
(2013) 08 OHC CK 0042
In the Orissa High Court
Case No : Writ Petition (C) No. 14958 of 2006

Shankar Subudhi

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 OHC CK 0042

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

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. This Writ Petition has been filed by the petitioner challenging the order dtd. 12.6.2006 passed by the Under Secretary to Government of Odisha in the Department of Home rejecting the application of the petitioner for allotment of five acres of cultivable land. On perusal of records, it appears that the petitioner after rendering service in forward areas and during Indo-China war, retired from service in the year 1967. He submitted an application on 09.12.1988 before the Government of Odisha for issuance of eligibility certificate for allotment of five acres of land. On receipt of such application, the Under Secretary to Government of Odisha in Home Department vide order dtd. 18.1.1989 called upon the petitioner to furnish the necessary documents for issuance of eligibility certificate for allotment of land. In pursuance of the said direction, the petitioner vide his letter dtd. 19.2.1969 submitted necessary documents. The Secretary, Rajya Sainik Board, Odisha vide letter dtd. 30.3.1989 under Annexure-7 moved the Under Secretary to Government of Odisha in Home Department for allotment of land in favour of the petitioner by furnishing the war service particulars with the recommendation that the petitioner is eligible for land concessions as per the existing rules of the State Government. Thereafter, Government of Odisha in Home Department vide letter dtd. 18.4.1989 called for a report from the Officer-in-Charge, Signal Records, Jabalpur as to whether the petitioner had ever proceeded to any forward areas during the period 26.10.1962 to 31.1.1964. The

Record Officer for OIC Records vide letter dtd. 28.4.2003 intimated the Government that the petitioner had rendered service in field area (Shillong/ Darjeeling) from 26.10.1960 to 17.12.1962. The Deputy Secretary to Government of Odisha in Home Department vide letter dtd. 24.4.2003 requested the Collector, Khurda to intimate whether any Government land has been allotted under Jawan quota in favour of the petitioner in the district of Khurda for his deputation to forward area during the National Emergency 1962-1965. On receipt of the said letter, the Addl. District Magistrate, Khurda vide letter dtd. 04.9.2003 intimated the Government that no Government land has been allotted in favour of the petitioner. The petitioner submitted several representations before the authorities for allotment of five acres of cultivable land on concession. As no decision was taken by the Government, the petitioner filed a petition before the Governor, Odisha on 19.8.2005, which was forwarded to the office of the Principal Secretary, Home Department by the Under Secretary vide letter dtd. 01.9.2005. The Under Secretary to Government of Odisha in Home Department vide letter dtd. 12.6.2006 rejected the application of the petitioner for allotment of five acres of cultivable land without assigning any reason.

2. Learned counsel appearing for the petitioner 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 had rendered service during Indo-China war 1960-62, is entitled to be allotted with Ac. 5.000 of land. He further submits that on the basis of Government resolution/ decision several persons similarly placed like the petitioner have been issued with Eligible Certificate and allotted with land but the application of the petitioner has been rejected which is discriminatory.

3. A counter affidavit has been filed by opposite party no. 1 stating therein that the Resolution dtd. 14.5.1963 issued by the Government of Odisha in the Department of Home when unutilized Government waste land was available in plenty and it is no more available now due to rapid urbanization and requirement of development projects being under taken by the Government in public interest. It is stated that though the petitioner discharged from service on 06.2.1967 in order to avail landless certificate, he has sold entire landed property along with homestead land on 20.6.2002 and is now staying with his son at Bhubaneswar. The petitioner applied for eligibility certificate after 35 years from the date of his retirement which shows that he has no intention for cultivation but to grab Government land because of its high value in monetary terms. So far as the allegation of the petitioner that on the basis of Government resolution/decision several persons similarly placed like the petitioner have been issued with Eligible Certificate and allotted with land, it is stated that each application for concession of allotment of land in case of defense personnel was examined separately and individual decisions were taken by the State Government on the basis of existing law formulated for the purpose from time to time. Therefore, the allegation of the petitioner is not based on any fact. It is further stated that paragraph-3(d) of the Resolution of Home Department dtd. 07.7.1969 provides that a person shall

be deemed to be landless if the total extent of 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 five acres, but the petitioner has not furnished his permanent address after selling out his homestead land and left his native place and has not shown the landed property of his family members, therefore, his application was rejected and he was not found eligible for availing the concession granted by State Government.

4. Considering the rival submission of the parties and after going through the materials available on record, it appears that 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.

xxx xxx xxx xxx

(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.

(emphasis supplied)

It further appears that the Revenue Inspector submitted the report stating that the petitioner had only Ac. 0.235 decimals of Gharabari landed property in

Village - Taladihi and Ac. 0.050 decimals of land in Village - Gopal Prasad, therefore, the total extent of land of the petitioner was Ac. 0.285 decimals, which was less than five acres. Though the petitioner moved the Government for allotment of land in the year 1988, the Government took 14 years time to verify the War Service Records/Reports i.e. from 18.1.1988 to 28.4.2003, therefore, the plea of the Government that the petitioner applied for eligibility certificate for allotment of Government land with free of cost after 35 years from the date of his retirement based on no records. The Government of Odisha in Home Department vide letter dtd. 07.11.2003 directed the Tahasildar, Banpur and Tahasildar, Bhubaneswar to submit report as to whether the petitioner is in possession of any private land of his own or not and the letter dtd. 19.1.2005 of the Addl. District Magistrate, Khurda clearly reveals that there is no land standing in the name of the petitioner. The report of the Revenue Inspector annexed to the counter affidavit clearly speaks the permanent residential address of the petitioner. The Secretary, Rajya Sainik Board, Odisha has already recommended the case of the petitioner after verifying the records that he is eligible to get concession of five acres of land at his native place as he has rendered service in forward areas during external aggression between 1962-64 as a Jawan. Hence, the petitioner is eligible to get the land as per the aforesaid resolutions.

For the reasons stated above, this Court disposes of this Writ Petition directing the Secretary to Government, Home Department - opposite party no. 1 to allot the land in favour of the petitioner in coordination with the respective Departments, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order.

A free copy of this order be supplied to learned Addl. Government Advocate for compliance.