

(2024) 03 OHC CK 0053
In the Orissa High Court
Case No : Writ Petition (C) No. 23521 Of 2013

Manoj Kumar Das

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 07-03-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2024) 03 OHC CK 0053

Hon'ble Judges : Chakradhari Sharan Singh, CJ; Murahari Sri Raman, J

Bench : Division Bench

Advocate : Surya Prasad Mishra, Soumya Mishra, B. Mohanty, S.K. Sahoo, Deepanwita Priyanka, Debakanta Mohanty

Final Decision : Dismissed

Judgement

Murahari Sri Raman, J.—

THE ACTION OF OPPOSITE PARTIES CHALLENGED:

1. Invoking provisions of Articles 226 and 227 of the Constitution of India, the petitioners, while questioning the inaction of the opposite parties-authorities in providing Ac.5.00 dec. of land in favour of the petitioners, which property is claimed to have been allotted in favour of the deceased father of the petitioners in 1995 in terms of Home Department Letter No.28888, dated 01.12.1966 as clarified by Home Department Letter No.66414, dated 26.09.1991, prayed for grant of the following relief(s):

"It is, therefore, prayed that this Hon'ble Court may graciously be pleased to admit this writ application, issue Rule NISI in the nature of writ of mandamus/ other writs calling upon the opposite parties to show cause as to why they shall not be directed to handover possession of Ac.5.00 dec. of land in favour of the petitioners in Puri, Tahasil which was allotted in favour of their deceased father Prasanna Kumar Das after identifying and demarcating the same within a period fixed by this Hon'ble Court and get the same mutated and recorded in favour of

the petitioners;

And if the opposite parties fail to show cause or show insufficient the said rule be made absolute and direct the opposite party authorities to handover possession of Ac.5.00 dec. of land in favour of the petitioners in Puri, Tahasil which was allotted in favour of their deceased father Prasanna Kumar Das after identifying and demarcating the same within a period fixed by this Hon'ble Court and get the same mutated and recorded in favour of the petitioners;

And further be pleased to pass any other order(s), direction(s), writ(s) and deem fit and proper;

And for this act of kindness the petitioners shall as in duty bound ever pray."

THE BACKDROP OF THE PRESENT PROCEEDING:

2. The facts, as adumbrated by the petitioners leading to filing of the present writ application, are stated briefly infra.

2.1. For the Army personnel the Government of India prepared a scheme to grant lease of land to the Ex-Military personnel and to the family of those jawans who sacrificed their lives in wars.

2.2. Prasanna Kumar Das, the father of the present petitioners, an Indian Navy personnel having joined in defence service in Navy, was deployed in sensitive areas and took part in the wars.

2.3. Prasanna Kumar Das, being an Ex-Military personnel and being eligible to get Ac.5.00 dec. of land as per Home Department Letter No. 28888, dated 01.12.1966, made an application before the Collector for allotment of the Ac.5.00 dec. of land, which was forwarded to the Tahsildar, Puri, which got registered as Lease Case No. 7 of 1988. Said application of Prasanna Kumar Das, registered as a lease case, was kept pending for a long time and no step was taken by the authorities for allotment of the land. Therefore, Prasanna Kumar Das again made another application on 03.08.1991 before the Home Department, Government of Odisha. The Under Secretary to Government of Odisha in Home Department after considering the said application intimated the Collector, Puri that the applicant-Prasanna Kumar Das has been declared eligible for benefit under the Home Department Letter No. 28888, dated 01.12.1966 and consequently, directed to take steps for allotment of land in favour of the applicant, if not already done, without any further delay vide Letter dated 26.09.1991.

2.4. On receipt of the Letter dated 26.09.1991, the Tahasildar, Puri without conducting any enquiry and without verifying the documents dropped Lease Case No. 7 of 1988 vide Order dated 03.03.1991 with a finding that said Prasanna Kumar Das is not eligible to get the benefit of the Home Department Circular and not entitled to the land. Thus on a review application of Prasanna Kumar Das, the Tahasildar dismissed the same vide Order dated 06.02.1992.

