

(2023) 05 OHC CK 0036
In the Orissa High Court
Case No : Writ Petition (C) No. 27768 Of 2020

Smt. Pravati Sahoo

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Odisha Government Land Settlement Act, 1962 — Section 3B

Citation : (2023) 05 OHC CK 0036

Hon'ble Judges : Arindam Sinha, J;S.K. Mishra, J

Bench : Division Bench

Advocate : R.K. Routray, A.K. Nanda

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Petitioner says, her title traces back to original allottee in respect of 5 acres of land. After 32 years of the grant by order dated 28th August, 1971, original allottee sold and transferred 67 decimals of the land in favour of one Calvin Eric Francis, by deed dated 14th November, 2003. Said transferee then transferred to petitioner by deed dated 1st February, 2016. Yadast was prepared in name of Calvin Eric Francis and separate plot number allotted. Petitioner on having filed Rent Case no.5934 of 2013, there was order for the plot to be recorded in name of General Administration (GA) Department. Petitioner alleges, no opportunity of hearing was given to her.

2. Petitioner has pleaded that the grant was made under Government Grants Act, 1895. In respect of such grant, provision in section 3-B of Odisha Government Land Settlement Act, 1962 is not applicable. Against the direction made for recording the land in name of GA Department, petitioner preferred appeal before the Settlement Officer. By impugned order dated 21st March, 2020, the appeal was disposed of on erroneous finding that order of the Tahsildar in Waste Land Case no.790 of 1970 had not yet been inquired into by a senior officer in rank of

Secretary, for implementing the order of this Court in OJC no.9449 of 1993.

3. Mr. Routray, learned advocate had moved the petition and thereafter obtained leave to file additional affidavit. He had submitted, the order made in the rent case, in which it was held as thought proper not to record Government land in favour of private individual, needed to be seen. Affidavit dated 21st March, 2023 was filed by petitioner, disclosing the order. Against said order his client had preferred appeal, disposed of by impugned order.

4. Today Mr. Routray submits, suo moto lease revision case was indeed initiated as would appear from order dated 14th August, 2001. The Additional Tahsildar initiated the case in obedience to order dated 29th January, 1996 of this Court in OJC no.9449 of 1993, whereby there was direction upon the State Government to enquire into the matter relating to land, through a senior officer in the rank of Secretary and to also enquire whether the Tahsildar had settled the land by misuse of power. The Tahsildar also referred to order dated 15th October, 1996 of this Court, directing the Government to examine whether the cases are covered under section 3-B.

5. He submits, the lease revision case was concluded on order dated 7th December, 2001, made by the Additional Tahsildar. He relies on relevant paragraphs in the order, extracted and reproduced below.

"Section 3-B of OGLS Act, 1962 empowered to the Addl. Tahasildar to resume the land, if it is used for the purpose other than the purpose for which the land was settled with the lessee. But in this instant case the land measuring Ac. 5.000 dec was leased to the lessee for Agriculture purpose. Presently the lessee is in possession of the land. The lessee has been cultivating it by raising green vegetables. During the spot enquiry it is seen that such crop was standing for harvesting.

As such he has not violated the condition of the lease as it was settled with him.

In view of the above facts I am declined to proceed with this case u/s 3-B of OGLS Act, 1962 to resume the land measuring Ac5.000 dec in Khata No.233/81 Plot No.784/1391 Mouza:Sampur, P.S. Chandaka settled with Shri Himanshu Sekhar Mohapatra.

Hence the lease is confirmed.

Send the case record to the lease central for necessary action. R.K. to confirm the case under confirmation to R.I. Paikarpur."

(emphasis supplied)

He submits, there be interference. Impugned order be quashed and there be direction for relief to his client.

6. Mr. Nanda, learned advocate, Additional Government Advocate appears on behalf of State. He refers to order sheet in respect of allotment to original

allottee. He submits, the person was not a Jawan. He fraudulently obtained 'Jawan lease', when in fact, he was of rank, Major. He relies on judgment dated 29th October 2021 of the Supreme Court in Civil Appeal nos. 6534-6535 of 2021 [State of Orissa and others v. Premalata Mohapatra (dead) Through LRS.]. The passage relied upon is reproduced below.

