
(2006) 08 OHC CK 0021
In the Orissa High Court

Rama Chandra Sahoo and Dhadi Behera and Others APPELLANT
Vs
State of Orissa and Another RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 7A, 7A(3)
Orissa Prevention of Land Encroachment Act, 1972 — Section 7(2)(a), 7(2)(b)

Citation : (2007) 103 CLT 276 : (2006) 2 OLR 769

Hon'ble Judges : S.B. Roy, C.J;M.M. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—As these two writ petitions involve similar question of law and fact, they are heard together and are disposed of by this common order. Since the dispute purely relates to the question of law and the opp. parties in both the writ petitions are State authorities and are represented by the learned Addl. Government Advocate, we do not find any necessity to issue notice to the opp. parties, which is accordingly dispensed with.

2. We have heard learned Counsel for the petitioners and the learned Counsel for the State.

3. The facts of both the cases reveal that the petitioners encroached upon different pieces of land belonging to the Government for which Encroachment Case Nos. 361/75 and 363/75 respectively were initiated against them by the Tahasildar, Tirtol/Kujanga under the provisions of Section 7(2)(a) and (b) of the Orissa Prevention of Land Encroachment Act, 1972 (for short "the O.P.L.E. Act"). Upon hearing the petitioners, the said Tahasildar by orders dated 5.8.1975 under Annexure-1 finding that the encroached lands can be leased out and no objection has been filed after general proclamation was made, the said encroached lands extending to an area Ac.0.60 decimals and Ac.0.75 decimals out of plot No. 2 were settled in favour of the petitioners respectively and the Tahasildar, Tirtol by orders dated 5.8.1975 directed the Record Keeper to correct R.O. Rs. accordingly.

4. Pursuant to the said orders, the R.O. Rs. were corrected in respect of the properties settled in favour of the petitioners as is evident from Annexure-3 to the writ petitions. It further transpires that when the petitioners remained in possession of the said land and continued to pay rent for the same to the Government, Suo motu Revisions u/s 7-A (3) of the Orissa Government Land Settlement Act, 1962 (for short "the O.G.L.S. Act") were initiated by the Collector, Jagatsinghpur being O.G.L.S. Revision Case Nos. 28 of 2004 and 24 of 2004. By orders dated 11.8.2005, the said Collector, Jagatsinghpur set aside the purported leases granted in favour of the petitioners.

5. Learned Counsel for the petitioners submits that since the leases were granted in the year, 1975, initiation of the proceedings u/s 7-A (3) of the O.G.L.S. Act in the year, 2004, i.e. after about 29 years is in contravention of the provisions of Section 7-A of the O.G.L.S. Act, as the second proviso to the said section prescribes that after lapse of a period of 14 years, no revision under the said section can be initiated.

6. In support of his contention, the learned Counsel relied upon the decision of this Court in the case of Gopaldas Agrawal Vs. State of Orissa and Others, wherein it has been held that revision u/s 7-A of the O.G.L.S. Act cannot be initiated after expiry of the period of 14 years as prescribed in the said Section and order passed in such a revision initiated beyond the period of 14 years cannot sustain.

7. It appears to us that the moot question to be decided in these cases is whether a settlement made u/s 7(2)(a) or (b) of the O.P.L.E. Act can be construed to be a lease granted under the O.G.L.S. Act.

8. For determining the above issue, we feel it appropriate to quote Section 7(2) (a) and (b) of the O.P.L.E. Act and Section 7-A(3) of the O.G.L.S. Act.

Section 7(2)(a) and (b) of the O.P.L.E. Act is quoted hereunder:

7. Summary eviction, forfeitures and fines-

(1) XXX XXX XXX (2) Notwithstanding anything contained in Sub-section (1)-

(a) Where any land is in the unauthorized occupation of a landless person, the Tahasildar may, instead of evicting such person from the land in his unauthorized occupation, settle the same with him, so, however, that the land so settled with him together with the land excluding homestead, if any, owned by him and the lands owned by all the members of his family who are living with him in common mess, shall, on no account, exceed one standard acre and shall not include more than one-tenth of an acre of land which is being utilized or can be utilized for purposes of homestead; and

(b) Where any land is in the unauthorized occupation of a homesteadless person, which is being utilized by him as homestead, the Tahasildar shall, instead of evicting such person, settle the same with him, so, however, that the land so

settled with him shall not exceed one tenth of an acre.

Section 7-A (3) of the O.G.L.S. Act is quoted hereunder: 7-A. Revision-

(1) xxx xxx xxx (2) xxx xxx xxx (3) 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.

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.

9. A bare reading of the above provisions in the two enactments would go to show that a settlement made in favour of a landless person under the O.P.L.E. Act is different from a lease granted under the O.G.L.S. Act. Sub-section (1) of Section 7-A of the O.G.L.S. Act specifically states that the Collector may revise any order made under Sub-section (1) or under Sub-section (3) of Section 7-A of the said O.G.L.S. Act passed by a Sub-Divisional Officer and the Revenue Divisional Commissioner may revise any such order passed by the Collector if an application is made by the aggrieved person within a time stipulated. Sub-section (3) of Section 7-A of the said O.G.L.S. Act prescribes that the Collector may revise suo motu any order made under that Act for the purpose of satisfying himself that 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. It is, therefore, crystal clear that power under Sub-section (3) of Section 7-A of the O.G.L.S. Act can be invoked by the Collector with respect to any order passed under the said Act. The inevitable conclusion, therefore, would be that the Collector cannot exercise power u/s 7-A (3) of the O.G.L.S. Act to revise any order passed under the O.P.L.E. Act.

(Emphasis added)

10. We, therefore, find that the action of the Collector in initiating the O.G.L.S. Revision Case Nos. 28 and 24 of 2004 against the petitioners in respect of the lands, which were settled in their favour under the provisions of the O.P.L.E. Act, is bereft of jurisdiction.

11. In this view of the matter, it is not necessary to decide whether the aforesaid revisions were barred by time having been initiated beyond the period of 14 years as stipulated in the second proviso to Section 7-A (3) of the O.G.L.S. Act. As we find that the Collector had no jurisdiction to initiate the O.G.L.S. Revision Case Nos. 28 and 24 of 2004 against the petitioners for cancelling the settlement of the lands in question made under the O.P.L.E. Act, the impugned orders dated

11.8.2005 passed in the aforesaid revisions by the Collector, Jagatsinghpur are quashed.

The writ petitions are allowed.

S.B. Roy, C.J.

12. I agree.