2.5. Prasanna Kumar Das being aggrieved by said Order dated 06.02.1992 passed by the Tahasildar challenged the same before the Sub-Collector, Puri by filing an Army Lease Appeal which was registered as Army Lease Appeal No. 1 of 1992. The Sub-Collector considering the Home Department Letter No. 66419, dated 26.09.1991 allowed the appeal vide Order dated 22.07.1992 and intimated the Tahasildar, Puri to act as per the Home Department Letter No. 66414, dated 26.09.1991.

2.6. In compliance of the order of the Sub-Collector, the then Tahasildar settled Ac.5.00 dec. of land in favour of the applicant-Prasanna Kumar Das out of Ac. 120.00 dec. of land in Mouza: Jagdal having Plot No. 798 under Khata No. 537 in Brahmagiri Tahasil and accordingly, Record-of-Right was prepared in the name Prasanna Kumar Das and land revenue was paid by him before the concerned Tahasil for the year 1996-97 and 1997-98 in respect of the land in question.

2.7. It is asserted by the petitioners that pursuant to the Order of the Tahasildar, patta was issued in favour of Prasanna Kumar Das in respect of Sabik Khata No. 537 Sabik Plot No. 798, corresponding to Hal Khata No. 516/284 and Hal Plot No. 798/2896 measuring an area of Ac. 5.00 dec. in Puri, Tahasil.

2.8. Land admeasuring Ac.5.00 dec. of land stated to have been allotted in favour of said Prasanna Kumar Das was not demarcated nor was the physical possession delivered in favour of the father of the petitioners in respect of the land in question at relevant point of time.

2.9. While the matter stood thus, Prasanna Kumar Das misplaced the file containing all the documents relating to the lease granted in his favour, which led him to approach the Tahasildar, Brahmagiri for grant of certified copy of the Record-of-Right. The Tahasildar instead of supplying the same informed that the Khatian copy in respect of the land in question was missing in the Tahasil Office at Brahmagiri.

2.10. The present Petitioner No.1, son of Prasanna Kumar Das, lodged a complaint dated 23.08.2002 before the Revenue Divisional Commissioner, Central Division, Cuttack regarding missing of Khatian in Brahmagiri Tahasil. As nothing turned out, Prasanna Kumar Das filed writ application, being registered as W.P.(C) No.3081 of 2004, questioning the inaction of the authorities.

2.11. During pendency of the writ application said Prasanna Kumar Das on 11.05.2011 applied before the Public Information Officer, Brahmagiri, Tahasil for supply the certified copy of Record-of-Right, but on 23.06.2011 Prasanna Kumar Das was informed that Record-of-Right corresponding to Khata No. 516/284 of Mouza: Jagadal is not available in the Tahasildar Office as per the Report of Revenue Inspector, Bhandarikuda.

2.12. During pendency of the writ application bearing W.P.(C) No.3081 of 2004, the original writ petitioner died on 29.05.2012, and the present petitioners being the legal heirs were substituted and sought to bring on record subsequent

development with new facts before this Court. Therefore, the substituted petitioners wanted to withdraw the writ application with a liberty to file a fresh writ application, which was, accordingly, allowed by this Court vide Order dated 22.04.2013.

2.13. Being granted with such liberty, the present petitioners filed the instant writ petition on 09.10.2013.

THE REPLY OF THE OPPOSITE PARTIES:

3. Though notices were issued to the opposite parties long ago, no counter affidavit is forthcoming, except seeking adjournments to file the same.

HEARING OF THE WRIT PETITION:

4. This matter was on board on 29.02.2024 under the heading "Admission". Counsel for both the sides conceded that this case has been continuing since long. It is submitted by the counsel for the petitioners that the original petitioner had filed W.P.(C) No.3081 of 2004, alleging inaction of the opposite parties in demarcating and handing over the possession of land stated to be allotted in his favour. Therefore, this Court took up the matter for final hearing and heard Sri Surya Prasad Mishra, learned Senior Advocate appearing along with Sri Soumya Mishra, learned Advocate on behalf of the petitioners and Sri Debakanta Mohanty, learned Additional Government Advocate for the opposite parties.