"...As per the decisions communicated in Home Department Resolutions of 1963, 1964 and 1969, Government agricultural land up to 5 acres are being given under Government Grants Act, 1895 to Jawans who served in forward areas during China aggression from the 26th October, 1962 to the 31st January, 1964. Subsequently, on the request of Home Department agricultural land up to one standard acres in favour of landless ex-servicemen and landless Gallantry and Non-Gallantry awards winner Defence personnel up to Non-Commissioned Officer rank under the said Act vide G.O. No.19513, dated the 16th April 1998 and No.40743, dated the 11th August 1998. xx xx xx"

(emphasis supplied)

He submits, the fraud, regarding the grant, is apparent on face of the record. The land was subsequently, correctly recorded in Government khata. There should not be interference. On query from Court Mr. Nanda is not able to point out this contention as appearing recorded in aforesaid orders dated 14th August, 2001, 7th December, 2001, 11th July, 2013, impugned order or pleaded in the counter.

7. We find that impugned order is wholly perverse and without jurisdiction. There does not appear to be any dispute that it was made on appeal from a rent case, scope of which was regarding fixation of rent. So far as complying with directions of this Court in OJC no.9449 of 1993 is concerned, the administration initiated suo moto lease revision case in compliance, which was concluded, as aforesaid, by order dated 7th December, 2001. The matter rested there but it was said in impugned order that no enquiry was made.

8. Coming to the contention of State advanced from the Bar, without any basis in the materials before us, for adjudication of it we are at a loss on how to deal with this so called discovery of new case. Firstly, the Supreme Court declared the law in Mohinder Singh Gill v. Chief Election Commissioner reported in AIR 1978 SC 851 that for adjudication of challenge to an order, it is to be looked into as cannot be supplemented otherwise. We reiterate, there is no mention whatsoever, of the contention, in impugned order or aforesaid earlier orders. On the contrary, the grant/allotment order says, inter alia, as appears from passages therefrom, extracted and reproduced below.

"One Revenue Officer, Collectorate, Cuttack, has sent the copy of eligibility certificate issued in favour of Major Himansu Sekhar Mahapatra by the Home Dept., Govt. of Orissa. He has been declared eligible to get the concession as per Home Dept. resolution no.11323 policy dated 14.3.63 read with subsequent resolution no.9738 policy dated 11.4.1964.

XXX	XXX	XXX	XXX	XXX	XXX
		XXX XXX XXX			
XXX	XXX	XXX	XXX	XXX	XXX
		XXX XXX XXX			

Hence Ac.5.00 (five acres) of land out of plot no.784, under khata no.245 of Mouza Sampur, is leased out in favour of Major H.S. Mahapatra, a Jawan serving in the front, without payment of salami. Issue patta accordingly.

Case is disposed of.”

(emphasis supplied)

9. Secondly, it is unacceptable that in the grant by the proceeding from order sheet, disclosed by petitioner herself, reference to original allottee as Major would, without pleading, at least in the counter, be proved as the person to be a Major and not a Jawan at the time he served in the front. It is inconceivable that Government servants entrusted with administration and allotment of leases, right from year 1970 upto year 2020, when the Additional Sub-Collector made impugned order, were oblivious or deliberately so, regarding ineligibility of original allottee to get grant of Jawan lease. As aforesaid there is no mention in impugned order nor in the orders made in respect of the lease revision case. Reproduced below are a passage from paragraph 6 and paragraph 8 in the counter.

“6.xx xx xx Further the averments of the petitioner that an area of Ac.5.00 decs. of Sabik Plot No.784/1391 under Sabik Khata No.233/91 has granted by the Tahasildar, Bhubaneswar on lease basis in W.L. Case No.790/1970 in favour of Major Himashu Sekhar Mohapatra an Ex-Military personnel is not within the knowledge of this deponent, hence no comments.

8. That during the course of rent settlement operation, the petitioner has filed a Rent Case bearing No.5934/2013 before the Camp Court and the Asst. Settlement Officer has ordered to delete the Hal Plot No.3174/8170 from the Khata No.2118 and record the suit Hal Plot in the name of General Administration Department (Government) the Hal R.O.R. prepared accordingly.”

(emphasis supplied)

10. We are surprised that on behalf of State such submission can be made, when there has already been lease revision inquiry pursuant to order made by this Court in OJC no.9449 of 1993. Accordingly, there is no requirement for us to adjudicate the further contention of petitioner that the grant having been made under since repealed Act of 1895, the Act of 1962 (section 3-B) has no application to it. Furthermore, Premalata Mohapatra (supra) has no application to said contention of State. By the judgment the Supreme Court had found that the applicant had not served in the forward areas in the period between years 1962 and 1964.

11. Impugned order is set aside and quashed. Petitioner will, by producing this judgment, apply for correction of the record, to be effected within four weeks of communication. The rent objection case is restored, for expeditious dealing with on order to be made therein.

12. The writ petition is disposed of.

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