
(1997) 03 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 1081 of 1994

Smt. Kamala Singh and Another	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 26-03-1997

Acts Referred:

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

Citation : (1997) 83 CLT 680 : (1997) 1 OLR 586

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

Bench : Division Bench

Advocate : Biswamohan Patnaik 2, for the Appellant; S.P. Mishra and S.K. Sangeneria, for the Respondent

Final Decision : Allowed

Judgement

D.M. Patnaik, J.—Petitioners invoke extraordinary, jurisdiction of this Court under Articles 228 and 227 of the Constitution of India to quash Annexure-8 the order dated 25-9-93 of the Additional District Magistrate (Revenue), Cuttack u/s 7-A (3) of the Orissa Government Land Settlement Act, 1982 (hereinafter referred to as the "Act") cancelling lease in respect of land measuring two acres.

2. Petitioners are respectively the daughter and the son of Taria Bewa, since deceased. Taria Bewa was granted lease by the Tahasildar, Salipur in respect of two acres of land under Khata No. 1347, plot No. 1218 in the year 1978 in lease case No. 152 of 1978. She possessed the land and paid rent etc. on the basis of the Stithiban Patta issued in her favour under Annexure-1. After death of Taria Bawa, petitioners being the legal heirs continued to possess the land. While they were so enjoying the land, the Additional District Magistrate, opp. party No. 2 by the impugned order dated 25-9-1993 (Annexure-8) cancelled the lease stated above on the ground that lease was granted illegally without following the prescribed procedure and also was the result of the fraud and misrepresentation.

3. Heard Mr. Biswamohan Patnaik (2) learned counsel for the petitioners, Mr. S. P.

Mishra learned counsel for opp. parties 4 to 27 and Mr. S. K. Sangneria learned counsel for opp. party No. 28 in regard to the respective cases of the parties whom they represent. While Mr. Patnaik strenuously used pointing out the various infirmities in the revisional order, the learned counsel for the opposite parties supported the order of cancellation.

The rival contentions need examination.

4. There is no dispute that that the Additional District Magistrate u/s 7-A (3) of the Act is competent to cancel a lease on the ground of mistake of fact or owing to fraud or misrepresentation or on account of any material irregularity in procedure.

It is well-settled in law that fraud like any other criminal charges unless circumstances so warrant should be proved by positive and satisfactory evidence and no amount of presumption would be sufficient to prove the allegation of fraud.

The Additional District Magistrate in the impugned order in paragraph 4 has categorically observed :

"In the absence of the original case record to substantiate the facts as to whether the lease was granted under a mistake of fact owing to fraud and/or under mis-representation on account of material irregularity of procedure posed a difficult task before me,"

But in the next breath he gave a finding that the missing of the case record led him to presume that the fact of missing was deliberate one and mischief was done to wipe out a substantial evidence on record.

5. Annexure-5 is the order of the Tahasildar dated 28-7-1988 which indicates that one. Dhaneswar Panda was the dealing Assistant and was asked to produce the record, but he failed. Annexure-5/3 is the D.O. letter dated 1-8-1988 of the . Tahasildar, Salipur addressed to the Additional District Magistrate (Revenue), Cuttack from which it is apparent that said Dhaneswar Panda was asked by letter dated 27-5-1988 as to the availability of the record and Shri Panda submitted explanation that the case record was handed over to the then Tahasildar Shri Gobindgopal Sen. It seems nothing progressed thereafter about the missing of the record. The same also indicated that petitioner No. 2 was serving as Senior Clerk since 22-7-1956. Because of the fact that petitioner No. 2 was serving in the Tahasil office, presumption was drawn by the Additional District Magistrate that he was responsible for the missing of the lease record. This is not acceptable. There is no prima facie material to draw such a presumption.

6. The Tahasildar's report coupled with statements of the witnesses that Taria Bewa was living for about twenty years with her daughter, petitioner No. 1 weighed in the mind of the Additional District Magistrate as one of the grounds to cancel the settlement. It may be stated that assuming the lady was staying with her daughter, yet it could not be said that she was unable to possess the land in question since, as a matter of fact, materials disclose that she was living with

her daughter only 6 K. Ms. away from her village where the land in question is situate. Secondly, the record-of-rights by the settlement authorities has been corrected vide Annexure-3. Needless to point out that such preparation/correction of record-of-rights are done under the statutes only when the authorities are satisfied with title and possession of the land and thereafter make the appropriate entry. The same is also the case with the Consolidation authorities. All official acts done are presumed to have been done as per law unless the contrary is proved. It would be too much to presume that these authorities were not satisfied with the fact of possession by the lessee, but mechanically recorded the land in her name.

