
(2013) 08 OHC CK 0062
In the Orissa High Court
Case No : Writ Petition (C) NO. 5583 OF 2004

Raj Kumar Dutta

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Forest (Conservation) Act, 1980 — Section 2

Citation : (2013) 08 OHC CK 0062

Hon'ble Judges : S. Panda, J;B.R. Sarangi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Writ Petition has been filed by the petitioner challenging the order dtd. 16.11.2001 passed by the learned Addl. District Magistrate, Bhubaneswar in Revision Case No. 6 of 1997 setting aside the lease granted in favour of the petitioner by the Tahasildar, Bhubaneswar vide order dtd. 17.9.1987 which was confirmed by the Sub-Divisional Officer, Bhubaneswar on 02.12.1987 in respect of Ac. 1.000 decimals of land appertaining to Plot No. 755 under Khata No. 257/36 of Mouza - Shyamasundarpur. Learned counsel appearing for the petitioner submits that the impugned order has been passed ignoring the fact that the petitioner was an Ex-Serviceman and he is entitled to get Ac. 1.000 decimals of land, therefore, the same is liable to be quashed. She further submits that in pursuance of the Resolution dtd. 14.5.1963 issued by the Government of Odisha in the Department of Home, the petitioner being a retired defense person, who has served the Country and has taken part in the 1971 war, is entitled to a land to the extent of Ac. 5.000.

2. Learned Addl. Government Advocate in support of the impugned order submits that in the affidavit filed by the petitioner along with the application for settlement of land he has disclosed his native place in West Bengal, therefore, the petitioner being a native of West Bengal is not entitled to get land under the

O.G.L.S Act, 1962. He further submits that as the type of the land recorded in the Records of Right was "Patra Jungle", the same is coming under the ambit of Forest Conservation Act, 1980 and in view of Section 2 of the said Act no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing any forest land or any portion thereof may be used for any non-forest purpose. It is stated that violating the said central statute since the Tahasildar has settled the land, rightly the order was revised within the statutory period and as such the impugned order need not be interfered with. He also reiterated the stand taken in the counter affidavit filed by opposite party no. 2 that the petitioner does not belong to Village - Shyamasundarpur at the time of filing of application for settlement of the land as he has mentioned two addresses i.e. Sahid Nagar and Bomikhal, which are different from the revenue Village - Shyamasundarpur. It is further stated that the Government of Odisha in Revenue and Excise Department vide Circular dtd. 22.9.1989 have instructed that the annual income of an Ex-serviceman from all sources if not exceeds Rs. 3,600/- he will come under eligible category for settlement of land under O.G.L.S Act, 1962 and since the petitioner's annual income is more than the said amount, he is not entitled to get lease of the land. It is stated that as the Tahasildar has not followed the statutory provisions of the Act and Rules while settling the land, the revisional authority by the impugned order rightly set aside the lease granted in favour of the petitioner, therefore, the same need not be interfered with.

3. Considering the rival submission of the parties and on perusal of the records produced by the learned Addl. Government Advocate, it appears that the petitioner joined the Air Force on 14.8.1970 and superannated from service on 01.7.1985. On 14.11.1986 he applied for a piece of land u/s 3(3)(c) of the Odisha Government Land Settlement Act, 1962 before the Tahasildar, Bhubaneswar, which was registered as W.L. Lease Case No. 1487 of 1986. The Tahasildar after following due procedure prescribed under the O.G.L.S Act, 1962 settled the land to the extent of Ac. 1.000 decimals appertaining to Plot No. 755 under Khata No. 257/36 of Mouza ? Shyamasundarpur in favour of the petitioner on 17.9.1987, which was confirmed by the Sub-Divisional Officer, Bhubaneswar on 02.12.1987. The petitioner was in peaceful possession over the said land. In the year 1997 the Addl. District Magistrate, Bhubaneswar initiated a suo motu revision u/s 7A (3) of the O.G.L.S Act, 1962, which was registered as Revision Case No. 6 of 1997. The Addl. District Magistrate by order dtd. 30.7.1998 set aside the order of the Tahasildar, Bhubaneswar settling the land in question in favour of the petitioner. Being aggrieved by the said cancellation order, the petitioner approached this Court in O.J.C No. 15850 of 1998. This Court by order dtd. 19.11.1998 while setting aside the order dtd. 30.7.1998 passed by the Addl. District Magistrate, Bhubaneswar remitted back the matter for fresh disposal as per law. In pursuance of the direction of this Court, the petitioner appeared before the Addl. District Magistrate and filed his show cause reply. After hearing the parties and going through the materials available on record, the Addl. District