SUBMISSIONS AND ARGUMENTS OF RESPECTIVE PARTIES:

5. Sri Surya Prasad Mishra, learned Senior Advocate submitted that prior to 1966 Government Circular, the Government of Odisha in Home Department Resolution No.11323-3S-29/63-Poll-D, dated 14.05.1963 provided the benefits to be given to the personnel of Indian Army, Navy and Air Force belonging to the State of Odisha, which inter alia extends Ac.5.00 dec. of land and made ready for cultivation at Government cost. In the instant case considering the eligibility criteria of the petitioners' father, namely Prasanna Kumar Das, agricultural land measuring Ac.5.00 dec. in Brahmagiri Tahasil was allotted and such allotment/settlement was made way back in 1995 out of Ac.120.00 dec. of land in Jagadal Mouza. Nonetheless, the land could not be identified and demarcated by the Tahasil Amin nor could the physical possession be delivered to the father of the petitioners. The land was not developed and demarcated. It is alleged that the Tahasil authorities, in spite of repeated approach by the father of the petitioners deferred the matter on some pretext or the other and eventually the father of the petitioners in whose favour the settlement/allotment was made could not enjoy the property as he died in the meantime. Since there has already been an allotment and Record-of-Right has been prepared in the name of Prasanna Kumar Das, the petitioners (legal heirs) are, therefore, legally entitled to get the possession of the said property.

5.1. Since the opposite parties have not provided the specific area of land settled/allotted in favour of father of the petitioners despite several approaches, and no

action being taken by the authorities due to non-availability of record, the recourse to writ remedy has been taken for an appropriate relief. It is vehemently submitted by the learned senior counsel that when the benefit has been provided under the resolution of the Government, father of the petitioners was entitled to such benefit. Decision has also been taken for allotment of land and the land was allotted in favour of the petitioners' father. Therefore, a valuable right having been accrued in favour of the petitioners' father, there cannot be denial of entitlement of benefit to the legal heirs of Prasanna Kumar Das, after his death. Such right being available for inheritance by the legal heirs-petitioners, they are, thus, entitled to get the benefit of the same.

6. Opposing aforesaid submissions of Sri Surya Prasad Mishra, learned Senior Advocate, Sri Debakanta Mohanty, learned Additional Government Advocate forcefully submitted that the writ petition is not liable to be entertained at all inasmuch as the nature of prayer made in the writ petition does emanate from disputed questions of fact. He has submitted that the Public Information Officer has intimated the petitioner No.1 herein that "the Revenue Inspector, Bhandarikuda vide his Letter No.1056, dated 11.05.2011 has informed that Record-of-Right relating to Mouza: Jagadal Khata No.516/284 is not available in his Office".

6.1. Sri Debakanta Mohanty, learned Additional Government Advocate further submitted that the benefit of getting Ac.5.00 dec. of land is available to "each person on return", but in case a person is killed, such benefit is extended to "widow and the dependents". There being no provision for making such benefit available to the legal heirs, the prayers made in the present writ application cannot be acceded to.

6.2. In furtherance to the above, the learned Additional Government Advocate referring to Order dated 05.07.1995 of Tahasildar, Puri (Annexure-3) he submitted that it is recorded that the applicant-Prasanna Kumar Das furnished declaration certificate to the effect that "he has no landed property in his name or name of his family members except homestead land". Since father of the petitioners was not landless person, the claim made by these petitioners deserves no consideration.

CONSIDERATION OF RIVAL CONTENTIONS:

7. The Government of Odisha in Home Department vide Resolution No. 11323—3S-29/63-Poll, dated 14.05.1963 made provisions to provide for concessions to the Jawans who are from Odisha and deployed in forward areas to defend the country. The following categories of persons were entitled to the facilities/concessions as detailed in the said Resolution:

"(1) Personnel of Territorial Army belonging to Odisha posted in the forward areas and personnel of the Auxiliary Air Force who have been called up.

(2) Personnel of the Odisha Military Police posted in forward areas.

(3) Personnel of the India Army, Navy and Air Force belonging to Odisha.

(4) Other categories of officers or men who are specially declared eligible for these concessions by the State Government."

