

(1990) 02 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 1913 of 1989

Madhaba Seth

APPELLANT

Vs

Additional Dist. Magistrate (Land Reforms) and Another

RESPONDENT

Date of Decision : 02-02-1990

Acts Referred:

Orissa Government Land Settlement (Amendment) Act, 1976 — Section 2
Orissa Government Land Settlement Act, 1962 — Section 3(2), 3(3), 3(4), 7A(1),
7A(3)

Citation : (1990) 69 CLT 558

Hon'ble Judges : J.M. Mahapatra, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : H.S. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—Being aggrieved by the orders passed by the Addl. Dist. Magistrate (Land Reforms), Bolangir (opp. party No. 1) on 30-1-1986 and 8-2-1989 in Revision Case No. 66 of 1985 (Annexure 1 and 2) cancelling the lease of Government Land granted in his favour by the Tahasildar, Titilagarh the Petitioner filed this writ application to quash the said orders. The Land Acquisition Collector, Bolangir is the opp. party No. 2 in the case.

2. The material facts, shorn of unnecessary details, may be stated thus:

On the application filed by the Petitioner on 31-12-1971 as a landless person which was registered as Lease Case No. 1615 of 1972 the Tahasildar, Titilagarh under the provisions of the Orissa Government Land Settlement Act, 1962 (hereinafter referred to as "the Act") on due enquiry and complying other formalities prescribed, settled two acres of land in plot No. 570/774 of village Badmal under Saintala Police Station in the district of Bolangir with the Petitioner; possession of the said land was delivered to the Petitioner on 13-12-1974 and since then he continued in peaceful possession of the property. More than 11 years thereafter the opp. party No. 1, Addl. Dist. Magistrate (L.

R.), Bolangir initiated the proceeding in Revenue Revision No. 66 of 1985 purportedly u/s 7-A (3) of the Act on the basis of the information said to have been received from the Sub-divisional Officer, Titilagarh that the grant of lease in favour of the Petitioner was irregular. By order dated 30-1-1986 the Addl. Dist. Magistrate finding that no case u/s 7-A (3) of the Act was made out in the absence of any specific irregularity committed in granting the lease in favour of the Petitioner, remanded the matter to the Tahasildar, Titilagarh to specifically indicate the nature of irregularity committed in the case through the Sub-divisional Officer, Titilagarh vide Annexure-1. Thereafter on getting the report from the Tahasildar, the Addl. Dist. Magistrate by the impugned order passed on 8-2-1989 (Annexure 2) quashed the order of the Tahasildar passed on 24-3-1974. The Petitioner challenges the aforesaid orders on the grounds, inter alia, that the proceeding was barred by limitation, in the facts and circumstances of the case it was not within the competence of the Addl. Dist. Magistrate to cancel the lease u/s 7-A (3) of the Act and the procedure followed by the revisional authority was erroneous and the proceeding was vitiated on that score.

3. Sub-section (1) of Section 7-A provides for revision, against the order made under Sub-section (1) or under Sub-section (3) of Section 7 on an application being made by the aggrieved person within a period of ninety days from the date of the order. Sub-section (3) reads as follows:

7-A(3). The Collector may of his own motion or otherwise call for and examine the records of any proceedings in which any authority subordinate to it has passed an order under this Act for the purpose of satisfying himself that any such order was not passed under a mistake of fact or owing to a fraud or misrepresentation or on account of any material irregularity of procedure and may pass such order thereon as he thinks fit:

Provided that no order shall be passed under this Sub-section unless the person affected by the proposed order has been given a reasonable opportunity of being heard in the matter:

Provided further that no proceeding under this Sub-section shall be initiated after the expiry of fourteen years from the date of the order.

From the above provision the position is manifest that the suo motu revisional power vested in the Collector is not a general and omnibus one. It is to be exercised by the Collector for the purpose of satisfying himself that the order passed by any authority subordinate to it under the Act was not passed under a mistake of fact or owing to a fraud or misrepresentation or on account of any material irregularity of procedure and if the Collector finds that the order of the subordinate authority is vitiated on any of the above grounds he may pass such order in the proceeding as it thinks fit. The exercise of the power vested under the section is subject to two further riders provided in the two provisos; that no order shall be passed unless the person affected by the proposed order has been given a reasonable opportunity of being heard in the matter and no proceeding

under the Sub-section shall be initiated after expiry of fourteen years from the date of the order. It was therefore incumbent on the part of the Addl. Dist. Magistrate to record a finding that the order passed by the Tahasildar granting lease in favour of the Petitioner was passed either under a mistake of fact or was vitiated owing to fraud or misrepresentation or on account of any material irregularity of procedure before he could set aside the order in exercise of the power vested u/s 7-A(3) of the Act. The order dated 8-2-1989 (Annexure-2) shows that the substantial part of it is devoted to recording the contentions raised by the Government Pleader. The finding of the Addl. Dist. Magistrate is contained in the last paragraph of the order which reads as follows:

In view of the above facts and circumstances and after careful consideration of arguments of both the Advocates, I am of the opinion that the Tahasildar has selected the beneficiaries having source of income other than agriculture in contravention of the provision to Section 3(2) and (3) of the O. G. L. S. Act, 1962, the Govt. instructions referred to above and has granted the lease illegally and irregularly. As such the orders of Tahasildar dated 24-3-1974 is hereby quashed...

