

(1989) 05 OHC CK 0018

In the Orissa High Court

Case No : Original Jurisdiction Cases No's. 147 and 148 of 1989

Prakash Chandra Baral and Jayant Kumar Baral

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 05-05-1989

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 3, 3B, 7, 7A(3)
Orissa Government Land Settlement Rules, 1974 — Rule 5(5)

Citation : (1989) 68 CLT 497

Hon'ble Judges : J.M. Mahapatra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : M.S. Panda, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—In these two writ applications power of the Collector u/s 7-A(3) of the Orissa Government Land Settlement Act, 1962 (hereinafter referred to as the "Act") is under challenge. In course of a proceeding where the revisional jurisdiction, had been invoked by the Additional District Magistrate and the, legality of an order of settlement in favour of the Petitioner was being enquired into, the Additional District Magistrate passed the impugned order dated 2-12-1988 requiring issuance of fresh show-cause notice containing all the, irregularities to be given to the Petitioner. The Petitioner challenges the aforesaid order inter alia, on the grounds that (a) the appropriate authority having invoked his jurisdiction and in accordance with the proviso to Section 7-A(3) of the Act having issued notice to show cause as to why the, settlement in favour of die Petitioner shall not be annulled has no further jurisdiction to issue fresh notice on fresh grounds; and, (b) even if the Collector has Jurisdiction to issue a fresh notice, but the impugned order dearly demonstrates total non-application of mind and it has not been found out by the appropriate authority as to what are the irregularities committed in settlement of the land in question In favour of the Petitioner and, therefore, such an order passed by total non-application of mind

cannot be sustained in law.

2. The Petitioner in each of the cases asserts that he is a poor landless labourer and applied for lease of Government land situated in mauza Grahaf under Choudwar Police Station. On receipt of the Petitioner's application, the Tahasildar made a thorough enquiry through his Revenue Inspector in accordance with the provisions of the Act and on receipt of the enquiry report, the Tahasildar settled the land in question with the Petitioner. While making the settlement, the Tahasildar followed the provisions of the Act as well as the provisions of the Orissa Government Land Settlement Rules, 1974 (hereinafter referred to as the "Rules"). The Petitioner was given delivery of possession and while he was peacefully possessing the same, he received the Patta being duly issued to him. Then suddenly the Petitioner received a notice from the Additional District Magistrate, Cuttack (opposite party No. 2) purporting to be one u/s 7-A(3) of the Act requiring the Petitioner to show cause as to why the lease in, his favour will not be cancelled. The grounds stated in the notice were. that the lessee was a minor on the date of the sanction of the lease and he was not a landless labourer on the date and there had been no publication of proclamation inviting objections by "beat of drums as required under Rule 5(5) of the Rules. This notice is annexed as Annexure-3 to each of the writ petitions. The Petitioner appeared before opposite party No. 2 but had not filed any reply since the records of the case were not available to the Tahasildar. The Petitioner filed his reply on 18-11-1988 indicating therein, that the notice issued by the Additional district Magistrate is vague and unfounded and the settlement in question has been made after complying with all the requirements of law. The Petitioner further asserted that he was, a landless labourer and there had been no infraction of the provisions of the Act and the Rules in settling the land with him. In course of hearing before opposite party No. 2. some villagers intervened and they submitted that there had been gross irregularities and illegalities in settling the land on lease basis with the Petitioner. The Additional District Magistrate, therefore, passed the order dated 2-12-1988 which, is being assailed on the grounds already stated.

3. Mr. Patra the learned Additional Government Advocate, appearing for the opposite parties contends that the power of revision conferred upon the Collector u/s 7-A(3) of the Act is a suo motu power which the Collector can exercise either on his own motion or otherwise and he can call for and examine records of any proceedings in which an authority subordinate to him has passed an order under the Act for the purpose of satisfying himself that such order was not passed under any mistake of fact or owing to a fraud or misrepresentation or on account of any material, irregularity of procedure and thereafter he may pass such order as he thinks fit.

Such a power has been conferred obviously to check any abusive exercise of power by the lower revenue authority who without following the procedure prescribed under the Act and the Rules might settle the land with undeserving

persons and there is no limitation in the said power as contended by the Petitioner and therefore, in course of the proceedings the appropriate authority had full jurisdiction to issue a revised notice indicating the other irregularities in the matter of settlement. Mr. Patra, the learned Additional Government Advocate, further argues that the order dated 2-12-1988 merely has required issuance of a fresh notice indicating all the irregularities committed in the matter of settlement. That, notice has not been served as yet on the Petitioner and the notice will indicate the irregularities committed by the Petitioner which the Petitioner will be required to answer. In this View of the matter, the Petitioner's contention that there has been non-application of mind by the Additional District Magistrate while passing the order on 2-12-1988 is wholly unfounded and the writ application, therefore, cannot be maintained.