7.1. Under the heading "Concessions" vide Paragraph 3(d) of the said Resolution, dated 14.05.1963, it has been specified inter alia, "Each person on return will get five acres of land free and made ready for cultivation at Government cost. In case a person is killed the widow and the dependents will receive the land." Said clause suffered further amendment by virtue of Resolution No.9736— 3S-29/63-Poll, dated 11.04.1964, with addition that "Provided that personnel of the Indian Army, Navy and Air Force and those in the Territorial Army or in the Auxiliary Air Force shall get such land after completion of five years of service in the Army."

7.2. As is apparent from the above resolutions, the widow and the dependents are entitled to receive land if the person is killed. It is not the case of the petitioners that their father was killed nor is it their case to demonstrate that they are dependents.

7.3. Main plank of argument advanced by Sri Surya Prasad Mishra, learned Senior Advocate is that as allotment of land measuring Ac.5.00 dec. was made out of Ac.120.00 dec. in Mouza: Jagadal under Khata No.537, Plot No.798 in favour of father of the petitioners, Prasanna Kumar Das, pursuant to Order dated 05.07.1995 in Jawan Lease Case No.7 of 1988 passed by the Tahasildar, Puri, the present petitioners, being legal heirs are entitled to be executed with lease deed.

7.4. Scrutiny of pleadings reveals the fact that vide paragraph 15 of writ petition the petitioners have admitted that "actual possession had not been delivered by the authorities". Furthermore, from the prayer made in the writ petition it is transpired that the petitioners seek direction to the opposite parties to identify and demarcate the land, which is stated to have been allotted in favour of Prasanna Kumar Das. Further reading of material on record suggests that the Public Information Officer, Brahmagiri Tahasil has made it clear that "Record-of-Right relating to Mouza: Jagadal, Khata No.516/284 is not available in his R.I. Office". The petitioners have also been candid in saying at paragraph 10 of the writ petition that "Prasanna Kumar Das misplaced the file containing all the documents relating to the lease granted in his favour".

7.5. As rightly pointed out by the learned Additional Government Advocate, there are disputed facts involved in the present matter which require to be established before the competent court of law. The petitioners are required to establish their right to such property as physical possession of the property sought to be identified and demarcated has never been handed over to the original applicant-Prasanna Kumar Das.

7.6. In such view of the matter, this Court is not inclined to accept the contention of the learned senior counsel appearing for the petitioners.

8. It is pertinent to notice that though the petitioners have claimed that Prasanna

Kumar Das was allotted with the subject-land way back in 1995; till 2002 no step was taken by Prasanna Kumar Das. Nonetheless, it is stated that a complaint was lodged before the Revenue Divisional Commissioner, Central Division, Cuttack. Thereafter, said Prasanna Kumar Das took another two years to approach this Court by way of petition in W.P.(C) No.3081 of 2004, which was withdrawn by the legal heirs with liberty to file fresh application.

8.1. From the aforesaid narration of fact, it is apparent that there was unexplained delay on the part of Prasanna Kumar Das in taking recourse before the appropriate forum for ventilation of his grievance.

8.2. This Court is, therefore, of the considered opinion that the present writ petition deserves to be dismissed.

9. Another significant aspect is that on 22.02.2024 when this matter was taken up for hearing, learned senior counsel sought adjournment to enable the petitioners to file additional affidavit in terms with Rule 3 of Chapter-IV of Part-II of the Rules of High Court of Odisha, 1948.

9.1. The petitioners appeared to have filed Additional Affidavit on 22.02.2024, wherein at paragraph 17 the following is stated:

"That in the meantime, the deponent exercising due diligence has procured a copy of the Record-of-Rights pertaining to Khata No.318 in Mouza: Sipasarubali, Tahasil: Brahmagiri, District: Puri wherein a number of plots in the status of 'Abada Jogya Anabadi' have been reserved by the State of Odisha for the purposes of allotment in favour of ex-servicemen of Odisha."

9.2. From the above Additional Affidavit, it appears, the petitioners are interested to have another chunk of land other than what was allotted to Prasanna Kumar Das.

