

---

**(1996) 04 OHC CK 0010**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 7589 of 1994

Smt. Bidyut Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

---

**Date of Decision :** 18-04-1996

**Acts Referred:**

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

**Citation :** (1996) 1 OLR 532

**Hon'ble Judges :** P. Ray, J;D.M. Patnaik, J

**Bench :** Division Bench

**Advocate :** S.C. Dash and P.K. Jena, for the Appellant; Additional Government Advocate, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

P. Ray, J.—The petitioner, a transferee from the original settlee of Government land has assailed the order dated July, 25, 1989 passed by the Addl. District Magistrate, Bhubaneswar in suo motu Lease Revision Case No. 21/89 initiated u/s 7-A (3) of the Orissa Government Land Settlement Act, 1962 (hereinafter referred to as the "Government Land Act") cancelling the grant of lease.

2. On October 9, 1975 land measuring about Ac. 1.000 acre comprising plot No. 562 under Khata No. 272 of Mouza Dasapur, P. S. Chandaka, Bhubaneswar (hereinafter referred to as the "disputed land") was settled in favour of one Dharamu Behera (opp. party No. 3) by the Tahasildar, Bhubaneswar in Waste Land Lease Case No. 1177 of 1975. On January 30, 1985 the said settlee transferred the disputed land to one Smt. Pratima Kar (opp. party No. 4). On December 6, 1985, opp. party No. 4 in her turn sold the disputed land to the present petitioner under registered sale deed No. 9941. The possession of the Land was duly delivered to the petitioner and she has been possessing the disputed land since the date her purchase.

3. In 1989 Addl. District Magistrate, Bhubaneswar (opp. party No. 1) in exercise

of its powers u/s 7-A (3) of the Orissa Government Land Act initiated a suo motu proceeding, for cancellation of the lease granted in 1975 in favour of opp. party No. 3. It appears that the notice of the said proceeding was sent to opp. party No. 3 only although on the date of such initiation the opp. party No. 3 had already transferred the disputed land in favour of others. Opp. party No. 3 having already sold the disputed land neither appeared nor showed any cause in the said proceeding. By the impugned order dated July 25, 1989 the Additional District Magistrate cancelled the lease, set aside the order of the Tahasildar dated October 9, 1975 and directed to correct the record-of-rights and to take over possession of the disputed land.

4. On the date when the impugned proceeding was initiated the present petitioner had already purchased the disputed land by a registered sale deed. Undisputedly no notice of the said proceeding was sent to the present petitioner. It has been submitted by the learned counsel for the petitioner that no notice having been sent to the petitioner the proceeding and the final order passed therein is wholly incompetent and void.

5. First proviso to Section 7-A (3) of the Government Land Act expressly postulates that no order shall be passed under the said provision unless the person affected by the proposed order has been given a reasonable opportunity of being heard in the matter. There cannot be any doubt that at the time of initiation of the proceeding it was the petitioner who was a person to be affected by the proposed or contemplated cancellation of the lease and as such she was/is entitled to reasonable opportunity of being heard in the matter.

6. It has been sought to be submitted on behalf of the opp. parties 1 and 2 that as the name of the petitioner was not entered in the record-of-rights at the time of initiation of the proceeding, opp. party No. 2 had no knowledge about the transfer and accordingly there was no obligation to send any notice to the petitioner. In view of the clear language of Section 7-A (3) of the Government Land Act such submission cannot be accepted. The Legislature in its wisdom has made it obligatory to give all the persons to be affected by the proposed order a reasonable opportunity of being heard. It does not restrict or confine the entitlement only to persons whose name appears in the record-of-rights. Moreover, the settled position of law is that registration itself is a notice of transfer to the State Government. The transfers by the original allottee to the opp. party No. 4 and the subsequent transfer by opp. party No. 4 in favour of the present petitioner having been effected by registered sale deeds, it is not open to opp. party Nos. 1 and 2 to deny opportunity of hearing to the holder of the title at the relevant point of time.

7. For the foregoing reasons, we are inclined to set aside the impugned order dated July 25, 1989 (Annexure-3) passed by opp. party No. 2 in Lease Revision Case No. 21/89 and direct the opp. party No. 2 to afford all reasonable opportunities of hearing to the present petitioner before taking any decision in the said Lease Revision Case. The petitioner will be at liberty to take all

objections including any objection relating to initiation of the said revision case and the manner thereof. No fresh notice is required to be given to the petitioner who is directed to appear before opp. party No. 2 on May 27, 1996 with his written objection, if any, and on such date opp. party No. 2 will fix a date of hearing of the said revision case.

8. The petitioner in his writ petition has taken several other points, but as the impugned order is being set aside on the ground of denial of opportunity of hearing and violation of the principle of natural justice, we do not propose to consider other points urged in the writ petition and all such points taken in the writ petition are left open.

9. Writ petition is thus allowed. No order as to costs. Let this order be communicated to opp. party Nos. 1 and 2. Requisites for communication be filed within seven days from the date of this order.

D.M. Patnaik, J.

I agree.