

(2023) 02 OHC CK 0033

In the Orissa High Court

Case No : Writ Petition (C) No. 25851 Of 2014

Prakash Chandra Das And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Citation : (2023) 02 OHC CK 0033

Hon'ble Judges : Dr. S. Muralidhar, CJ; M.S.Raman, J

Bench : Division Bench

Advocate : Basudev Pujari, Debakanta Mohanty

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. Questioning the orders dated 29th March, 2014 and 29th May, 2014 issued by the Director of Estates and the General Administration Department (Opposite Party Nos.2 and 1 respectively) requiring the Petitioners to deposit Rs.18,18,182/-and Rs.31,81,818/- in respect of lease Plot No.80 Drawing No.C-3363, Mouza – Bapuji Nagar, the present writ petition has been filed by the four Petitioners with Petitioner No.1 being the wife of late Sri Lal Vihari Das and Petitioner Nos.2, 3 and 4 being his sons.

2. Although the present petition was filed on 31st December, 2014 it appears from the orders passed on various dates, that the Petitioners were only seeking adjournments and no effective hearing took place for nearly five years.

3. When the petition was listed on 23rd September, 2019 the Addl. Government Advocate (AGA) appearing for the Opposite Parties-State) informed the Court that a counter affidavit had been filed on 20th September, 2019 and it was asked to be traced out and placed on record. Interestingly, the said counter affidavit had been filed without even notice issuing to the present Petitioners in the five years time during which the petition was pending.

4. On 21st October, 2019 the Court was informed that Petitioner No.1 Smt. Sakuntala Das had expired on 29th May, 2016 itself and that her legal representatives i.e. her sons, Petitioner Nos.2, 3 and 4 were already on record. Accordingly, the Court directed that the name of Petitioner No.1 shall stand deleted. However, since no consolidated memo of parties was asked to be filed, in the same cause title, orders were passed on 8th November and 16th December, 2021 and 11th January, 2022. During this time a further affidavit was filed on 14th December, 2021 by the Opposite Parties to meet the plea of discrimination set out in para 5 (a) of a rejoinder affidavit dated 15th September, 2021 filed by the Petitioners and also placing on record the Government decision dated 22nd February, 2010 whereunder the differential concessional land premium had been stipulated to be paid.

5. On 19th December, 2022 the following order was passed:

"1. Mr. Pujari, learned advocate appears on behalf of petitioners and submits, impugned is letter dated 29th May, 2014, by which there has been wrongful demand of Rs.31,81,818/- towards differential payment for conversion from leasehold to ownership.

2. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and draws attention to reply affidavit dated 20th December, 2021 disclosing photograph of the building, being used for commercial purposes at address 80 Janpath, Bapuji Nagar, Bhubaneswar. Mr. Pujari draws attention to reply affidavit dated 7th February, 2022 filed by his clients, in which they have said that the plot is different. Particulars of the plot given in said affidavit is reproduced below.

"Plot No.532, under Khata No.282 of "Bhubaneswar Sahara Unit No.1, Bapuji Nagar under New Capital Police Station". In this respect Annexure-4 of the writ petition may kindly be seen."

3. State will file additional affidavit dealing with this contention of petitioner. The affidavit will be accepted on adjourned date upon advance copy served.

4. List on 6th January, 2023."

6. On 3rd January, 2023 the Deputy Director of Estates, G.A. Department filed a further additional affidavit enclosing a copy of the enquiry report dated 21st December, 2022 and the trace map of the leasehold Plot No. 80 drawing no. 3363 corresponding to Revenue Plot No. 532, Khata No. 282, area Ac. 0.103 decimal of Mouza-Bapuji Nagar.

7. The said affidavit further stated that in terms of the enquiry report it was revealed over the suit leasehold plot no. 80, drawing no. 3363 RCC roof buildings exists and both are being used for commercial purposes i.e. (Nimapada Sweets New Life Style First Fly, etc) which violates the lease condition No. 2 (xiv) of the lease deed dated 14th May, 1958.

8. In response to the above affidavit the Petitioners filed an affidavit dated 29th January, 2023 claiming that the Petitioners have never filed W.P.(C) No.133 of 1997 nor any other writ petition except the present writ petition i.e. W.P.(C) No.25851 of 2014. The Petitioners contended that the Opposite Parties "has been untruthful and lackadaisical in the response to the claims made in W.P.(C) No.25851 of 2014". It was further contended that the Opposite Parties had not satisfactorily explained the assertion made by the Petitioners in the rejoinder to the counter affidavit filed by the Opp. parties that conversion of Plot Nos. 97, 101, 83, 94 and 85 had been allowed on the same terms as claimed by the Petitioners.

9. At this juncture, it is necessary to note that the plot in question forms part of the land allotted in favour of the Capital Cooperative Building Society ('Society') which in turn allotted the plot in question in favour of late Lal Vihari Das, the husband of the Petitioner No.1 and father of the Petitioner Nos.2 to 4. On 14th May, 1958 a lease deed formalizing the allotment was instituted between late Lal Vihari Das and the Additional Secretary to Government in the Political and Services Department.

