
(2011) 12 OHC CK 0018
In the Orissa High Court
Case No : Writ Petition (C) No. 408 of 2009

Smt. Ratan Devi Tapadia	Vs	APPELLANT
State of Orissa and others		RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21

Citation : (2011) 12 OHC CK 0018

Hon'ble Judges : V. Gopala Gowda, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This writ petition has been filed for quashing letter dated 24.05.2005 (Annexure-3) issued by the Divisional Head, Industrial Development Corporation, Rourkela Division by which the decision was taken by opposite parties to cancel the lease of industrial plot bearing No.486 measuring Ac.1.85 decimals in the Kalunga Industrial area in Sundargarh district. The petitioner further prays for quashing letters dated 12.09.2008 and 02.12.2008 under Annexure-24 and Annexure-27 respectively refusing to regularise the ownership of the Unit and directing the petitioner to take back the deposits made by her towards HP dues given on 30.06.2008 and Annexure-27 issued by opposite party No.3-the Divisional Head, Industrial Development Corporation, Orissa (for short, "IDCO").

2. Petitioner's case in a nutshell is that late Brij Gopal Tapadia, who was the proprietor of M/s Wooden-N-Wooden, applied for lease of an industrial plot in Kalunga Industrial Area of Sundargarh district to District Industries Centre, Sundargarh (for short, "DIC") for setting up his Unit. He was allotted with a piece of land measuring Ac.1.85 decimals pertaining to Plot no.486 in village: Beladihi under Kalunga Developed Area vide allotment letter No.2085 dated 16.06.1979 for the purpose of establishment of Timber Product Industry subject to the terms and conditions as stated in the said allotment letter. As per the

terms and conditions laid down in the allotment letter, the petitioner submitted an undertaking pursuant to which she was put in possession over the aforesaid leasehold land on 11.07.1979 in presence of the General Manager, DIC, Sundargarh. While the matter stood thus, on 06.06.1986, the original allottee, namely, Sri B.G.Tapadia passed away due to a massive cardiac arrest, his wife, the present petitioner took over the business of M/s Wooden-N-Wooden. The said industrial plot allotted in favour of late B.G.Tapadia was developed by making huge expenditure over a period of time. While the petitioner was running her business in the year 2005, for the first time, opposite party No.3-IDCO being came into existence issued letter No.1025 dated 29.04.2005 in the name of late B.G. Tapadia asking him to show cause as to why the allotment shall not be cancelled. Petitioner's case is that she has not received any such letter. Opposite party No.3 again issued another letter No.1377 dated 24.05.2005 (Annexure-3) stating therein that allotment of Plot No.468 has been cancelled and in the said letter further request was made to handover the vacant possession of the land in question from all encumbrances within fifteen days from the date of issuance of such letter. On receiving such letter under Annexure-3, the petitioner through her power of attorney holder submitted her reply stating that she has not received the letter dated 29.04.2005 referred in Annexure-3 and further requested to grant time up to 31.07.2005 for clearing up of the outstanding dues payable to IDCO. Again on 25.08.2005, the petitioner wrote a letter to opposite party No.3 requesting him to extend the time up to 30.09.2005 to complete the lease agreement formalities as the banker has assured to give another loan after the proposal is approved by their regional office at Bhubaneswar. In the meantime, on being asked by the IDCO office, the petitioner applied for change of ownership of plot No.468 allotted in favour of her late husband. For such transfer she has also complied with all the formalities required to be fulfilled by her. The Andhra Bank had advanced a loan to M/s Wooden-N-Wooden and for recovery of such loan amount, the Bank had filed a suit against the petitioner as well as against the IDCO bearing T.M.S. No.77/84 in the Court of Sub-Judge (now Civil Judge, Sr. Division), Rourkela. As against the judgment and decree passed in the said suit, the Andhra Bank filed F.A. No.282/91 before this Court. Upon receipt of the letter of the petitioner dated 19.09.2005, opposite party No.3 communicated with the Chief General Manager of opposite party No.2 vide letter dated 21.09.2005 stating therein that after initial allotment of the plot in question on 16.06.1979, the physical possession was handed over to the Unit on 23.07.1979 by the General Manager, DIC, Sundargarh and the F.A. No.282/91 is running between Andhra Bank Vs. Mrs. Ratan Tapadia and others. The Chief General Manager, IDCO, Bhubaneswar vide letter dated 24.11.2005 wrote to the Divisional Head of IDCO, Rourkela that the affidavit sworn before the Notary in property dealing is not acceptable. Similarly, the unauthenticated copies of the "Disclaimers" are also not acceptable and the party may be advised to clear the outstanding dues of IDCO first. Moreover, since the FA No.282/91 is subjudice in the High Court at that stage approval of change of ownership may not be desirable. The wife of late B.G. Tapadia, the present petitioner, is the sole and

