
(2015) 07 OHC CK 0046
In the Orissa High Court
Case No : WP(C) No. 10782 of 2015

Prafulla Ku. Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Prevention of Land Encroachment Act, 1972 — Section 12(1), 3(a-1), 7, 8-A

Citation : (2015) 07 OHC CK 0046

Hon'ble Judges : Akshaya Kumar Rath, J

Bench : Single Bench

Advocate : S.K. Swain, for the Appellant; B.P. Pradhan, AGA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J—In this writ petition under Article 226 of the Constitution of India, challenge is made to the order dated 31.3.2015 passed by the Addl. District Magistrate, Cuttack, in OPLE Revision No. 1 of 2015 whereby and whereunder the Addl. District Magistrate, Cuttack dismissed the revision and confirmed the order dated 6.12.2014 passed by the Sub-Collector, Athagarh, opposite party No. 3, in OPLE Appeal No. 55 of 2013 vide Annexure-4. By order dated 6.12.2014, opposite party No. 3 confirmed the order of eviction dated 8.5.2013 passed by the Tahasildar, Narasinghpur, opposite party No. 4, in Encroachment Case No. 418 of 2012-13, vide Annexure-3.

2. The case of the petitioner is that Encroachment Case No. 418 of 2012-13 was initiated against him by the Tahasildar, Narasinghpur, opposite party No. 4, in respect of the Government land appertaining to Khata No. 355, Plot No. 1010, area Ac.0.15 dec. of Mouza-Kuranja in the district of Cuttack. Pursuant to issuance of notice, he appeared before opposite party No. 4 and filed a show cause contending, inter alia, that the land in question had been donated to his father by the Ex-Ruler of Narasinghpur for performing seva puja of Lord

Bholanath Bije Baselihata. At the relevant point of time, the kissam of the land was Bagayat. After death of his father, he is in possession of the land for more than 30 years. Opposite party No. 4 directed the petitioner to produce the documentary evidence in support of his stand. Accordingly, the case was adjourned to 12.4.2013. He could not trace out the year-old documents of the land and prayed more time. Again the same was adjourned to 23.4.2013. On 23.4.2013, he filed a petition to refer the matter to the Sub-Collector, Athagarh, opposite party No. 3, for enquiry into his possession over the land for more than 30 years. Opposite party No. 4 did not consider his petition and put up the case to 8.5.2013 for order and field enquiry to be made in the case. The opposite party No. 4 made a field enquiry on 6.5.2013 without issuing notice to the petitioner as well as public. Basing on the same, the case was disposed of on 8.5.2013 directing the office to issue Form-G for realization of penalty. Opposite party No. 4 also directed to the office to issue eviction order in Form-B against the petitioner to remove the encroachment. He challenged the same before the Sub-Collector, Athagarh, opposite party No. 3, in Encroachment Appeal No. 55 of 2013 under Section 12(1) of the Orissa Prevention of Land Encroachment Act, 1972 (hereinafter referred to as "the OPLE Act"), but the appeal was dismissed in the Lok Adalat on 6.12.2004, vide Annexure-4, in the absence of his lawyer. He unsuccessfully challenged the same in OPLE Revision No. 1 of 2015 before the Additional District Magistrate, Cuttack. The same was eventually dismissed.

3. On 9.7.2015 this Court directed the petitioner to file an affidavit indicating therein the amount of pension he is getting. On 13.7.2015 when the matter was taken up, the petitioner filed an affidavit stating therein that he has retired from service on 31.3.2009. On retirement his pension is fixed at Rs. 9825/- per month. He is getting a sum of Rs. 6760/- per month towards pension. Out of the pension amount, a sum of Rs. 3065/- is deducted towards loan. It is further stated that he is getting a sum of Rs. 18,491/- as pension on deduction of commuted loan. The said affidavit be kept on record.

4. Heard Mr. Swain, learned counsel for the petitioner and learned Addl. Government Advocate for the opposite parties.

5. Learned counsel for the petitioner submitted that the land in question had been donated by the Ex-Ruler of Narasinghpur to the father of the petitioner for performing seva puja and nitikranti of Lord Bholanath Bije Baselihata. After death of his father, the petitioner is in possession of the same for more than 30 years by the time the encroachment proceeding was initiated against him. In the hal settlement record-of-right, the kissam of the land has been wrongly recorded as Gochar. He further submitted that the Tahasildar, Narasinghpur, opposite party No. 4, has committed manifest illegality and impropriety in making field enquiry without issuing any notice to the petitioner. He further submitted that the Sub-Collector, Athagarh, opposite party No. 3, has committed an error in disposing of the matter in the Lok Adalat. According to the learned counsel for the petitioner, the finding of the opposite party No. 4 that the petitioner is not a landless person

and his annual income is Rs. 75000/- is not correct. Since the petitioner is in occupation of the land for more than 30 years, opposite party No. 4 ought to have referred the matter to the opposite party No. 3, for settlement of the land under Section 8-A of the OPLE Act. Learned counsel for the petitioner further submitted that the son of the petitioner is serving in the Indian Army and as per the Government provision, he is entitled to get five acres of the Government land. In view of the same, the impugned orders are not sustainable in the eye of law and are liable to be quashed.

