

(2023) 03 OHC CK 0119
In the Orissa High Court
Case No : Writ Petition (C) No.26920 Of 2022

Padma Nayak

APPELLANT

Vs

State Of Odisha And Another

RESPONDENT

Date of Decision : 16-03-2023

Acts Referred:

Odisha Government Land Settlement Act, 1962 — Section 3(1)(e), 3(2), 3(3)

Citation : (2023) 03 OHC CK 0119

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : Dharendra Kumar Mohapatra, G.N. Rout

Final Decision : Disposed Of

Judgement

Arindam Sinha, J.

1. The writ petition was moved on 26th October, 2022. Mr. Mohapatra, learned advocate appearing on behalf of petitioner had submitted, his client's father constructed thatched house on Government land and after him, she has been residing therein. The construction was made in year 1965. The land is situated within territorial limits of Bhubaneswar town. Revenue along with penalty were collected in respect of the land since year 1985. He submits, impugned is, inter alia, order dated 12th January, 2018 made by the Director of Estates and Ex-Officio Addl. Secretary to Government, rejecting his client's representation for settlement of land in her favour. Purported ground alleged is absence of provision under the Land Grant Policy, 2015, to settle Government land in name of private individual.

2. He relies on section 3(1)(e), (2) and (3) in Odisha Government Land Settlement Act, 1962 to submit, settlement can be made. There be direction upon the authority to do so.

3. Several documents have been impugned by petitioner, including above mentioned order dated 12th January, 2018. It transpires that thereby petitioner

is faced with eviction to be implemented by Bhubaneswar Development Authority (BDA). Opposite party no.4 is BDA but has not been noticed. We find, it is not necessary for it to be noticed in adjudication and disposal of the writ petition. This is because, of the documents impugned, order dated 12th January, 2018 is the one, regarding which submissions were made and challenge thereto, relevant for purpose of petitioner. Said order was passed by Director of Estates and Ex-officio Additional Secretary to Government, a functionary of State.

4. By our order dated 26th October, 2022 we had made a requirement on State. Paragraph-4 from said order is reproduced below.

"State is required to inform Court by issuing instruction or by filing affidavit as to whether land in Bhubaneswar town has been settled upon private persons pursuant to authorization under section 3(1)(e). The affidavit will be accepted on returnable date upon advance copy served."

5. Mr. Rout, learned advocate, Additional Standing Counsel appears on behalf of State and submits, affidavit dated 21st November, 2022 has been filed. We reproduce paragraph-4 from said affidavit without reference to the annexure.

"4. That the section 3 of the Odisha Government Land Settlement Act, 1962 provides reservation and settlement of Government land. The provisions contained in section 3(1)(e) of the Act is quoted below for better application:

"3(1)(e) to authorise any officer of Government not below the rank of a Tahasildar to dispose of applications for settlement of lands and to settle the same in such manner as may be prescribed and subject to the provisions of Sub-Sections (2) and (3)."

5. That in this connection, it is humbly submitted that GA and PG Deptt. is the custodian of the all Government land within the Capital City of Bhubaneswar as per the Odisha Government Rules of Business. GA Deptt. was following the provisions of the Government Grants Act, 1895 for lease, transfer and alienation of Government land. After repeal of the Government Grants Act, 1895 through the Repealing and Amending (Second) Act, 2017. Act No.4 of 2018, a new Schedule-IV-A was inserted in the schedule of the Odisha Government Land Settlement Rules, 1983 for lease, transfer and alienation of Government Land within the limits of the Bhubaneswar Municipal Corporation area through the Odisha Government Land Settlement (Second Amendment) Rules, 2020."

6. We have perused said impugned order dated 12th January, 2018. Our earlier perusal had resulted in the requirement on State, to file the affidavit. Contents of paragraph-4 in the affidavit filed were not referred to and thereby presumed as not considered in passing said impugned order dated 12th January, 2018. Hence, we set aside and quash the same. Petitioner's representation dated 5th June, 1998 is restored to the authority being Director of Estates and Ex-officio Additional Secretary to Government, for consideration afresh.

7. Mr. Mohapatra submits, in the affidavit incorrect statement has been made.

We reproduce relevant passage from paragraph-9 therein, relied upon by Mr. Mohapatra.

"xx xx xx However, it is pertinent to mention here that no land in Saheed Nagar area in Bhubaneswar city has been settled in favour of any individual after 1992. Hence, the allegation of the petitioner that the other similarly situated persons have been settled with Govt. land in the area is not correct."

He draws attention to annexure-11 in his client's additional affidavit dated 9th November, 2022 to demonstrate, inter alia, plot no.887 was settled as per order in Mutation Case no.5476 of 1995. On query from Court he submits, Satyanagar is adjacent to Saheednagar in Bhubaneswar city. In respect of said plot there is another mutation case referred, being case no.118 of 1998. He submits further, his client being in possession of the land since year, 1965, having constructed in year 1965 and applied for settlement in year 1996, the policy based on Government Grants Act, 1895 is applicable to his client's case for fresh consideration as directed. Mr. Mohapatra's submission is recorded for consideration by the authority regarding scope of savings and repeal in the repealing Act of 2018. We note that in the affidavit, in the passage extracted above, there is implication that there was settlement in Saheednagar are a prior to year, 1992, contrary to assertion in the impugned order hereby set aside and quashed.

8. Petitioner will communicate this order to aforesaid authority. The authority is directed to deal with petitioner's representation dated 5th June, 1998 and inform him result thereof within four weeks of communication.

9. Status quo be maintained till three weeks after petitioner is informed decision on his representation dated 5th June, 1998. Petitioner will communicate this order also to BDA.

10. The writ petition is disposed of.

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