absolute owner of the unit. The parties of FA No.282/91 agreed for settlement of compromise and in that context the Andhra Bank communicated to the petitioner vide letter dated 24.07.2006 intimating that they are taking steps to withdraw the appeal pending before this Court. Vide letter dated 05.10.2006 the petitioner communicated to opposite party No.3 that the First Appeal No.282/91 has been allowed to be withdrawn by this court vide order dated 22.08.2006 and the Andhra Bank has no outstanding dues against the petitioner. Opposite Party No.3 vide its letter dated 09.11.2006 advised the petitioner to pay a sum of Rs.11,41,482/-to adjust the outstanding dues by 30.11.2006. Accordingly, a cheque bearing No.026412 dated 27.11.2006 drawn on UTI Bank, Rourkela for Rs.11,41,482/-was issued by one Smt. Uma Agrawal (Partner) on behalf of M/s Wooden-N-Wooden.

3. The petitioner submitted her representation dated 07.03.2007 through her legally constituted power of attorney to opposite party No.3 requesting him to reconsider the matter sympathetically and to allow her time till 31.03.2007 to clear up the entire dues of IDCO. As no action was taken on the said representation the petitioner approached the Managing Director, IDCO to ventilate her genuine and legitimate grievance by filing separate application on 07.06.2007. Along with the said representation, the petitioner has resubmitted all relevant documents for the purpose of transfer and a draft of Rs.11,70,000/- bearing D.D. No.009964 dated 07.06.2007 drawn on UTI Bank, Rourkela expressing her desire to pay the balance amount, if any, as soon as it is made known to her. The petitioner received a reply from the Head Office of IDCO vide letter No.14613 dated 10.08.2007 through the Joint Manager (ID) IDCO stating that the EUO Case No.797/07 has already been initiated in the Estate Court against the unit and hence returned back the D.D. to the petitioner. On 17.08.2007, opposite party No.5 issued notice to B.G.Tapadia, C/o M/s Wooden-N-Wooden directing him to appear before the Estate Officer in EUO Case No.979/06 on 25.08.2007 for hearing of the case.

4. Earlier challenging the action of opposite parties, the petitioner approached this Court by filing W.P.(C) No.12731 of 2007 with a prayer to quash the decisions under Annexures-3 and 18. This Court vide order dated 11.10.2007 issued notice to opposite parties and was also pleased to stay the further proceeding of the said EUO Case pending before opposite party No.5. During pendency of the said writ petition, the petitioner applied for regularization of her ownership under one time settlement scheme prepared and adopted by IDCO along with token deposit of Rs.50,000/-. Since the petitioner was staying in Mumbai, she authorised her Manager, Sri Shankarlal Agarwal with intimation to the Divisional Head, IDCO, Rourkela to submit the one time settlement proposal on 04.04.2008.

5. While the matter stood thus, the Chief General Manager (ID), IDCO, Bhubaneswar vide his letter dated 19.06.2008 informed the Divisional Head, IDCO, Rourkela Division, that revenue plot No.486(P) measuring Ac.1.85 decimal

has been regularised in favour of M/s Wooden-N-Wooden and requested him to collect the documents stated therein from the petitioner for regularization of the ownership of the said unit. Pursuant to such letter of CGM, IDCO the petitioner was asked to submit the documents stated therein and consequent upon submission of such documents the petitioner was asked to deposit Rs.10,37,077/- with the Divisional Head, IDCO, Rourkela as finalized under the OTS proposal. The petitioner thereafter immediately deposited the said sum with the Divisional Head, IDCO, Rourkela, who in turn accepted the said deposit with condition that the petitioner shall withdraw the writ petition bearing W.P.(C) No.12731 of 2007 and shall submit the certified copy of the said order for taking necessary steps in the matter. The petitioner thereafter approached this Court by filing Misc. Case No.10730 of 2008 for withdrawal of the aforesaid writ petition. This Court vide order dated 21.08.2008 allowed the said Misc. Case and the writ petition was allowed to be withdrawn.

