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**(1976) 11 OHC CK 0003**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 844 of 1974**

Sadhu Charan Das

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

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**Date of Decision :** 08-11-1976

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Orissa Prevention of Land Encroachment Act, 1972 — Section 2, 3

**Citation :** (1977) 43 CLT 177

**Hon'ble Judges :** R.N. Misra, J;K.B. Panda, J

**Bench :** Division Bench

**Advocate :** J.B. Patnaik, for the Appellant; Govt. Advocate for Addl. Standing Counsel, for the Respondent

**Final Decision :** Allowed

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## Judgement

K.B. Panda, J.—In this application under Articles 226 and 227 of the Constitution, the Petitioner seeks to quash the orders passed by the Collector, Puri opposite party No. 3 and Revenue Divisional Commissioner, Cuttack opposite party No. 2 dated 20.3.1973 and 6.7.1974 in Misc. Case No. 17 of 1972 and Lease Revision Case No. 8 of 1973 (Annexures 7 and 8) respectively. The concerned land comprises only 0.14 acre appertaining to plot No. 55 under khata No. 80 of mouza Chandrakot of Pipili Tahasil, recorded in the last settlement as "Abada Jogya Anabadi" with a note of illegal possession by the Petitioner since 1959.

2. The history of the land referred to in the petition is not relevant for the purpose of disposal of this application. Suffice it to say, on 15-2-1971 the Petitioner had been granted a lease of the same. One Tahsildar started Encroachment Case No. 102 of 1970-71 against the Petitioner evidently on the footing that he was an encroacher in respect of this 14 decimals of land. The disputed land is contiguous to the house of the Petitioner which he had enclosed with brick walls and had put cocoanut trees therein. In the receipt record-of-rights in the "Remarks" column there was a note of illegal possession by the

Petitioner since 1959. After the encroachment case was started, the Petitioner prayed that the land be leased out to him in consonance with the Government order No. 14960(6)- Enc-33-63-R dated 4-3-1964, which lays down that all lands encroached by parties be settled with them on receipt of Salami etc., if such encroachment is prior to 13-9-1961 and unobjectionable. Accordingly, Salami was accepted from the Petitioner, back rent was collected and the status of occupancy right was conferred on him. However, a Patta had not been issued.

3. The successor of the Tahasildar, who had granted lease, recommended on 20-3-1973 for cancellation of the entire lease of 14 decimals or at least 4 decimals therefrom. The Collector (opposite party No. 3) started Misc. Case No. 17 of 1972 and without any enquiry recommended for cancellation of the lease to the Revenue Divisional Commissioner (opp. party No. 2) mainly on three grounds, namely, (1) the encroachment of land is objectionable; (2) the Petitioner practised fraud in obtaining the lease; and (3) it interfered with a third party's right.

4. The Revenue Divisional Commissioner disposed of the matter (Lease Revision No. 8 of 1973) by setting aside the order of the Tahsildar who had granted the lease and directed for a fresh inquiry and settlement. Evidently it was under two grounds, namely, (1) a lease cannot be granted in an encroachment proceeding; and, (2) granting of lease under approved lease principles is not legal when the Orissa Land Settlement Act has come into force.

5. It is stated in the petition that the grounds on which the Collector recommended for cancellation of the lease as well as the grounds given by the Revenue Divisional Commissioner for remanding the case for fresh disposal are untenable in law as well as in fact. Further it is asserted that the character of the land being Abada Jogya Anabadi and that being in possession of the Petitioner ever since 1959, leasing out the land to him in an encroachment proceeding is perfectly legal which cannot be disturbed capriciously since he has acquired occupancy right over the same. In the counter affidavit it is stated that the land is used as a passage for villagers; that the Petitioner suppressed the fact of an earlier decision in Misc. Case No. 10 of 1963-64 and Estates Abolition Appeal No. 33 of 1967 where in his prayer had been rejected on 23-10-1968; that the Collector rightly exercised his power under Rule 2 of the Approved Lease Principles and that the Revenue Divisional Commissioner (opp. party No. 2) in exercise of his inherent and revisional powers has rightly approved the order of the Collector as the lease granted was not legal. It was also stated that the Petitioner had no subsisting right created in his favour by an illegal order given by the Tahsildar.