It is apparent from the order that the Addl. Dist. Magistrate has not recorded any specific finding that the order of the Tahasildar is vitiated on any of the grounds enumerated in Section 7-A(3). He seems to have satisfied himself by merely recording a finding that the Tahasildar has granted the lease illegally and irregularly. The power of suo motu revision vested under Sub-section (3) is a drastic measure which enables the revisional authority to unsettle a settlement of Govt. land with a person any time within fourteen years. The legislature being cognisant of the drastic nature of the power with intent to limit/curtail its scope, provided for exercise of the power in specific circumstances where some grave errors- like mistake of fact, fraud, misrepresentation, irregularity in following the mandatory provisions relating to procedure is found to have vitiated the proceeding. The revisional power u/s 7 -A(3) cannot be equated with the vide power vested in the appellate authority. It is thus clear that the Addl. Dist. Magistrate did not approach the proceeding in proper perspective and was not cognisant of the true scope and ambit of the provision in Section 7-A(3) of the Act while dealing with the matter.

4. Another feature in the impugned order which tends to indicate want of due application of mind by the authority is the finding that the provisions in Section 3(2) and (3) of the Act were contravened by the Tahasildar in granting the lease to the Petitioner. Section 3 deals with reservation and settlement of Govt. lands. Sub-section (2) of the said section provides that in the settlement of lands under Clause (e) of Sub-section (1), seventy per centum thereof shall be settled with persons belonging to the Scheduled Tribes and Scheduled castes in proportion to their respective populations in the village in which the lands are situated and the remaining lands shall be settled with the other persons not belonging to the aforesaid categories. Sub-section (3) of Section 3 lays down the order of priority

to be followed in the matter of Settlement of lands under the section. In the impugned order the Addl. Dist. Magistrate has not indicated in what manner the reservation provided under Sub-section (2) of Section 3 and the order of priority laid down in Sub-section (4) have been violated in granting the lease in favour of the Petitioner. These matters in the very nature of things are factual and are to be enquired into and discussed in the order while exercising the revisional power. This basic requirement has also been lost sight of by the authority.

5. Before parting with the case, we would like to discuss shortly about the procedure followed by the Addl. Dist. Magistrate, in this case. As noticed earlier, the proceeding under section-7-A(3) was initiated on the recommendation of the Sub-divisional Officer, Titilagarh. In the order passed by him on 30-1-1986 (Annexure 1) the Addl. Dist. Magistrate clearly observed During argument the Government Pleader could not mention specifically the nature of irregularity committed in allowing lease case under the scope of Section 7-A (3) of the Orissa Government Land Settlement Act., 1962. Moreover nothing has been mentioned specifically while submitting the lease case for review. "In view of this finding, the only order that could be passed was to drop the proceeding; instead the Addl. Dist. Magistrate remanded the case to the Tahasildar, Titilagarh " to specifically indicate the nature of irregularity committed in this case through the Sub-divisional Officer, Titilagarh." Such a procedure, in our view, was erroneous and against the principle of natural justice. If a proceeding is initiated on a report of a subordinate authority which does not indicate specific reasons to satisfy the competent authority to initiate the proceeding u/s 7 A(3) the matter has simply to be dropped. The order shows as if the revisional authority was making efforts to find out some irregularity in the proceeding and then interfere in the matter which the Addl. Dist. Magistrate should not have done while exercising quasi judicial power.

6. Regarding the contention raised on behalf of the Petitioner that initiation of the proceeding was barred by limitation, we do not find any substance in it. Under the second proviso to Section 7-A(3) the period prescribed is fourteen years. This period of limitation was inserted by amendment by Section 2 of the Orissa Government Land Settlement (Amendment) Act, 1976 (Orissa Act 38 of 1976). Clause (b) of Section 2 reads:

for the second proviso, the following proviso shall be and shall be deemed always to have been substituted, namely:

Provided further that no proceeding under this Sub-section shall be initiated after the expiry of fourteen years from the date of the order.

It is therefore clear that the amended provision was expressly made retrospective. In the present case, the lease was granted in 1974 and the proceeding u/s 7-A (3) was initiated in 1985, it was therefore within the prescribed period.

7. On the above analysis, the order of the Addl. Dist. Magistrate setting aside the

lease granted in favour of the Petitioner in exercise of his power u/s 7 -A(3) of the Act is unsustainable. Therefore the writ application is allowed and the impugned orders passed by the Addl. Dist. Magistrate on 30-1-1986 and 8-2-1989 in Revision Case No. 66 of 1985 are quashed. There will however be no order for costs of this proceeding.

J.M. Mahapatra, J.

I agree.

Writ application allowed.