9.3. This Court is not oblivious of change of policy by virtue of the Resolution No.7390-Polls/2-04/2013-Poll, dated 19.02.2014 of the Government of Odisha in Home Department published in Odisha Gazette Extraordinary No.480, dated 10.03.2014, relevant portion of which is reproduced herein below:

"SUBJECT: Monetary grant in lieu of agricultural land to landless Jawans who have served in the forward areas during 28-10-1962 to 31-1-1964/landless ex-servicemen, Cash reward to Gallantry and Non-gallantry award winner Defence personnel.

Ref:-1. Home Department Resolution No. 11323/Poll., dated the 14th May, 1963/ Resolution No. 9736, dated the 11th April, 1964/Resolution No. 20827, dated the 7th July, 1969/ Resolution No. 4741, dated the 6th February, 1970/Resolution No. 59216, dated the 24th October, 1986/Resolution No. 25219, dated the 30th May 2003/Resolution No. 37613, dated the 11th August 2009.

2. All GOs. issued by Home Department and Revenue & D.M. Department in pursuance of the aforesaid Resolutions.

As per the decisions communicated in Home Department Resolutions of 1963, 1964 and 1969, Government agricultural land up to five acres are being given under Government Grants Act, 1895 to Jawans who served in forward areas during China aggression from the 26th October, 1962 to the 31st January, 1964. Subsequently, on the request of Home Department, the erstwhile Revenue & Excise Department made provision for allotment of Government agricultural land up to one standard acre in favour of landless ex-servicemen and landless Gallantry and Non-gallantry award winner Defence personnel up to Non-Commissioned Officer rank under the said Act vide GO. No. 19513, dated the 16th April 1998 and No. 40743, dated the 11th August 1998. While making such provision for grant of land, Revenue & Excise Department in the aforesaid letters had requested Home Department for award of Monetary grant in lieu of land in favour of Gallantry award winner and Non-gallantry award winner Defence personnel, if land is not available. The Home Department after taking into consideration, the aforesaid views of Revenue Department issued a Resolution bearing No. 25219, dated the 30th May 2003 wherein provision of monetary grant in lieu of land was made in favour of Gallantry award winner Defence personnel. The provision of monetary grant in lieu of land was made due to the reason that it was becoming difficult to allot agricultural land due to paucity of land.

2. Now, the situation with regard to availability of land has further worsened with passage of time. It has become difficult to find Government land for implementation of projects even for developmental purposes funded from the State exchequer. In many occasions, land reserved for specific purposes in RoR are now required to be dereserved for other public purposes. Because Revenue & D.M. Department has not been able to meet the requirement of land for Administrative Departments, a policy for direct purchase of private land for social development projects has, meanwhile, been formulated and communicated in Revenue & D.M. Department Letter No. 26223/ R&D.M., dated the 6th July 2013.

3. Therefore, in supersession of all previous Resolutions/instructions issued by Home Department in this regard from time to time, Government, after careful consideration, have been pleased to decide that monetary grant in lieu of agricultural land shall be given to the eligible Jawans who served in the forward areas during the period from the 26th October, 1982 to 31st January, 1964 and landless ex-servicemen. The amount of monetary grant in lieu of agricultural land in each case shall be as indicated in column 3 of Annexure-1.

4. The Government have also been pleased to decide to continue to give only cash rewards to members of the Armed Forces every time for winning Gallantry and Non-gallantry awards at the rates as mentioned in column 3 of Annexure-II. This category is neither eligible for agricultural land nor eligible for monetary grant in lieu of agricultural land.

***"

9.4. This Court in the case of Pratima Mohanty Vrs. State of Odisha, W.P.(C) No.27100 of 2013, vide Order dated 12.04.2021 [2021 (II) ILR-CUT 13], while considering,

"The Petitioner, whose late husband was working in the Navy between 1955 to 1966, has filed the present petition for a mandamus to issue to the Opposite Parties to allot Ac.5.00 land at Bidanasi or Bidyadharpur area of Cuttack. She also seeks quashing of a Gazette Notification dated 19th February, 2014 in the matter of monetary grant in lieu of agricultural land to landless Jawans, who have served in the forward areas during 26th October 1962 to 31st January, 1964.", held as follows:

"6. On 19th February, 2014 the Government published a resolution in the Odisha Gazette whereby the policy of allotting land to Jawans, who had been engaged between the period from 26th October, 1962 to 31st January, 1964 was reviewed and substituted by the policy of monetary grant in lieu of land. ***

18. The second obvious difficulty for the Petitioner is of course the policy change brought about by the Opposite Parties on 19th February, 2014. At this point in time i.e., 2021, it is not possible to the Court, in the circumstances explained hereinbefore, to issue any mandamus to the Opposite Parties to allot land in favour of the Petitioner notwithstanding the change in policy.