While the matter stood thus, the petitioner received a letter bearing No.5266 dated 12.09.2008 (Annexure-24) from the Divisional Head, IDCO, Rourkela intimating that after careful consideration of her application for regularisation of ownership of the unit the same was not accepted by the IDCO Management and the status of allotment of Plot No.486 was cancelled with effect from 24.05.2005 and the petitioner was directed to handover the vacant possession of the said land on the grounds stated therein the said letter. The petitioner was further informed to take refund of her deposit towards HP dues made by her on 30.06.2008. Hence, the present writ petition.

6. Mr. Mohapatra, learned counsel appearing on behalf of the petitioner submitted that the conduct of opposite parties in issuing letter dated 12.09.2008 (Annexure-24) is not sustainable in law. The opposite parties had earlier accepted the proposal of the petitioner and decided to regularise the ownership of the unit in favour of the petitioner. Petitioner has also deposited the entire dues including the HP dues as demanded by the opposite parties. Without any rhyme or reason IDCO issued Annexure-24 on vague, arbitrary, absurd and illegal grounds. On receiving letter under Annexure-24, the petitioner requested the Managing Director, IDCO, Bhubaneswar to give her opportunity of hearing in the matter vide her letter dated 30.09.2008. Despite her request, no opportunity of hearing was given. Before cancellation of the leasehold land no show cause was issued to the petitioner. On 20.02.2008, the petitioner submitted her representation to the Divisional Head, IDCO, Rourkela wherein the petitioner had clearly explained the grounds taken by the IDCO Management while cancelling the lease hold land which was initially allotted to the deceased husband of the petitioner. Thereafter, the petitioner received a letter bearing No.6398 dated 02.12.2008 (Annexure-27) intimating her the decision of IDCO on her representation that it was difficult to consider the case of the petitioner on sympathetic grounds and she was directed to handover the vacant possession of the land in question, immediately, otherwise suitable action as deemed fit would be taken to resume the said property of IDCO.

7. Mr. Mohapatra, further submitted that the conduct of the opposite parties in cancelling the lease granted in favour of the petitioner cannot be sustained in the eye of law. Due to death of the husband of the petitioner in the year 1986, no formal lease could be executed during the life time of the original allottee though the lease of the plot was allotted and possession was delivered in favour of her late husband. The petitioner being the surviving legal heir of the original allottee is enjoying possession over the property since death of her husband. Since number of statutory obligations was to be complied with before starting of the commercial activities and IDCO did not regularize the ownership and executed the formal lease deed the petitioner could not be able to commence activities in the name of M/s Wooden-N-Wooden. The petitioner has never misled or confused any authority/forum/court including this Court. Ownership of the plot was never in dispute and no dispute relating to the said plot was sub judice before any court of law. OTS proposal submitted by one Shankarlal Agrawal, who was the authorised representative of the petitioner and was looking after the overall working of M/s Wooden-N-Wooden unit. The conduct of opposite parties is hit by the principle of estoppel. Opposite parties having accepted the OTS proposal and deposits finalized and therefore legally estopped to back out at this juncture and treat the allotment cancelled, particularly when the petitioner has already acted upon such compromise. The decision of the IDCO cancelling the allotment of Plot No.486 communicated to the petitioner vide letter No.1377 dated 24.05.2005 was taken without affording opportunity of hearing to her who was in possession of the plot in question. However, vide letter dated 09.11.2006 under Annexure-12 the opposite parties demanded the outstanding amount from the petitioner. Further, subsequent, conduct of the opposite parties which eventually lead to withdrawal of W.P.(C) No.12731 of 2007 vide letter dated 21.08.2008 goes to show that the opposite parties waived the notice dated 24.05.2005 under Annexure-3. Therefore, notice under Annexure-3 does not exist in the eye of law. Thus, the conduct of all the opposite parties violates fundamental rights guaranteed under Articles 14, 19, and 21 of the Constitution. Concluding his argument, Mr.Mohapatra prayed to allow the writ petition.

