
(2010) 01 OHC CK 0030
In the Orissa High Court

Mirza Siddik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-01-2010

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 3B, 7A

Citation : (2010) 109 CLT 653

Hon'ble Judges : Sanju Panda, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Learned Counsel for the Petitioner & the Learned Government Advocate for the State-Opp. Parties. By means of this Writ Petition, the Petitioner has prayed for quashing of the impugned Order Dated 30.4.1998 passed by the Tahasildar, Bhubaneswar resuming the land settled in favour of the father of the Petitioner & to restore the said land to the Petitioner.

Facts of the case are that Mirza Bhikam, the father of the Petitioner who was in Military service was declared by the Home Department of the State Government eligible for concession of land as per the Home Department Resolution No. 20827/ Poll. Dated 7.7.1969. Thereafter he filed a petition for allotment of Govt. land as admissible to Jawans out of Plot No. 329 under khata No. 274 of mouza Alakar. As after enquiry the aforesaid land was found to be of Chotajungle kisam & cannot be considered for settlement, the Petitioner was asked to select another piece of land pursuant to which the Petitioner prayed for allotment of land out of plot No. 53 under Khata No. 201 in mouza Gothapatna. Considering the application of the Petitioner & after due enquiry, the Tahasildar, Bhubaneswar by Order Dated 25.1.1990 passed in W.L. Case No. 945 of 1987 settled acres of land appertaining to plot No. 53 under khata No. 201 in mouza Gothapatna in favour of the father of the Petitioner. Thereafter the aforesaid land was mutated in the name of the father of the Petitioner & he continued to possess the land by paying rent. Case of the Petitioner is that his father after prolonged illness died on

1.3.2001 & the Petitioner who was staying outside went to pay the rent, the same was not accepted on the ground that the land has been restored to the Government.

Contention of the Learned Counsel for the Petitioner is that the land having been allotted to his father under the Government Grants Act could not have been resumed by applying the provision of Section 3-B of O.G.L.S.Act. His further contention is that no notice having been issued to his father or after his death to the Petitioner before cancellation of the allotment, there was violation of the principles of natural justice. It appears from the order of allotment that the land allotted to the father of the Petitioner was reserved for settlement among the Jawans. It further appears from the order of allotment that settlement of land with Jawans is governed by the provisions of Govt. Grants Act, 1895 as a measure of reward & not by the provisions of O.G.L.S.Act, 1962. From the impugned order it appears that the case was taken up on receipt of letter dated 15.12,1997 from the A.D.M., Khurda directing the Tahasildar, Bhubaneswar for resumption of the land in question on the ground that Sri R.C.Mishra, I.A.S, who was entrusted with the enquiry into the lease cases sanctioned in Bhubaneswar Tahasil also pointed out irregularities in regard to sanction of lease by the Tahasildar under the Govt. Grants Act & therefore it was necessary to resume the land. By the impugned order, the Tahasildar resumed the land, cancelled the patta issued in favour of the father of the Petitioner & restored the land to Govt. holding.

A similar matter came up for consideration before this Court in Rajkishore Das Vs. State of Orissa and Others, wherein an ex army personal challenged the order of the Additional District Magistrate, Bhubaneswar cancelling the land settled with him as war lease. In that case this Court held that the settlement of five acres of land In favour of ex-army personnel was not made in accordance with the provisions of the Orissa Government Land Settlement Act but the same was made under the lease principles read notifications which made special provision for special categories of persons who could not be treated on the same footing as private individuals. Therefore, suo motu proceeding u/s 7A(3) of the Act could not be resorted to for examining the correctness or otherwise of the settlement made in favour of a Jawan. In the instant case the land was sanctioned in favour of the father of the Petitioner as a concession for his serving in Army during the year 1962-1964 who was declared eligible by the State Government for such concession. The said land was resumed by the Tahasildar on the basis of the letter, issued by the Additional District Magistrate, Khurda This case is therefore covered by the decision of this Court in Rajakaishore (supra).

In view of the above, we hold that the proceeding initiated for cancellation of the grant in favour of the father of the Petitioner was without jurisdiction & the order passed thereunder cannot be maintained. We, therefore, allow this Writ Petition & quash the impugned order. Issue urgent certified copy.