

(2012) 04 OHC CK 0011
In the Orissa High Court
Case No : Writ Petition (C) No. 20499 of 2011

Nirmal Kumar Pattnaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 3(2), 7A(3), 7A(3)

Citation : (2012) 114 CLT 277

Hon'ble Judges : L. Mohapatra, J;B.K. Misra, J

Bench : Division Bench

Advocate : Sarada Pr. Sarangi, P.P. Mohanty, P.K. Dash, B.P. Das, A. Pattnaik and G. Senapati, for the Appellant;

Judgement

B.K. Misra, J.—This is the second round journey of the present Petitioner in challenging the order of the Additional District Magistrate, Bhubaneswar in Lease Revision Case No. 439 of 1998 dated 30.5.2011 (Annexure-8) wherein the Addl. District Magistrate, Bhubaneswar set aside the settlement of the case land in favour of one Bika Naik in W.L. Lease Case No. 2055 of 1973. The case of the Petitioner is that one Bika Naik was granted lease of Ac. 0.500 decimals of land appertaining to Hal Plot No. 266/1044/1130. under Hal Khata No. 239/33 corresponding to Sabik Plot No. 1044 under Sabik Khata No. 281 in Mouza-Giringaput by the Government after considering all the statutory formalities. A lease deed was executed in the year 1974. The original lessee, namely, Bika Naik transferred the said Ac. 0.500 decimals of land to one Trilochan Behera after obtaining permission from the Revenue Officer, Bhubaneswar transferred the case land measuring Ac. 0.500 decimals to one Rama Krushna Parida on 18.10.1985. It is the further case of the Petitioner that thereafter the said Bika Naik transferred the case land which he purchased from Trilochan Behera in favour of the present Petitioner. The Petitioner alleges that on 29.4.1998 i.e. almost after 13 years of his purchasing the case land the Addl. District Magistrate, Bhubaneswar namely, the present Opp. Party No. 1 initiated a Sou Motu Revision Case u/s 7-A(3) of the Orissa Government Land Settlement Act,

1962 & after examining, the lower Court record set aside the settlement of the case land by his Order Dated 29.4.1998 & directed the Tahasildar, Bhubaneswar to cancel the lease granted by the State Government in favour of Bika Naik & to correct the records & take over possession of the land in question. This order of the Additional District Magistrate, Bhubaneswar was challenged by the present Petitioner before this Court in W.P (C)No. 13763 of 2008 & this Court while setting aside the order of settlement of the Revisional Authority directed the Additional District Magistrate, Bhubaneswar to dispose of the case afresh after giving opportunity of hearing to the Petitioner & also to consider the question of limitation. It is the further case of the Petitioner that she appeared before the Additional District Magistrate, Bhubaneswar & after hearing the Additional District Magistrate, Bhubaneswar passed the impugned order at Annexure-8.

2. Learned Counsel appearing for the Petitioner contended that the Revenue Authority cancelled the lease granted in favour of Bika Naik without issuing any show cause notice indicating the grounds for cancellation of the lease granted to him & the Petitioner had also no knowledge of such cancellation of lease & though he is entitled to a show cause notice, no notice was issued to him & therefore, the impugned order smacks transparency & there has been gross violation of the principles of natural justice. It was also equally argued that Suo Motu Revision Proceeding initiated by the Additional District Magistrate, Bhubaneswar i.e. after long lapse of 25 years is without any jurisdiction & the reasoning assigned are totally fallacious & cannot be sustained in the eyes of law. Thus, it is contended by the Learned Counsel for the Petitioner that the impugned order should be quashed.

3. The Opp. Party No. 1 files his counter affidavit denying all the allegations of the Petitioner & while praying for dismissal of the Writ Petition it has been specifically averred that Bika Naik the original lessee is neither a member of the Scheduled caste or Scheduled Tribe community but he availed the benefit u/s 3(2), of the O.G.L.S. Act, 1962 by impersonating him as a member belonging to the Scheduled Tribe community with an ulterior motive to grab the said land accordingly when such a fact came to the notice of the Revisional Authority, a Sou Motu Revision was initiated which was in accordance with law & no fault can be found with the Revisional Authority in passing the impugned order at Annexure-8.

4. Learned Additional Government Advocate appearing on behalf of the State contended that the impugned order at Annexure-8 is a speaking order & when by misrepresentation on facts & playing fraud the land was leased out to Bika Naik on the notion that he belongs to the Scheduled Tribe community, the competent authority on considering such fraud & misrepresentation initiated Sou Motu Revision & in doing that there has been no violation of any statutory provision & limitation of 14 years is not applicable to the facts & circumstances of this case.

5. We have heard the matter at length. Section 7-A(3) of the Orissa Government Land Settlement Act reads as follows:-

The Collector may, of his own motion or otherwise, call for & examine the records of any proceeding 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 & 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.

6. In the instant case, the impugned order (Annexure-8) nowhere reveals that the Additional District Magistrate, Bhubaneswar if at all made any attempt to comply with the mandate of the first provision of Section 7-A (3) of the Act by calling for information from the office of the Sub Registrar as to whether the lease hold property or any portion thereof has been alienated by the original lessee to any other party. Had such report been called for the Revisional Authority could have ascertained that the Petitioner had purchased the lease hold land from the original lessee & should have issued notice to the Petitioner as well as to Bika Naik the original lessee who are the affected parties. But no such step appears to have been taken by the Additional District Magistrate before passing the impugned order.

7. In a similar case, this Court in the case of Rama Chandra Pandav -v- State of Orissa & others in W.P.(C) No. 14364 of 2006 held that since the Petitioner had purchased the lease hold land from the original lessee the order of the Addl. District Magistrate is not sustainable as no notice has been issued to the purchaser before cancellation of lease.

8. Further we find that the original lease was granted long back in the year 1974 whereas the Revisional Authority initiated the Suo Motu Revision in 1998 i.e. after a long lapse of 25 years. Under 2nd Proviso to Section 7-A(3) of the Orissa Government Land Settlement Act no proceeding can be initiated after expiry of fourteen years from the date of order granting lease. While prescribing the period of limitation the legislature while drafting the Orissa Government Land Settlement Act in their wisdom prescribed the period of limitation for initiation of a proceeding in examining the correctness of the order passed under the act & also to find out if any fraud or misrepresentation etc. was practised in obtaining an order. Being cognizant of such contingencies the period of limitation of 14 years has been prescribed. The reasons assigned by the Additional District Magistrate, Bhubaneswar about the fraudulent declaration made by Bika Naik that he belongs to the Scheduled Tribe community & fraud was practised to get the land settled in his favour can be decided by the Revisional Authority as per terms of the provision but within the period of limitation.

9. In view of the aforesaid provision of law when the Suo Motu Lease Revision

Case No. 439 of 1998 which has been initiated after a long lapse of 25 years" & in view of the 2nd proviso to Section 7-A(3) of the Orissa Government Land Settlement Act, 1962 such Suo Motu Lease Revision case is without jurisdiction & resultantly, the impugned order at Annexure-8 cannot be sustained & is set aside accordingly.

Accordingly, the Writ Petition stands disposed of.

L. Mohapatra, J.

I agree.