8. Mr.Ashok Mukherji, learned Senior Advocate appearing for opposite parties 2, 3 and 5 contending the averments of the writ petition submitted for dismissal of the writ petition at the threshold because the petitioner is Smt. Ratan Devi Tapadia whereas affidavit has been sworn by one Sri Janaki Das Tapadia. Though the name in the affidavit is Janaki Das Tapadia but Smt. Ratan Devi Tapadia has signed the affidavit as the deponent. The petitioner has committed fraud on this Court and it is well settled that fraud vitiates the entire proceedings. Similarly, in the cause title of the writ petition Smt. Ratan Devi Tapadia is represented through her legally constituted Power of Attorney, i.e., Sri Janaki Das Tapadia. Since Smt. Ratan Devi Tapadia had already withdrawn the Power of Attorney executed in favour of Janaki Das Tapadia and the same was intimated by Smt. Ratan Devi Tapadia to opposite party vide its letter dated 26.06.2008 the transaction made between them is bad. Thus, the present writ petition is

thoroughly misconceived and is liable to be dismissed in limine. The opposite party has rightly cancelled the allotment because the plot was unutilized and the same was allotted to Brij Gopal Tapadia, proprietor of M/s Wooden-N-Wooden who died in the year 1986. As on date, there was no firm existing in the name of M/s Wooden-N-Wooden in the eye of law. The General Manager, DIC, Sundargarh vide letter No.2085 dated 16.06.1979 allotted Plot No.486 measuring an area of Ac.1.85 decimals in Village: Beladihi, Industrial Estate, Kalunga, in favour of M/s Wooden-N-Wooden, Proprietor, Sri B.G.Tapadia for setting up Timber Industries the same was handed over on 11.07.1979. Despite several notices, M/s Wooden-N-Wooden did not deposit Rs.5,26,788/-towards cost of the land. In the year 2005, IDCO sent a final letter stating all the grounds of cancellation of lease. After some communications one Uma Agarwal claiming to be a partner of M/s Wooden-N-Wooden deposited the demanded money. IDCO returned the amount stating that Uma Agarwal is an outsider. Thereafter, IDCO instituted EUO Case No.797/2007 for eviction. In the allotment letter, the petitioner was directed to execute a detailed lease deed and also directed to furnish the Directors' list, if any. Such direction of the opposite parties was not complied with. The death of Brij Gopal Tapadia was never intimated to opposite party. IDCO is only interested to see whether the land which has been allotted is properly utilized or not. Opposite party has power under the Act to cancel the allotment/lease in case of non-utilization of the industrial plot. The averments made in paragraph-7 are contradicted by the petitioner in paragraph 37. In paragraph 7, she states that she was running the business smoothly whereas in paragraph 37 she admits that because of legal hassles and statutory requirement she could not commence any commercial activity on the plot. In reality, the plot is lying vacant and the present opposite party is unable to allot the same in view of the interim order because of industrial boom in Orissa and the demand for industrial sheds and plot has gone up. Genuine interested entrepreneurs were not able to get a plot whereas the petitioner who has been holding the plot since 1979 has left it unutilized. The one time settlement was rejected because it was submitted by Shankarlal Agarwal, who was not the proprietor of M/s Wooden-N-Wooden. The PMT number in the OTS application form is reflected "LX12085" whereas the present deponent on enquiry it was found that the PMT number stands in the name of M/s Bhola Metalic Works. The PMT number issued in favour of M/s Wooden-N-Wooden is 1664. If the petitioner was dissatisfied with the cancellation, she could have applied before the Managing Director, IDCO since there is an alternative remedy available to the petitioner. The report submitted by the Executive Engineer, Electrical Division, reveals that the electricity connection has been disconnected since 1989. Therefore, the petitioner claims that she has been running the business is not correct. The cancellation of allotment and eviction proceedings are both lawful and correct.

9. One Om Prakash Killa, Proprietor of Chandra Steels & Metallics, filed an intervention petition which was allowed vide order dated 23.06.2011 passed by this Court and he was added as opposite party No.6 to the present writ petition.

