

(2005) 05 OHC CK 0037

In the Orissa High Court

Case No : Writ Petition (C) No. 5824 of 2005

Smt. Sandhya Rout and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Government Land Settlement Act, 1962 — Section 3, 3B

Citation : (2006) 101 CLT 45 : (2005) 2 OLR 77

Hon'ble Judges : M.M. Das, J;C.J.MANUOR01832005.htm, J

Bench : Division Bench

Advocate : Bhaskar Ch. Panda and S. Mishra, for the Appellant; Keshab Ch. Kar, A.S.C., for the Respondent

Judgement

1. Heard Mr. BCC. Panda, learned counsel for the petitioners and Mr. Kar learned Addl. Standing Counsel.

2. The facts of the case reveal that one Binod Bihari Das having made an application for settlement of Government land being a landless person, the Tahasildar, Bhubaneswar-Opp.Party No. 3 in the writ petition initiated W.L. Case No. 2129 of 1979 and after following the procedure as prescribed under the Orissa Government Land Settlement Act, 1962 (hereinafter referred to as "the Act"), settled a piece of land measuring Ac. 1.00 situated in mouza Malipada under Khata No. 428 Plot No. 149, in his favour. Accordingly, lease of the above land was granted in favour of the said Binod Bihari Das. The said land was subsequently mutated in favour of the said Binod Bihari Das in the record of right and he was recorded as an occupancy tenant over plot No. 149/1172 under Khata No. 365/ 10 measuring Ac. 1.00.

3. It appears from the writ petition that the said Binod Bihari Das through his Power of Attorney Holder sold the above land in favour of one late Lala Nalini Kumar Roy. It is alleged by the petitioners that the concerned Revenue Inspector refused to accept the rent from the year, 2001-2002 for which the said original

lessee-Binod Bihari Das filed W.P. (C) No. 2625 of 2002 before this Court and in the said writ petition, a direction was issued to the petitioners to approach the Addl. Tahasildar, Bhubaneswar for necessary relief. Accordingly, the Addl. Tahasildar, Bhubaneswar after hearing the original lessee and recording his statement directed the concerned Revenue Inspector to accept the rent and rent for the land for the year, 2003-2004 was paid. The petitioners have purchased different portions of the above land by registered sale deeds and after purchase they offered rent for the year, 2004-2005 which was not accepted by the Revenue Inspector. Non being informed by the Revenue Inspector, the petitioners obtained the certified copy of the order sheet in W.L. Case No. 2129 of 1979 which has been annexed as Annexure-9 to the writ petition. From the said order sheet, it transpires that in the order dated 16.11.2002, the Addl. Tahasildar, Bhubaneswar has resumed the land which was originally leased out in favour of the said Binod Bihari Das. Being aggrieved by the said order, the petitioners have approached this Court under Article 226 of the Constitution of India for redressal of their grievance on the ground that the said order was passed without affording an opportunity of hearing to the petitioners.

4. Mr. Panda, learned counsel for the petitioners submitted that the impugned order appears to have been passed pursuant to the order of this Court in O.J.C. No. 9449 of 1993 (Safat Kumar Sahu v. A.D.M. and Ors.). He further submitted that though Section 3-B of the Act does not specifically provide for affording an opportunity of hearing to the present owner of the lease hold land but nevertheless resumption of lease u/s 3-B being an action to take away the right of the person from enjoying the lease hold land, the order of resumption should not be passed without hearing the present owner of the land. He further contended that the impugned order dated 16.11.2002 clearly goes to show that during the spot enquiry, the Addl. Tahasildar, Bhubaneswar gathered knowledge that the original lessee has transferred his land but even then no attempt has been made by the Addl. Tahasildar to enquire and find out as to who are the present owners of the land and no opportunity was given to the petitioners of being heard in the proceeding u/s 3-B of the Act.

5. Mr. Kar, learned Addl. Standing Counsel on the contrary submitted that Section 3-B of the Act provides that the officer who has settled the land on lease can resume the lease if he has reasons to believe that the person with whom the land was settled has used it for any purpose other than that for which it was settled and may impose a penalty as provided under the said Section. Section 3-B of the Act is quoted hereunder:

"Resumption of land and imposition of penalty-(1) Any officer authorized under Clause (e) of Section 3 may resume any land settled by him, if he has reasons to believe that the person with whom the land was settled has used it for any purpose other than that for which it was settled and may impose a penalty of an amount not exceeding one hundred rupees on such person :

Provided that no order under this sub-section shall be passed without giving such

person a reasonable opportunity of being heard in the matter."

6. A bare reading of the above provision shows that the authorized officer can resume any land settled by him if he has reasons to believe that the person with whom the land was settled has used it for any purpose other than that for which it was settled.

7. On going through the impugned order dated 16.11.2002 (Annexure-9) it transpires that the Addl. Tahasildar, Bhubaneswar on spot enquiry found that the land is lying vacant and not being used for agriculture purpose. From the above finding it cannot be said that the land has been used for any other purpose other than that for which it was settled inasmuch as just because the land was lying vacant it cannot be concluded that the said land was not being used for agriculture purpose for which the land was settled in the instant case.

8. We further note that even though there is no specific provision in Section 3-B of the Act to give opportunity of hearing to the present owner of the land in a proceeding under the said Section for resumption of lease but according to us, any person who may be directly affected by any order passed by the authority under the above Section 3-B of the Act has a right to be heard before final decision of resumption of the lease is taken by the authority.

9. We, therefore, have no hesitation to conclude that in the present case, there is clear violation of principle of nature justice.

10. On the above premises, we quash the impugned order dated 16.11.2002 passed in W.L. Case No. 2129 of 1979 by the Addl. Tahasildar, Bhubaneswar and direct that if the said Addl. Tahasildar, Bhubaneswar intends to proceed u/s 3-B of the Act in the aforementioned W.L. Case No. 2129 of 1979, he shall issue notice to the present petitioners to file their show cause and shall afford them with opportunity of hearing and shall thereafter dispose of the said proceeding in the light of the observation made by us in this order.

11. The writ petition is accordingly disposed of with the above direction.

12. Requisites for communication of this order shall be filed by the petitioners within a week.

13. Urgent certified copy of this order be granted on proper application.