10. Upon death of Lal Vihari Das on 25th March, 1995 Petitioner No.2, his son applied to the G.A. Department in December, 2012 for mutation of the plot in the name of the legal heirs of late Das. The said mutation was granted by an order dated 24th September, 2013 of the G.A. Department.

11. Thereafter on 25th January, 2014 the Petitioners applied for conversion of the leasehold plot to freehold attaching an indemnity bond as well as the affidavit stating that no unauthorized construction had been made in the property and importantly that the plot was being used only for residential purposes.

12. On receipt of the above conversion application, an enquiry was held by the Opposite Parties in the G.A. Department and it was found that the plot was being used for commercial purposes. Apart from the fact that this was in violation of the mandatory condition of the lease deed dated 14th May, 1958 and in particular lease condition No.2 (xiv), it was contrary to the affidavit sworn in support of the conversion application by the Petitioners. Applying the scheme of conversion dated 18th July, 2003 it was ascertained that the Petitioners were liable to pay conversion fees @ 20% of the prevailing rate of premium. Further, since it was found that the original lessee had availed 35% concession at the time of the initial allotment by the Society, the Petitioner would be required to pay differential premium @ 35% of the prevailing rate of premium. Accordingly, while allowing the conversion by the order dated 29th March, 2014, the Petitioners were asked to pay Rs.18,18,182/- and Rs.31,81,818/- towards differential premium.

13. Petitioner No.2 then wrote a letter to the G.A. Department on 11th April, 2014 contending that the differential premium had been erroneously calculated and was also without taking into consideration the order dated 23rd June, 2003

issued by the G.A. Department. It was contended that the conversion had to take place under the freehold scheme of 1998 and not under the scheme of 2003.

14. The contention of the G.A. Department is that the initial scheme for conversion, announced by the orders dated 31st March, 1998 and 8th June, 1998 was in force till 31st March, 2000. It was thereafter extended to 31st March, 2001. For the purpose of simplifying the procedure, a revised scheme of conversion was published on 18th July, 2003 which was applicable only to full premium paid residential plots and was silent on concessional leasehold plots. It is contended by the Opposite Parties that at the time the Petitioners applied for conversion i.e. 25th January, 2014 the earlier scheme of 1998 ceased to be operational. The applications had to be dealt with only under the subsequent policy that came into force on 18th July, 2003. The said policy was brought into force by a Government order dated 23rd June, 2003, the relevant portions of which read as under:

"The policy of the Government in the matter of conversion of the leasehold to freehold status under the freehold scheme 1998 floated by Government does not adequately cover cases of leasehold plots allotted to members of Co-operative Societies at a concessional rates. As incorporated in clause 2 (xvi) of the lease deed, once a lessee ceases to be a member of the co-operative society, he shall not longer be eligible for such concession and differential premium is required to be paid by the lessee concerned. Government after careful consideration of the aforesaid cases have been pleased to decide as follows, which will be applicable to all such cases under the freehold scheme-1998. Government is however not bound to follow a particular policy in future.

(1) The lessee(s) whose membership has been ceased, shall pay the concession availed, proportionately calculated @ premium prevailing on the date of cessation. The date of cessations of membership should be ascertain from the concerned ARCS.

(2) In cases where the original lessee (s) has/have died, the date of death should be treated as date of cessation of membership and if their legal heirs, have not been substituted as members of society shall pay the concessional premium availed by the lessee. This would be at the rate of premium prevailing on the date of death of lessee(s).

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(5) Freehold being an optional scheme, the lessee will be unaffected if they continue with leasehold status without freehold. If the lessee is unwilling to pay the balance premium their application of freehold shall summarily be rejected."

15. The above order is also stated to have become redundant after the conversion scheme announced on 18th July, 2003. This was reiterated by an order dated 13th January, 2015 issued by the G.A. Department where inter alia it was stated as under:

"Criteria for calculation of the amount of differential premium in the matter of conversion of lease hold to free hold status under the Conversion Scheme, 1998 floated by the Government, required to be paid by the lessees, who had availed concession in payment of land premium at the time of sanction of lease and in the event of their death, by the substituted lessees and in the event of transfer of the lease plots, by the transferees, had been laid down in this Department Order No. 7345 Dated 23.06.2003.

Calculation of amount of differential premium, concerning the lease plots in respect of which concession has been availed by the lessees on the basis of their membership of Co-operative Societies, in the matter of conversion of lease hold to free hold status under the Conversion Scheme floated subsequently in the year 2003, at a uniform rate was under the active consideration of the Government for some time. Now, Government, after careful consideration of the matter, have been pleased to decide that in the matter of conversion of lease hold to free hold status, the lessees including the substituted lessees, in the event of transfer of the lease plots, shall pay the differential premium to be calculated at the rate of premium prevailing on the date of filling application for conversion, irrespective of the death of the original lessee or transfer of the lease plot, etc.