Mr. Kanungo, learned counsel for opposite party No.6 (intervenor) submitted that a number of correspondences have been made between the intervening applicant and opposite party-IDCO regarding allotment of the land in question. The industrial plot No.486 measuring an area of Ac.1.85 decimals in Kalunga Industrial Area of Sundargarh district which is the subject matter of dispute in the present writ petition is being sought to be allotted to the intervener/petitioner. It is evident from letter dated 17.05.2005, the IDCO authorities are in know of the fact that the intervenor petitioner after being advised by IDCO officials had applied for industrial plot bearing No.486 measuring Ac.1.85 decimals in the Kalunga Industrial area in Sundargarh district. The case of the intervenor opposite party No.6 has also been recommended by the Rourkela Chamber of Commerce and Industry which has made a remark on the petitioner's industry. Allotment of the plot in question is not being able to be processed due to the pending cases filed by the petitioner and interim orders passed by this Court. The intervener/petitioner has incurred loans and prepared the necessary project report for its purported project and has all the documentation and finances ready for its project, which if allowed to be set up on the plot in dispute would make the entire project viable. The land in question had remained unutilized for a period of twenty years which is a serious breach of allotment condition Nos. 2 and 3. PMT registration number of the petitioner unit has been de-registered by DIC, Rourkela since 29.12.1992 and since the same has not been renewed the OST registration No.RL-II-763 allotted in favour of the petitioner unit has been cancelled since 01.04.1989. Electricity supply to the petitioner's unit has been disconnected since March, 1985 and there is no power supply to the unit; the unit is lying closed with no trace of activity; no succession certificate produced in spite of the property being disputed. By letter dated 23.06.2008, the Advocate of the petitioner has called upon the power of attorney holder of the petitioner to handover the original power of attorney executed by the petitioner in favour of Janaki Das Tapadia as well as all the documents relating to the said property. It has been stated that Janaki Das Tapadia has indulged in illegal agreements for sale of the property with one Shankar Lal Agarwal as well as misappropriated huge sums of money from the petitioner. Various mis-representations and fraud have been committed by the said Janaki Das Tapadia. Letter dated 26.06.2008 has also been issued by the petitioner to the Divisional Head, IDCO, Rourkela regarding misuse of the power of attorney by the said Janaki Das Tapadia and revocation of the said power of attorney. The affidavits sworn in the writ petition and Misc. Case are seriously refuted and disputed and the same are an outcome of fraud. After the order passed by this Court in W.P.(C) No.12731 of 2007 the dues of opposite party-IDCO has been sought to be paid by one Uma Tapadia who is neither a partner nor legal heir of late Brij Gopal Tapadia. One Shankarlal Agarwal, who is writing letters on behalf of the petitioner more particularly letter dated 22.11.2008 under Annexure-26 has no locus standi to do so and is the same individual who has entered into an illegal and unholy agreement with Janaki Das Tapadia to purchase the said property. Not a single communication has been made by the petitioner with IDCO

officials after withdrawal of the previous writ petition. The intervenor/petitioner has been running from pillar to post from 2005 onwards and is facing irreparable and irrevocable injury as the viability of his project is being seriously affected by this fatal delay. The intervenor has complied with all the formalities required for allotment of the land and has further incurred loans. With these averments, the intervening petitioner prayed for dismissal of the writ petition.

10. On the rival contentions advanced by the parties, the following questions fall for consideration by this Court:

(i) Whether the opposite party-IDCO is justified in cancelling the allotment of Plot No.486 made in favour of late Brij Gopal Tapadia?

(ii) Whether in the facts and circumstances of the case, after death of late Brij Gopal Tapadia, any right accrues in favour of the petitioner-widow in respect of the properties of M/s. Wooden-N-Wooden ?

(iii) What Order?

11. Undisputed facts are that late Brij Gopal Tapadia, the late husband of the petitioner was the Proprietor of M/s Wooden-N-Wooden applied for lease of an industrial plot in Kalunga Industrial Area of Sundargarh district to DIC, Sundargarh for setting up of his unit. He was allotted with a piece of land measuring an area of Ac.1.85 decimals pertaining to plot No.486 in village: Beladihi vide allotment letter No.2085 dated 16.06.1979 for the purpose of establishment of Timber Product Industry subject to the terms and conditions stated in the said allotment letter. In the said allotment letter, the petitioner was requested to furnish the names and detail particulars of partners/proprietors/directors to the office of the General Manager, District Industries Centre and take possession of the plot within ten days from the date of receipt of the order of allotment subject to the conditions mentioned in that order of allotment. The conditions as mentioned in the order of allotment are quoted below:

1) You will be required to execute detailed lease deed and pay premium fixed by the State Government. A copy of the approved lease deed form along with terms and condition will be sent to you in due course. You are therefore requested to furnish an undertaking as enclosed before taking possession of the land.

2) No construction work can be started on the plots unless you submit a detailed blue printed lay out plan in the scale 1" x 10" in triplicate to this office. If no blue printed plan is received within 2 months from the date of receipt of the order, the allotment will stand automatically cancelled.

3) Construction work in the factory building should start within one month of the receipt of the layout plan duly approved by D.I.C. if no construction work is started within this period, the allotment would stand cancelled and Govt. reserve right of entering upon you plot and taking back possession of the same.