Magistrate, Bhubaneswar by the impugned order dtd. 16.11.2001 set aside the order dtd. 17.9.1987 passed by the Tahasildar, Bhubaneswar and the confirmation thereon by the Sub-Divisional Officer, Bhubaneswar dtd. 02.12.1987.

4. The Government of Odisha in the Department of Home vide its Resolution dtd. 14.5.1963 taken a decision to extend certain facilities to the Jawans of the State, who have proceeded or will be proceeding to forward areas to defend our country in consideration of the risk and sacrifice made by them. In Clause-3(d) of the said Resolution it is stipulated that each person on return will get 5 acres of land free and made ready for cultivation at Government cost and in case a person is killed the widow and the dependents will receive the land. Further, it appears that the Government of Odisha, Home Department vide Resolution dtd. 11.4.1964 taken a decision to amend the resolution dtd. 14.5.1963 in order to allow the personnel of the Regular Armed Forces Territorial Army and Auxiliary Air Force in completion of five years of service and accordingly the proviso "Provided that personnel of the Indian Army, Navy or Air Force and those in the Territorial Army or in the Auxiliary Air Force shall get such land after completion of five years of service in the army." was added to Clause 3(d) of the said Resolution. In Resolution dtd. 07.7.1969 the Government further clarified regarding facilities to be provided to the Jawans of Odisha, who have served in forward areas during the Emergency. In the said resolution it was specifically reflected that on careful consideration of all the relative aspects having a bearing in the matter, the State Government decided as follows:-

(a) The concessions by way as assignment of land, medical facilities and educational facilities contemplated under the above Resolution will be available only to such personnel who have served in the forward areas during the period from 26th October, 1962 to 31st January, 1964. For this purpose, the personnel seeking such concessions will be required to produce a certificate from the Unit Command that he actually served during the above period in a forward area.

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(d) The facility of assignment of land will be available only to such personnel who are "landless". A person shall be deemed to be landless if the total extent of his land along with the land hold as a tenant or raiyat by all members of his family living with him in one mess is less than 5 acres.

5. Since the petitioner has joined the Air Force in the year 1970, his case is not covered under the resolution dtd. 14.5.1963 issued by the Government of Odisha in the Department of Home. Admittedly, the petitioner has filed an application u/s 3(3) of the O.G.L.S. Act, 1962 and the type (Kisam) of the land was "Patra Jungle", which was not disputed. As the land is a forest land, in view of Forest Conservation Act, 1980 without prior permission from the Central Government, the same cannot be used for any non-forest purpose. In view of Circular dtd. 22.9.1989 issued by the Government of Odisha in Revenue and Excise Department even though the petitioner is an Ex-Serviceman and his annual

income from all sources is more than Rs. 3,600/-, he is not coming under the category of landless person to become eligible to get land.

6. For the reasons stated above, this Court finds no error apparent on the face of the record in the impugned order so as to warrant interference by this Court in exercise of the jurisdiction under Article 227 of the Constitution of India. Accordingly, this Court is not inclined to interfere with the same. However, it is open to the petitioner to file an application before the concerned authority afresh, if he is entitled to get concession from the State Government having an Ex-Serviceman from the State of Odisha and in such event his application shall be considered by the said authority in accordance with law. Accordingly this Writ Petition along with Misc. Cases is dismissed. The interim order dtd. 20.5.2004 passed by this Court in Misc. Case No. 5650 of 2004 stands vacated.