6. Learned Addl. Government Advocate supported the impugned orders passed by the opposite parties.

7. Notice issued by the Tahasildar, Narasinghpur, opposite party No. 4, in Form-Ka, vide Annexure-1, in Encroachment Case No. 418 of 2012-13 shows that the kissam of the land is Gochar. No document whatsoever has been filed before this Court to substantiate the case of the petitioner that the kissam of the land is Bagayat and in the hal settlement, the same has been wrongly recorded as Gochar. Thus the position as it stands is that the kissam of the land is Gochar.

8. The question does arise whether the same can be settled in favour of the encroacher if the encroacher proves by unequivocal evidence that he is in possession of the land for more than 30 years. Second proviso to Section 7 of the OPLE Act stipulates that no such settlement shall be made if the land is recorded as Gochar. Section 8-A has to be harmoniously read with Section 7 of the OPLE Act.

9. Thus the conclusion is irresistible that even if a person is in unauthorised occupation of Gochar land for more than 30 years, the same can not be settled under Section 8-A of the OPLE Act.

10. Not a single scrap of paper has been filed before forum below or before this Court that the land was donated to the father of the petitioner for performing seva puja and nitikranti of Lord Bholanath Bijee Baseliyata. Though opportunity was provided by the Tahasildar, Narasinghpur, opposite party No. 4, instead of filing the document the petitioner made an application for settlement of the land under Section 8-A of the OPLE Act. The order dated 8.5.2013 passed by the Tahasildar, Narasinghpur, opposite party No. 4, shows that he visited the spot on 6.5.2013 and enquired into the matter in presence of the villagers, village President and Revenue Inspector. It was found that the case land was cultivated by Sri Akshay Senapati long since. He sold the same to the present petitioner 8 years back by an unregistered sale deed. The petitioner was serving as a teacher and was a Government servant. He was cultivating the land by growing vegetables after purchase. When he started fencing the case land two months ago and constructed a thatched cowshed over the same, the villagers made objections. Opposite party No. 4 observed that the petitioner advanced false and fabricated case with a design to grab the valuable Government land adjacent to the State High Way. The petitioner was never in possession for more than 30

years over the case land. Accordingly, the petitioner was directed to pay penalty and the order of eviction was passed.

11. With regard to the submission advanced by the learned counsel for the petitioner that the Sub-Collector, Athagarh, opposite party No. 3, has committed illegality in disposing of the matter in the Lok Adalat, reference may be made to a Division Bench decision of this Court in the case of Radhika Padhan v. Debaraj Meher, (W.A No. 272 of 2014 disposed of on 12.09.2014) (where Dr. A.K. Rath, J was a party). It was held that when both the parties argue the matter at length in the writ petition, the High Court can decide the lis without being fettered by any technicalities. The Court/Tribunal may not assign good reasons while allowing/rejecting the application filed by any parties, but the same does not preclude the High Court in the writ jurisdiction to decide the entire issue. The power of the High Court is wide enough to issue writs. The Special Leave to Appeal (C) No(s).32324/2014 filed against the judgment and order of this Court was dismissed by the apex Court on 5.12.2014.

12. The petitioner challenged the order of the Sub-Collector before the Addl. District Magistrate, Cuttack in OPLE Revision No. 1 of 2015. In a well discussed order dated 31.3.2015, the Addl. District Magistrate, Cuttack came to hold that the land is recorded in Gochar kissam, which is highly objectionable and as such the same cannot be settled. It was observed that during field enquiry made by the opposite party No. 4, the petitioner was present on the spot and signed the enquiry report of the Tahasildar. Thus the submission of the learned counsel for the petitioner that the enquiry was done without issuing notice to the petitioner and villagers is not correct.

13. The petitioner was serving as a teacher. He has retired from the Government service on 31.3.2009. His pension was fixed at Rs. 9825/-. He was getting a sum of Rs. 6760/- after deduction of loan of Rs. 3065/-. Thus he is getting Rs. 81,120/- per annum. Therefore, he does not come within the meaning and ambit of landless person as defined under Section 3(a-1) of the OPLE Act. Further, the submission of the learned counsel for the petitioner that the petitioner is in possession of the land for more than 30 years has no legs to stand. Not a single scrap of paper or document has been filed by the petitioner to substantiate his case that the land was donated by the Ex-Ruler of Narasinghpur to his father.

14. This Court fails to understand as to how a retired Government servant would encroach upon a Government land and pray for settlement of the same in his favour.

15. The writ is a discretionary as well as an equitable remedy. Though the petitioner signed in the report of the Tahasildar, Narasinghpur, opposite party No. 4, but he has taken a frivolous plea that the enquiry was conducted by opposite party No. 4 behind him. Thus the petitioner has approached the writ court with a pair of unclean hands.

16. In Dr. Buddhi Kota Subbarao Vs. K.Parasaran and others, (1996) 6 AD 133 :

AIR 1996 SC 2687 : (1996) CriLJ 3983 : (1996) 3 Crimes 143 : (1996) 7 JT 265 : (1996) 5 SCALE 797 : (1996) 5 SCC 530 : (1996) 4 SCR 574 Supp , the apex Court held that no litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. However, access to justice should not be misused as a licence to file misconceived or frivolous petitions.

17. There being no illegality or infirmity in the orders passed by the opposite parties, this Court is not inclined to interfere with the same. The writ petition being devoid of merit is dismissed with cost of Rs. 1000/- (rupees one thousand).