4) Production in the factory to be established in the plots to be allotted to you

should start within one year of the approved of lay out plan as mentioned at Sl. No.3 above failing which the State Government reserve the right of taking back possession of the said plot along with all construction and assets thereon.

5) You are strictly prevented from sub-letting, leasing or changing the structure of your construction without prior permission of the General Manager, D.I.C.

6) No construction work beyond those approved in the lay out plan can be taken up in the plots without prior approval of the General Manager, D.I.C. and no attempt to do so will make you liable for cancellation of the above allotment.

12. The petitioner took possession of Ac.1.85 decimals of land in the village Beladihi in Kalunga Industrial Area in Sundargarh district on 11.07.1979 upon submission of undertaking. On 06.06.1986 the original allottee, namely, Brij Gopal Tapadia passed away. The Divisional Head, IDCO, Rourkela Division vide his order dated 24.05.2005 cancelled the allotment of Plot No.486 on the following grounds:

(i) Non-payment of statutory dues like ground rent Rs.19,849/- & Cess Rs.14887/- IMC Rs.49630/-;

(ii) Misutilization of shed Plot

(iii) Unauthorized additional construction

(iv) Non Payment of dues of Rs.11,56,284/-

The said letter was addressed to M/s Wooden-N-Wooden, Proprietor, Brij Gopal Tapadia, Plot No.486, I.E., Kalunga, Beladihi and the other address as it appears in the said letter of cancellation is Brij Gopal Tapadia, Quarter No.U/13, PO: Civil Township, PS: Rourkela. The addressee was directed to handover the vacant possession of the said land within fifteen days from the date of issue of the letter. Liberty was given to the addressee to appeal to the Managing Director, IDCO within fifteen days from the date of issue of this letter. The addressee was further informed that WESCO would be intimated to disconnect the power supply to the premises and water supply line would be disconnected if not disconnected earlier, unless a stay order is granted by the appellate authority, i.e., Managing Director, IDCO within said fifteen days period. The said order also reveals that one show cause notice bearing No.1025 dated 29.04.2005 was also issued to the addressee. Thus this letter shows that from the date of allotment, i.e., 16.06.1979 so also from the date of giving the possession on 11.07.1979 no action was taken by the opposite parties against the allottee, Brij Gopal Tapadia till the show cause notice dated 29.04.2005 was issued although by that time, Brij Gopal Tapadia had died on 06.06.1986. Thus during the life time of the original allottee, Brij Gopal Tapadia and after his death till the show cause notice dated 29.04.2005 was issued, the opposite parties have not taken any step either for realization of any dues payable to them or to cancel the allotment for breach of any conditions stipulated in the letter of allotment dated 16.6.1979.

13. The widow petitioner of the original allottee Brij Gopal Tapadia while denying receipt of any show cause notice dated 29.04.2005 in her letter dated 01.06.2005 addressed to the Chairman-cum-Managing Director, IDCO requested him to allow her time up to 31.07.2005 to clear up the outstanding dues payable to IDCO. Thereafter several correspondences were made between the parties and since the said plot was not transferred in the name of the petitioner she approached this Court in W.P.(C) No.12731 of 2007. This Court vide order dated 11.10.2007 directed for issuance of notice to opposite parties and stayed the further proceedings in EUO Case No 797 of 2007 pending before opposite party No.5 during pendency of the said writ petition. While the said writ petition was pending, petitioner applied for regularisation of ownership under OTS Scheme prepared and adopted by IDCO. The Chief General Manager (ID), IDCO, Bhubaneswar vide his letter dated 19.06.2008 informed the Divisional Head, IDCO, Rourkela Division, that revenue plot No.486 (P) measuring Ac.1.85 decimal has been regularised in favour of M/s Wooden-N-Wooden at Kalunga Industrial in favour of the promoter of the said unit Sri Brij Gopal Tapadia. Consequent upon the death of the owner on 06.06.1986, the Chief General Manager requested the Divisional Head, IDCO, Rourkela to collect some documents from the petitioner including the legal heir certificate for taking further action at his end for regularisation of the ownership of the said unit. Vide letter dated 18.07.2008, the Divisional Head, IDCO, Rourkela has intimated the petitioner that consequent upon submission of requisite documents along with her undertaking to withdraw W.P.(c) No.12731 of 2007 from this Court, they have accepted the payment of Rs.10,37,077/-paid by the petitioner towards cost of the land, statutory dues and processing fees in shape of pay order. In the said letter, the petitioner was also requested to withdraw the cases and submit certified copy of the order of this Court immediately. Pursuant to the said letter dated 18.07.2008, the petitioner withdrew the writ petition. After withdrawal of the writ petition, the petitioner received the letter bearing No.5266 dated 12.09.2008 (Annexure-24) from the Divisional Head, IDCO, Rourkela intimating her that after careful consideration of her application for regularisation of ownership of the unit, the same was not accepted by the IDCO Management and the status of allotment of Plot No.486 was cancelled with effect from 24.05.2005. The relevant portion of the said letter is quoted below:-