This will come into effect from the date of issue of this Order."

16. Mr. Basudev Pujari, learned counsel for the Petitioner referred to para 5(a) of the rejoinder affidavit where it is stated that the Opposite Parties had allowed conversion of Plots 83, 85, 94, 97 and 101 in Bapuji Nagar by applying the Government order dated 23rd June, 2003 in terms of which the premium was payable at the rate prevailing on the death of the lessee.

17. It must be noted here that the contention of the Opposite Parties is that by the G.A. Department order dated 31st December, 2009 the rate of premium of the Government land in the Bhubaneswar Municipal Corporation (BMC) area became equivalent to the Bench Mark Valuation of land as determined by the Revenue & DM Deptt. for the locality with effect from 31st December, 2009.

18. It was further clarified by a subsequent G.A. Department Order dated 22nd February, 2010 that the new rates of premium as required in the GA Department Order No.20099 dated 31st December, 2009 will not be made applicable in respect of the applications pending (under the conversion scheme) as on 14th December, 2009 (but otherwise eligible) as such applicants should not be penalized by way of higher conversion charges on account of any delay in processing of their cases.

19. It is clarified by the Opposite Parties that the conversion application in respect of the aforementioned drawing plot Nos. 83, 85, 94, 97 and 101 of Mouza Bapuji Nagar had been received much prior to the G.A. Department order dated 31st December, 2009 i.e. before the introduction of the revised land premium. It was further stated in the said affidavit that during field verification

dated 29th November, 2021 it was ascertained that the plot in question was being used for commercial purposes and a furniture godown named as 'Bharat Furniture' is functioning in the plot.

20. A photograph of the said 'Bharat Furniture', show room has also been enclosed with the said affidavit dated 20th December, 2021 of the G.A. Department.

21. In response to the above affidavit, the Petitioners filed an affidavit on 7th February, 2022 contending that the above building was not on the land in respect of which the writ petition had been filed and that as per the record of rights issued on 28th May, 1987 the land that is under possession of the Petitioners and is the subject matter of the writ petition is "Plot No. 532, under Khata No. 282 of "Bhubaneswar Sahara Unit No. 1, Bapuji Nagar under New Capital Police Station."

22. It was the above affidavit which led to an order being passed by this Court on 19th December, 2022 requiring the State to file a further additional affidavit. In the said additional affidavit filed by the Opposite Parties on 3rd January, 2023 it is mentioned that there was again an inquiry by the field officials of the G.A. Department held on 21st December, 2022. It is stated that inadvertently the photograph of Plot No.80 Drawing No.1823 was submitted earlier whereas the plot in question is Drawing No.3363 corresponding to Revenue Plot No.532 Khata No.282. In terms of the said enquiry, RCC roof buildings existed which were being used for commercial purposes i.e., Nimapara Sweets, New Life Style, Photo Printing, Glass Framing Shop etc. Interestingly, the last affidavit filed by the Petitioner on 29th January, 2023 there is no denying that there are now two RCC roof buildings being used for commercial purposes on the plot in question.

23. Mr. Pujari, learned counsel for the Petitioner insisted that the Petitioners were discriminated against vis-à-vis the other five plots mentioned earlier in Bapuji Nagar where conversion was allowed on the basis of the premium rates prevailing on the death of the original lessee.

24. The Court is unable to accept the above submission of Mr. Pujari. In those five cases as has already been explained by the Opposite Parties, without any denial by the Petitioners, the conversion applications had been filed much prior to the issuance of the G.A. Department order dated 31st December, 2009 whereas admittedly, the Petitioners filed their applications for conversion only on 25th January, 2014. Having filed the applications more than eighteen years after death of the original lessee on 25th March, 1995 the Petitioners obviously cannot insist that the conversion fees and the premium have to be calculated on the basis of the rates prevailing on 25th March, 1995. It is obvious that it is only those orders of the G.A. Department and conversion policy that were prevalent on the date of allowing the conversion by the G.A. Department in the Petitioners case i.e. 29th March, 2014, would apply.

25. The G.A. Department has correctly applied the conversion scheme dated 18th July, 2003 to calculate both the conversion fees as well as the differential

premium.

26. Once it is plain that the original lease condition did not permit use of the plots for commercial purpose whereas the field enquiry has revealed the existence of 2 RCC roof buildings both of which are being used for commercial purposes, then the Petitioners cannot escape having to pay the conversion fee and premium for regularizing the use of the plots on question for commercial purposes contrary to the original condition of the lease.

27. For the aforementioned reasons, the Court finds no ground made out for interfering with the impugned demands raised by the G.A. Department by letters/orders dated 29th March, 2014 and 29th May, 2014.

28. The Court finds no merit in the present writ petition and it is dismissed as such.

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