6. That the disputed land has been included within the boundary wall of the Petitioner and he was in possession of it prior to 1959 is not challenged. Thus it is evident that there had been no inconvenience to the general public because of this encroachment. That in an encroachment proceeding, no lease can be granted betrays lack of knowledge of the relevant rules and circulars.

Government in the Revenue and Excise Department Circular No. 14960(6)-Enc-33-63-R dated 4-3-1964 has issued instructions to various departments thus:

Subject: Imposition of penalty in addition to the Salami for settlement of encroachments committed prior to the 13th September, 1961.

Sir,

1. 1. I am directed to invite a reference to this Department letter No. 48597, dated the 26th October, 1961 explaining the policy of Government that all encroachments on Government land made prior to the 13th September, 1961, if considered unobjectionable, may be settled with the encroachers on payment of Salami at the following rates, namely:

xx xx xx

1.2. The said letter also defines the policy for settlement of waste lands on application and fixes the rates of Salami as indicated below:

xx xx xx

2.

xx xx xx Government desire that this should be brought to the notice of the Revenue officers entrusted with the disposal of encroachment proceedings so that in case of unobjectionable encroachments to be settled in accordance with the principles referred to in paragraph 1.1 above, the penalty proposed to be levied and the Salami proposed to be realised taken together should not exceed the amounts specified in paragraph 1.1 above. The best course would, therefore, be not to levy any penalty and to release salami at full rates subject, of course, to other principles of settlement and levy of Salami like recovery in installments, etc.

xx xx xx

5. All Collectors, Settlement Officers, Sub-divisional Officers, Charge Officers and Tahsildars are being informed.

The Orissa Prevention of Land Encroachment Act, 1972 before amendment laid down u/s 3 thereof what are objectionable encroachments thus:

3. Unauthorised occupation of any land which is the property of Government and which belongs to any of the categories specified below shall be deemed to be an objectionable encroachment

(a) Lands recorded as Gochar, Rakshit or Sarbasadharan in any record-of-rights prepared under any law;

(b) lands situate in any village which are

(i) set apart for the common use of the villagers;

(ii) used as house-site, back-yard or temple-site, whether or not recorded as such in the record-of-rights;

(iii) likely to be required for any development scheme and are declared as such in the manner prescribed by rules made under this Act by the State Government by a notification;

(c) lands unauthorisedly occupied by persons, who had once before been evicted therefrom or from any portion of such land in accordance with the provisions of this Act or any other similar law; and

(d) lands specified in Clause (e) of Section 2.

We posed the question to the learned Government Advocate as to under what category the present disputed land would come and he pointed out that it would come u/s 3(b)(ii). We do not think the disputed land will come under any of the categories. It has been described as Abada Jogya Anabadi, that is, fallow land capable of being utilised and thus does not come under any of the categories. That apart, it is under the occupation of the Petitioner prior to 1959 evidently without any objection till 1971 when the first encroachment case was started. The land having been settled according to the Government Circular referred to above, in an encroachment proceeding by the Tahsildar who was competent to do so on fixation of Salami and the Petitioner having paid it and the lease having been finalised in his favour it is no more open to reagitate the question and treat him as an encroacher. The subsequent proceeding by the successor of the Tahsildar is misconceived and so too the recommendation of the Collector as well as the order passed by the Revenue Divisional Commissioner.

7. Accordingly we would quash the orders impugned (Annexures- 7 and 8) and allow the petition. In the circumstances, there would be no order as to costs.

R.N. Misra, J.

8. I agree.