1. P.M.T. Registration no of the unit is de-registered by DIC, Rourkela since 29.12.1992 and you have not yet renewed the same (As communicated by PM (DIC), Rourkela).
2. Your OST Registration No.RL-II-763 allotted in favour of M/s Wooden-N-Wooden is cancelled since 01.04.1989 (As communicated by Additional Commercial Tax Officer, Rourkela Circle-II, Panposh).
3. Your Unit is also disconnected with Electric Power supply since March, 1985. (As communicated by Executive Engineer, WESCO, Rajgangpur) and there is no power supply to this unit at present.

4. As the matter relates to disputed property (As the matter is under sub-judice), suitable direction of Civil Court to establish legal heir is necessary.

5. During my inspection to your unit on 09.09.2008, it is found that the unit is lying closed without a trace of activity.

It is pertinent from the above facts that the land is lying vacant at least since 1985 and there is no industrial activity even at present, for the purpose the land was allotted to you. This is a serious breach of allotment condition on your part and hence our cancellation of allotment & starting OPPE case is fully justified. Due to the above reasons, after careful consideration, your application for regularisation of ownership for the units is not accepted by the IDCO management and "the Status of allotment of the plot No.486 as cancelled since 24.05.2005" is in force at present and you are directed to handover vacant possession of the said land.

Over and above, after verification of your application to clear the outright purchase dues under OTS Scheme, it is not accepted by the management on the following grounds.

1. Application for regularisation of the ownership of the said unit is not accepted by the management due to cancellation of said unit for non-utilization of the land.

2. PMT number mentioned in the application is misleading and deliberate suppression of fact on the part of you.

3. The application was not duly signed by the lawful authorized signatory of the unit as it is signed by Manager, Sri Sankarlal Agrawal.

In the above letter petitioner was directed to prefer appeal/representation to the M.D.

14. On receiving the letter dated 12.09.2008, the petitioner, who is an old widow vide her letter dated 30.09.2008 requested the Managing Director, IDCO for giving her an opportunity to represent her case. Subsequently, she wrote letter dated 22.11.2008 to Divisional Head IDCO, Rourkela Division controverting the grounds on which the allotment was cancelled vide IDCO letter dated 12.09.2008. It is necessary to reproduce the explanation of the petitioner mentioned in her letter dated 22.11.2008:

1) The de-registered P.M.T. Registration No. of the unit, the OST registration No.RL-II-763 of M/s. Wooden-N-Wooden and the Disconnected Electric Power Supply to the unit could not be renewed because you could not transferred the ownership of the unit till date in my favour i.e. in the name of Smt. Ratan Devi Tapadia after the death of my husband late B.G.Tapadia as the unit belongs to IDCO and the same is under lease to M/s Wooden-N-Wooden. Unless you declare me as the proprietress of the unit I can not get any type of registration no., nor the electric power supply to our unit M/s. Wooden-N-Wooden.

Hence it is necessary to transfer the ownership in my favour as the land belongs

to IDCO.

2) Suitable direction of Civil Court is not necessary to establish Legal heir, because I am the legal wife of Late B.G.Tapadia and all my children have already given disclaimers in my favour (Xerox copy of Genealogy certificate issued by Addl. Tahasildar, Rourkela is enclosed.)

3) During your inspection on 09.09.2008, you have found that the unit is lying closed without a trace of activities.