On the face of such documentary evidence with regard to possession it was not correct on the part of the Additional District Magistrate to arrive at a finding that the lessee was not in possession merely because she was staying with her daughter. The fact that the Additional District Magistrate accepted the report of the Tahasildar and the statements of the witnesses that the lady broke away, from her son because of ill-feeling with the latter's family, rather was a justifiable reason to hold that her requirement for a piece of land was genuine.

7. The other reasons assigned in the order are, Taria Bewa possessed Ac. O. 143 decimals of land to her share vide Annexure-6, report dated 6-11-1990 of the Tahssildar. It also weighed in the mind of the revisional authority that she was getting pension.

Neither of the two above reasons could have been the grounds for cancellation of the settlement since they are not covered under the provisions of Sub-section (3) of Section 3 of the Act. The provisions of Sub-section (3) prescribe for settlement of government land in order of priority. The opposite party State has not filed any counter. Separate counters have been filed by the villagers, opp. parties 4 to 27 and opp. party No. 28, the Secretary of the Gomangal Samiti. Nothing has been brought out in the counters stating that the cases of any Co-operative Society of landless agricultural labourers, landless agricultural labourers, ex-servicemen or members of the armed forces. Raiyats cultivating not more than one standard acre of land have been ignored while setting the land in favour of Taria Bewa. Rathor under Sub-section 3 (e) of Section 3 of the Act, it is prescribed that in the absence of persons belonging to any foregoing categories, land could be settled with any other person. It may further be seen from the report dated 23-5-1988 of the R. I.. Bhismapur (Annexure-5/A) that the total area of he land available under disputed Khata No. 1347. plot No. 1218 Kisam Gramya Jungle was Ac. 5.710 decimals out of which Ac. 2.00 was leased out to Taria Bewa.

Therefore, in the absence of any allegation by the villagers or even a report by the Tahsildar or any other authority that lease was granted ignoring the categories on priority basis mentioned therein, it was not proper for the Additional District Magistrate to cancel the lease in question.

8. in the present case the petitioners had been noticed and they appeared before the Additional District Magistrate and put forth their case in support of the settlement of the land in the name of their mother Taria Bawa. The impugned order of cancellation amply establishes that the original records in Lease Case No. 152 of 1978 was not traceable as reported by the Tahasildar. Therefore, a reconstructed record was put up before the Additional District Magistrate for perusal. Though the date of the lease could not be ascertained as observed by the Additional District Magistrate, yet it would be legitimate to hold that the lease was granted sometime during the year 1978 since one of the rent receipts, earliest in point of time is found to be dated 3-12-1979 (vide Annexure-2 series). It may be noted that Taria Bawa has been recorded after correction of the record-of-rights vide Annexure-3 under a separate Khata No. 1198/23 plot.No 1218 which fact is admitted. It is further worthwhile to note that during pendency of the writ petition it has been brought to the notice of this Court that the matter was also before the Consolidation authorities (as is indicated from the certified copy of the order dated 27-12-1990 of the Assistant Consolidation Officer, referring the case to the Consolidation Officer) for disposal since the matter was contested by the State. Since the Consolidation Officer allowed consolidation in favour of the petitioners, opposite parties-villagers went in appeal before the Deputy Director of Consolidation in Appeal No. 9 of 1991 and the appeal was dismissed vide order dated 3-12-1991. The villagers went before the Commissioner of Consolidation in Consolidation Revision No. 254 of 1992 and by order dated 4-11-1995 the revision has been dismissed for default.

9. A point has been raised in the counter of the opposite parties 4 to 21 that the land being a communal land it could not have been settled by the Tahasildar.

It may be pointed out that this is permissible vide decision of this Court reported in 40 (1974) C.L.T. 38, Brundaban Malik v. State of Orissa and Ors.

10. In the result, the writ petition is allowed. The impugned order of the Additional District Magistrate (Annexure-8) is set aside. We, however, make it clear that the authorities may go for a fresh enquiry of the matter after notice to the petitioners and should cancel the lease only on the basis of any positive and specific material which will justify cancellation u/s 7-A (3) of the Act, but not on a mere presumption as pointed out in judgment.

Pradipta Ray, J.

11. I agree.