

(1992) 12 OHC CK 0009

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2327 of 1990

Rajkishore Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-12-1992

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 7A(3)

Citation : (1994) 2 OLR 149

Hon'ble Judges : P.C. Misra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : Susanta Kumar Dash and Prem Ranjan Panda, for the Appellant;
Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—The petitioner, an ex-army personnel, has challenged the order of the Additional District Magistrate, Bhubaneswar cancelling a lease granted in his favour in purported exercise of jurisdiction u/s s 7-A(3) of the Orissa Government Land Settlement Act, 1962 (Act 33 of 1962),

2. The petitioner, who was admittedly in Military service applied for lease of a piece of land being a landless person and having no source of income after being discharged from service. His application was registered as W.L. Case No. 864 of 1977 and was considered in accordance with the decision of the Government for settlement of land in favour of the Jawans, The Home Department of the State Government declared the petitioner to be eligible for grant of land as per the Department's resolution Mo. 20827/POII dated 7-7-1969 subject to the condition that the petitioner and all his-family members taken together have got less than 5 acres of land in the State and that he is a permanent resident of the State of Orissa in terms of resolution No. 4741/POII dated 8-2-1970. The petitioner had submitted a declaration to the above effect that he satisfies the aforesaid criteria and that he is entitled to lease of land as per the resolution of the Government. The petitioner's application was duly considered by the

Tahasildar, Bhubaneswar for lease of 5 acres of land appertaining to Plot No 2031 in Khata No, 645 in village Andharua. After issuing proclamation inviting public objection and after due enquiry by the Revenue Inspector, whose report was placed before the Tahasildar, the aforesaid Sand was granted to the petitioner free of salami as he was a Jawan. The land was so settled by order of the Tahasildar on 30-3-1973.

3. It is alleged by the petitioner that the Additional District Magistrate, Bhubaneswar initiated a suo motu proceeding under Sec 7-A(3) of the Orissa Government Land Settlement Act, 1962 (hereinafter called the "Act") against the petitioner which was registered as Revision Case. No. 5/1982 in which notice was ordered to be served on the petitioner to show cause as to why the settlement of land made by the Tahasildar should not be set aside being vitiated by mistake of fact / fraud/misrepresentation /material irregularity of the prescribed procedure. It is asserted by the petitioner that he had no notice of the said proceeding and the records of the revision case would establish the same. Thus, without giving any opportunity to the petitioner, the Additional District Magistrate proceeded ex parte and cancelled the lease granted in favour of the petitioner. The petitioner challenged the aforesaid order in this Court in O.J.C. No. 4007 of 1989. This Court by order dated 9-3-1990 quashed the revisional order dated 25-11-1982 and remitted the matter to the Additional District Magistrate, Bhubaneswar to consider the question as to whether the lease granted to the petitioner was a "war lease" and if the revisional Court had jurisdiction to decide the matter for cancellation of lease under the Act. The revisional Court was also called upon to decide as to whether proclamation was published by beat of drum and was served upon the Grama Panchayat and whether the lease granted in village Andharua was barred under any order of the Government. The petitioner was directed to appear before the Additional District Magistrate on 4-4-1990 which he did and filed show cause on that day. The Additional District Magistrate (O.P. No. 2) though held that the lease was "war lease" cancelled the same with a finding that the same was granted under the Act against which the present writ application has been filed.

4. Learned counsel for the petitioner mainly urged three points challenging the legality of the order passed by the Additional District Magistrate in Annexure-5, which are as follows : (i) The lease in favour of the petitioner was not granted under the Act and, therefore, the proceeding u/s 7-A(3) of the said Act was incompetent and no jurisdiction was available to the Tahasildar to suo motu initiate a proceeding and cancel the lease, (ii) That the Tahasildar was not competent to settle five acres of land under the Act which renders the settlement illegal is not correct in law and the petitioner was never called upon to meet such a point by the revisional court. It was also urged that opp. party No. 2 exceeded in his authority to decide the aforesaid question which was beyond the point formulated by this Court while remitting the matter by order dated 9-3-1990 in OJC No. 4007 of 1989. (iii) The finding that no proclamation - was made by beat of drums is unsupportable on the face of materials available on record.

5. In the counter affidavit filed on behalf of the opp parties it has been urged that the land in question in favour of the petitioner was settled under the said Act as there was no other Act, circular or executive instructions of the Government in that behalf. it has also been urged that the petitioner being an ex-army personnel, his claim for settlement of the land should have been entertained under the provisions of the Government Grants Act, 1895 under which the Tahasildar will not be the competent authority to settle the land. The petitioner's application for lease of land was, therefore, considered as an application by any ordinary person under the said Act and all records in that behalf support the aforesaid action. The further case of the opp. parties is that prescribed procedures under the Orissa Government Land Settlement Rules have not been followed and the Tahasildar was incompetent to settle more than one standard acre of agricultural land with the ex-army personnel for which the lease was rightly cancelled by the Additional District Magistrate.