21. As regards the challenge to the policy dated 19th February, 2014, the Court finds that there is sufficient indication in the resolution of that date why the State Government had to resolve to the change in policy. In para-2 of the said resolution, it is stated as under:

'2. Now, the situation with regard to availability of land has further worsened with passage of time. It is has become difficult to find Government land for implementation of projects even for developmental purposes funded from the State exchequer. In many occasions, land reserved for specific purposes in RoR are now required to be dereserved for other public purposes. Because Revenue & D.M. Department has not been able to meet the requirement of land for Administrative Departments, policy for direct purchase of private land for social development projects has, meanwhile, been formulated and communicated in Revenue & D.M. Department Letter No.26223/R & D.M., dated the 6th July 2013.'

22. Indeed with the scarcity of land available for allotment, the Government is constrained to review the earlier policy and this per se cannot be said to be arbitrary or irrational. ***"

9.5. Under the aforesaid premises, it is open for the petitioners to approach the appropriate forum for establishing their right and justification of claim as legal heirs of Prasanna Kumar Das.

EXERCISE OF POWER UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA,
WHERE DISPUTED QUESTIONS OF FACT IS INVOLVED:

10. There is no semblance of doubt that when there is involvement of disputed question of fact and the parties are required to establish their right in property writ Court is loathe in entertaining writ petition and sparingly under extraordinary circumstances exercises power under Article 226 of the Constitution of India.

10.1. On the pleading of the petitioners that Prasanna Kumar Das misplaced original documents relating to allotment and grant of lease of property described in the writ petition, and on the clear statement of the opposite party that such records are also unavailable in the Brahmagiri Tahasil, no writ of mandamus can possibly be issued to the opposite parties to "identify" and "demarcate" the property as made in the "prayer" under the present circumstances.

10.2. In the case of State of Odisha Vrs. Malati Biswal & Others, Civil Appeal Nos. 9895-9896 of 2017 (arising out of SLP(C) Nos.26318-26319 of 2013), vide Order dated 27.07.2017, Hon'ble Supreme Court of India observed as follows:

"*** The State of Orissa has come up in the appeals aggrieved by the orders passed by the High Court in the Writ Petitions which were filed by the respondents for allotment of the land. The High Court has allowed the writ applications by the impugned order on the ground that since the land had not been allotted to someone else, it would be appropriate to direct the State of Orissa to allot the land to the respondents who were agriculturalist and or in military. Thus, it would be appropriate to direct that the State of Orissa to realise the market value of the property from them to make the allotment of the land.

The provisional allotment orders were issued to them on 6.4.1990, 24.7.1989, 20.3.1992 and 20.7.1989 respectively. However, it is an admitted fact that none of the respondents had deposited any premium as per the condition of provisional allotment and had filed the writ petitions after 18-23 years. The High Court has allowed the writ applications by the impugned orders. Hence the appeals.

In view of the aforesaid stipulation, it is clear that there was no necessity of passing any formal cancellation order and the provisional allotment order stood cancelled automatically due to admitted non-compliance of the requisites to be performed, as stipulated in the order of allotment. No reason has been shown good bad or otherwise why there was so much of delay in approaching the Court. Once the Government has framed benevolent scheme for such people, it was incumbent upon them to take advantage of the same as stipulated in the scheme and the allotment orders within reasonable time, it would not be a sufficient ground in the facts of the case that since some of them have served the country,

they can approach the court at any time after 20 years. Time cannot be relaxed after lapse of decades. The delay was inexcusable and due to laches on the part of the respondent they were not entitled for any relief.