This matter has not been suppressed by me as I have confirmed the above facts in my letter written to your Estate Officer, IDCO, Bhubaneswar Camp at Rourkela IDCO office on 27.08.2007. (Xerox copy enclosed)

It is true that no Industrial activities are going on and the purpose of allotment is not fulfilled hence this breach of allotment is due to the Natural Calamities of the death of late B.G.Tapadia, (which is beyond the control of any person). You have cancelled the allotment vide your letter Ref. No.IDCO/RKL/CIV/A/1377 dt.24.05.2005 but the Hon"ble C.G.M (ID)/I/c vide his letter Ref.No.HO:ID:A:2824/01 17452 dt.24.11.2005 has asked the Divisional Head, Rourkela to advise M/s. Wooden-N-Wooden to clear the outstanding IDCO dues first (Xerox copy enclosed).

Even after cancellation of allotment on 24.05.2005 your Rourkela Divisional Head vide his letter Ref.No.RKL/CIV/A-2824/01-1865 dt.09.11.2006 has requested us to pay the IDCO's dues of Rs.11,41,482/-which was paid by me on 27.11.2006 vide our Cheque No.026412 drawn on UTI Bank, Rourkela (Xerox copy enclosed).

The P.M.T. Registration no. of the unit is not available in the files of Late B.G.Tapadia and only a letter of allotment of the General Manager, DIC was found and hence this letter ref. no. was mentioned in place of PMT in the OTS application and hence it is not misguiding and deliberate suppression of the fact.

The OTS application was signed by my Manager Sri S.L.Agarwal who was authorized by me and the authorization was faxed to your Divisional Head, Rourkela on 5th April, 2008 at 04:58 PM from Fax No.022-28976222 (Xerox copy enclosed).

Under the above circumstances and the facts mentioned above I would request you to be kind enough to give me a last chance to start my late husband's industrial unit, so that I can settle my son in this difficult juncture of life to earn his livelihood honestly. Lastly I, the old and widow lady am praying for justice and I hope to get justice from you.

15. The above representation of the petitioner did not find favour

16. Sequence of the case reveals that the opposite party-authorities with petitioner. have not undertaken any material action for realization of their dues during life time of original allottee, B.G. Tapadia and even after the death of B.G. Tapadia till 2005. They maintained stony silence since 1979 to 2005 i.e. for 26

years and not offered any explanation for the same. Vide letter dated 19.6.2008 the Chief General Manager regularised the industrial plot in question in favour of Wooden-N-Wooden, Promoter Brij Mohan Tapadia. Payment of Rs.10,37,077/- made by the petitioner towards cost of the land, statutory dues, processing fees was accepted by the opposite parties. On their advice, the petitioner withdrew the earlier writ petition (W.P.(C) No.12731/2007) with the assurance of the opposite parties that the said land would be regularised in her favour. After withdrawal of the earlier writ petition, the said assurance was not fulfilled by the opposite parties.

17. It goes without saying that IDCO makes allotment of plots for industrial promotion in the State. The genuine person should get a plot of land in the industrial area to establish their industry. In the present peculiar circumstances, it cannot be said that the petitioner was not prevented from sufficient cause to establish her industry after death of her husband. It is perhaps for that reason, the opposite parties took a decision to regularise the industrial plot in the name of the petitioner and asked her to file succession certificate and clear up arrear dues which the petitioner complied with. Needless to say, that the State Government as well as the Central Government is framing several benevolent Schemes for upliftment of women. Relaxation of various conditions are provided in the fields of employment, business and education etc. in case of women. Apart from the above, the matter can be looked at from another angle. After cancellation of the plot in question, IDCO would certainly allot the said plot to another entrepreneur for the purpose of establishing an industry on the said plot for which as stated by the intervenor correspondences are going on between opposite party-authorities and the intervenor. Therefore, we are not convinced as to why an opportunity should not be given to the petitioner who is an old lady to establish an industry on the land in question which was allotted in favour of her late husband and is in her possession till now.

18. In the fact situation, we direct the opposite party-IDCO to regularise the plot No.486 covering area of Ac.1.85 decimals in the Kalunga Industrial area in Sundargarh district in favour of the petitioner accepting the outstanding dues as indicated in their earlier letter and on fulfilment of required conditions. However, we make it clear that if the petitioner fails to establish the industry within the reasonable time or violates any of the conditions of the agreement that would be entered into between the petitioner and the opposite party-IDCO, it would be open for the opposite party-IDCO authorities to cancel such allotment giving opportunity of hearing to the petitioner.

19. In the result, letter dated 24.05.2005 (Annexure-3), letters dated 12.09.2008 and 02.12.2008 under Annexures-24 and 27 respectively are quashed. The writ petition is allowed with the above observations and directions.

V. Gopala Gowda, C.J.

20. I agree.