6. Section 7-A(3) of the Act provides that the Collector, may of his own motion or otherwise, call for and examine the records of any proceeding 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. Thus, the language of the Section is clear enough to conclude that the jurisdiction under the aforesaid Section can be exercised by the Collector only when an order has been passed under this Act by any authority subordinate to it. If the settlement of land in favour of the petitioner was not pursuant to the provisions of this Act, the Collector would have no jurisdiction to cancel the same in exercise of his power under the aforesaid provision of law. it is, therefore, essential at the first instance to examine as to whether the settlement land was made in favour of the petitioner under the Act. Section 3 (1) (e) of the Act empowers the Government 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 Subsecs. (2) and (3) of the Act. Sub.sec. (2) provides for settlement of seventy per centum of Government land with the persons belonging to the Scheduled Tribes and the Scheduled Castes in proportion to their respective populations in the village in which the lands are situated and the remaining lands shall be settled with the other persons not belonging to the aforesaid categories and if sufficient number of persons belonging to the aforesaid categories are not available or are not willing to accept the settlement of land so much of the land reserved for the said persons as cannot be settled with them may be settled with other persons. Sub-section (3) of the said Section enumerates the order of priority in the matter of settlement of lands, the first being the co-operative farming societies formed by landless agricultural labourers; the second being any landless agricultural labourers of the village; and the third being ex-servicemen or members of the Armed Forces of the Union if they belong to the village in which the land is

situate. The opp. parties rely on Rule 11 of the Orissa Government Land Settlement Rules which makes a reference to Schedule II prescribing the limits which an authority of the Government is entitled to sanction settlement of the Government land Entry No. 11 of the said Schedule in particular is relied on which prescribes a limit of one standard acre in rural areas which can be settled by the Tahasildar subject to the confirmation by the Sub-divisional Officer.

7. Learned counsel for the petitioner has relied upon Government of Orissa, Home Department Resolution No. 11323-3S-29/63-Poll dated 14-5-1963 which declares the facilities to be given to the Jawans of Orissa who proceeded to forward areas. This was decided in consideration of the risk and sacrifice of the officers and men who are proceeding to forward areas in active service. The categories of the persons and men who would be entitled to such facilities have been enumerated therein. It is not disputed that the petitioner is one of the eligible persons to the facilities declared under the aforesaid Resolution. One of the concessions available to the eligible person under the said Resolution is that such person on return from service will get five acres of land free and make ready for cultivation at Government cost. In case a person is killed, the widow or the dependants will receive the land. Such facilities were subsequently extended to army personnel who have completed five years of service with which we are not concerned at the moment. Learned counsel appearing for the petitioner has referred to the lease principles approved by the Government which authorised the Tahasildar of the area or where there is no Tahasildar, the Subdivisional Officer, who is the competent authority to decide the settlement of land in accordance with the principles to be decided by the Government. The Government Order No. 4898-R dated 28-1-1966 has been relied upon by the learned counsel for the petitioner, paragraph 4 of which provides for special reservation. It says that Twenty per cent of the area from the arable Government lands shall be reserved for allotment to persons belonging to Orissa, who have Joined the regular Armed Forces and for members of the Orissa Military Police and Territorial Army belonging to Orissa who have been posted in the forward areas and personnel of the Auxiliary Air Force belonging to Orissa, who have been called up. The essence of his submission is that the aforesaid Government order read with the Government resolution No. 11323-3S-29/63 Poll dated 14-5-1963 would make it clear that Jawans of the categories mentioned in different Government orders should not be treated on the same footing as private individuals and settlement of land in their favour cannot be conceived under the Act inasmuch as a Jawan is entitled to settlement of five acres of land which obviously is beyond the prescribed limit under the said Act and also for the reason that the settlement in favour of a Jawan does not require time taking detailed procedures to be followed as prescribed under the Act. The learned Additional Government Advocate could not reconcile as to how the Government orders and principles declaring settlement of five acres of land in favour of Jawans could be made under the Scheme of the Act. In the aforesaid premises the conclusion is irresistible that the settlement of five acres of land in favour of

petitioner was not made in accordance with the provisions of the Act, but it was under the lease principles read with Government notifications which made special provision for special categories of persons who could not be treated on the same footing as private individuals. It, therefore, follows that a suo motu proceeding u/s 7-A(3) of the Act could not be resorted to for examining the correctness or otherwise of the settlement made in favour of the petitioner. The suo motu proceeding initiated against the petitioner is, therefore, held incompetent and the order of the Additional District Magistrate in Annexure-5 is bound to be quashed on this count alone. It is, therefore, unnecessary to answer the other questions raised by the learned counsel for the petitioner as the proceeding itself was without jurisdiction and the order passed thereunder cannot be maintained.

8. In the result, we allow the writ application and quash the order of the Additional District Magistrate, opp. party No. 2 in Annexure-5. There shall be no order as to costs.