Thus, the impugned order is hereby set aside. The appeals are, accordingly, allowed. No order as to costs."

10.3. In the case of Santosh Ku. Nath Vrs. Collector, Sambalpur, W.P.(C) No.8364 of 2007, vide Order dated 15.03.2021, this Court observed as follows:

"9. Learned counsel for the Petitioner drew attention of the Court to a Division Bench decision of this Court in Girish Chandra Mohanty Vrs. State of Orissa, 2013 (II) OLR 166 where inter alia it has been held that the OGLS Act [Odisha Government Land Settlement Act, 1962] could not be invoked for cancelling the lease granted in favour of a Jawan. On the facts of that case, it appears that the application was submitted on 9th May, 1967 and the eligibility of the applicant in that case was determined under the provisions of Government Grants Act, 1985 and not under the OGLS Act.

However, in the present case, it is plain that the grant of lease in favour of the Petitioner was after the enactment of the OGLS Act.

10. In any event, the whole purpose of granting the lease in favour of a Jawan is only keeping in mind "those persons who actually need the land". In the facts of the present case, it is plain that the Petitioner was not a landless person. Added to this, in para-12 of the counter affidavit, it is pointed out that as a Project Displaced Family (PDF) of M/s. Bhusan Steel Ltd., the Petitioner has availed all the benefits i.e. one plot of an area Ac 0.13 decimals, one house as per Rehabilitation and Re-Settlement Policy as well as cash compensation in lieu of job. Therefore, the essential requirement of a person being a landless person to be eligible for grant of lease under the OGLS Act does not appear to be satisfied in the present case.

11. The Court finds no ground to interfere with the impugned order. The writ petition is dismissed."

10.4. In the instant case, there is no pleading whatsoever available on record to show that the petitioners are landless and Prasanna Kumar Das or his legal heirs is, in need of agricultural land. Rather the Order dated 05.07.1995 of Tahasildar vide Annexure-3 shows that Prasanna Kumar Das had homestead.

10.5. This Court in yet another case in the case of Anil Palai Vrs. State of Odisha, W.P.(C) No.80 of 2016, vide Order dated 31.05.2021 relating to the lease of Government land with reference to the Odisha Government Land Settlement Act, 1962, held as follows:

"8. Considering the rival contentions of the parties and the interveners, coupled with the fact of pendency of the Civil Suit as noted hereinbefore, it is clear that the present writ petition raises highly disputed question of facts, which would

require the leading of evidence and the examination and cross-examination of witnesses, and which are, therefore, not amenable to being adjudicated under Article 226 of the Constitution. In *Chairman, Grid Corporation of Orissa Limited (GRIDCO) Vrs. Smt. Sukamani Das* (1997) 7 SCC 298, it was held by the Supreme Court that it is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy.”

10.6. With the aforesaid legal position, this Court is not inclined to issue writ of mandamus as sought for in the “prayer” portion of the writ petition by the petitioners, legal representatives of Prasanna Kumar Das.

CONCLUSION:

11. The discussions made above clearly lead to establish that Prasanna Kumar Das, having homestead, was never handed over possession of the land stated to have been allotted in his favour and accordingly, lease was not executed. Significantly, it is stated in the writ petition that said Prasanna Kumar Das also misplaced the records relating to subject-land.

12. There was also unexplained delay in approaching this Court invoking writ jurisdiction.

13. In view of changed position qua lease of land to jawans by virtue of Resolution No.7390-Polls/2-04/2013-Poll, dated 19.02.2014 of the Government of Odisha in Home Department published in Odisha Gazette Extraordinary No.480, dated 10.03.2014, the instant writ petition at the behest of the legal representatives of Prasanna Kumar Das does not deserve indulgence.

14. This Court makes the observation that the Additional Affidavit filed on 22.02.2024 gives a complete new stand and the petitioners sought to demonstrate that certain plots are reserved for allotment in favour of ex-servicemen in the status of ‘Abada Jogya Anabadi’ in another Mouza. Therefore, if the petitioners are so advised may pursue their claim before the appropriate forum.

15. In the result, this writ petition stands dismissed, but in the circumstances, there shall be no order as to costs.

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