4. In the premises as aforesaid, the following two questions arise for our consideration:

(i) What is the extent of power conferred on the collector u/s 7-A(3) of the Act and what are the limitations thereto and how the Collector debarred from issuing a fresh notice to show cause on fresh grounds while he is in seisin of the matter and he is inquiring into the matter? and

(ii) Can the impugned order be said to be the outcome of non-application of mind and whether the Petitioner is prejudiced thereby in any manner?

5. So far as the first question is concerned it depends upon an interpretation of Section 7-A(3) of the Act. Section 7-A(3) together with the two provisions are extracted hereinbelow in extenso:

I (3) The Collector may of his own motion or otherwise call for and examine the records of any proceedings 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 and 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.

Prior to the Orissa Government Land Settlement Act, there was no statutory provision to allow settlement of Government waste land and the same was being done under certain executive instructions issued from time to time. In different parts of the State, different administrative circulars had been issued and the administration was finding it difficult on account of lack of uniformity. To override these difficulties, the Act in question was passed as a general legislation formulating a set of uniform principles regarding lease of Government waste

land. Under the Act, Section 3 deals with power of reservation and settlement of Government land. The period of settlement has been indicated in Sub-section (3) of Section 3. An order passed u/s 3 or Section 3-B is appealable u/s 7 and against the appellate order a revision lies u/s 7-A, Then comes Sub-section (3) of Section 7-A of the Act. This power is in fact a suo motu power which has been conferred upon the Collector who can examine the records of any proceedings of the subordinate authority for the purpose of satisfying as whether the order in question has been passed in accordance with law or not and then he can pass such appropriate order as he thinks fit. Proviso to Sub-section (3), however, puts a restriction on the power of the Collector, namely the power under Sub-section (3) cannot be exercised unless the person affected has been given, a reasonable opportunity of being heard in the matter and the second proviso to Sub-section (3) is that a proceeding cannot be initiated after expiry of fourteen years from the date of the order. Apart from the limitations contained in the two provisos, we do not find any fetters on the power of the Collector in exercise of his suo motu jurisdiction under Sub-section (3). Consequently, in course of an inquiry after invoking his jurisdiction under Sub-section (3) of Section 7-A and issuing a notice to show - cause as to why the settlement shall not be cancelled on certain grounds, if the Collector comes to the conclusion that the settlement can be set aside on some other grounds, he can issue a fresh notice to show cause to the aggrieved party and that power is there with the Collector under Sub-section (3) of Section 7-A of the Act. In this view of the matter, there is no infirmity in the order of the Collector dated 2-12-1988 requiring issuance of fresh show cause notice including indicating all the irregularities committed, in the matter of settlement of land with the Petitioner under the provisions of the Act. In this view of the matter, the first ground of attack of Mr. Panda, the learned Counsel for the Petitioner in each of the writ applications fails and cannot be sustained.

6. So far as the second ground is concerned, there can not be any dispute that any order passed by any authority without application of mind is not sustainable in law, but so far as the present case is concerned, by order dated 2-12-1988, the Collector has merely directed that a fresh show-cause notice be issued to the affected person containing all the irregularities and what are those irregularities will be indicated in the notice itself. The Petitioner will have a full opportunity of refuting those grounds or irregularities. That notice has not yet been served on the Petitioner. From the order dated 2-12-1988, it cannot be said that the Collector passed the order without application of mind. On the other hand, as it appears, on behalf of the villagers an application for intervention had been filed indicating several irregularities and after applying his mind to the same, the Collector thought it fit to issue a fresh notice to show cause. In the facts and circumstances the present case, we are not in a position to accept the submission of Mr. Panda, the learned Counsel for the Petitioner in each of the cases, that the order dated 2-12-1988 is the outcome of total non-application of mind by the Collector. In this view of the matter, the second contention of Mr. Panda also fails.

7. Both the contentions having failed and no other contention having been urged, both the writ applications have no merit and are accordingly dismissed, but without any order as to costs. Opposite party No. 2 before whom the proceedings are still pending is directed to take expeditious steps for finalisation of the proceedings. The interim order passed on 16-1-1989 in both the cases stands vacated.

J.M. Mahapatra, J.

8. I agree.