
(2016) 05 OHC CK 0033

In the Orissa High Court

Case No : Writ Petition (Civil) No. 17665 and 17666 of 2008

Smt. Sukanti Naik

APPELLANT

Vs

Revenue Divisional Commissioner

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 7A (1)

Citation : (2016) 1 ILRCuttack 1114

Hon'ble Judges : S. Panda and K.R. Mohapatra, JJ.

Bench : Division Bench

Advocate : M/s. Ramakanta Mohanty, D.K. Mohanty, A.P. Bose, S.N. Biswal, N. Das, S. Mohanty, S.K. Mohanty, S. Mohanty, Advocates, for the Petitioner; Additional Government Advocate, for the Opp. Parties

Final Decision : Dismissed

Judgement

S. Panda, J.—The self same petitioner in both the writ petitions assails the order dated 27.09.2008 passed by the Revenue Divisional Commissioner, opposite party no.1 in O.G.L.S. No. 13/02 and O.G.L.S.R.C. No. 24/07 wherein the lease granted in favour of the petitioner over Plot No. 1528/5999, Khata No. 1456 measuring an area of Ac.0.500 dec under Bhawanipatna Municipality was set aside.

2. The brief facts as delineated by the petitioner in these writ petitions while challenging the impugned order as stated above, tend to reveal thus:-

The petitioner, who claims to be proprietress of hotel, M/s. Hotel Khushi, made an application on 01.01.2001 to the Tahasildar, Kalahandi for grant of lease of a Government land over Plot No.1528/5999, Khata No. 1556 measuring an area of Ac.0.500 dec under Bhawanipatna Municipality for the purpose of construction of a Hotel-cum-Lodge. Accordingly the Tahasildar, Kalahandi-opposite party no.3 registered Lease Case No.2/01 and directed the Amin to cause an inquiry. After causing an inquiry the Amin submitted a report stating that the said plot was not

reserved for any purpose and also free from encumbrances. After receipt of the Amin's Report, opposite party no.3 vide notice under Annexure-2 issued proclamation inviting public objection and also forwarded the copy of the same to the Sub-Collector, Bhawanipatna, E.O., Bhawanipatna Municipality, B.D.O., Sadar for wide circulation and also affixed the same in the Notice Board. During that time, the petitioner also moved to the District Industries Centre (DIC), Kalahandi (Bhawanipatna) for registration of her project as a Small Scale Tourism related Industrial activity and the General Manager DIC, Kalahandi vide letter dated 04.01.2001 requested the Tahasildar to allot the Government land to the petitioner at a concessional rate of premium as per I.P.R. Government of Orissa.

However, after the proclamation period was over, opposite party no.3 visited the spot personally and examined the spot to find out as to whether the said land was free from encroachment and encumbrances and as to whether there were any mines or mineral and or any trees standing over the said plot. Being satisfied that the said plot is suitable for small scale tourism related industrial activity like Hotel-cum-Lodge, opposite party no.3 transmitted the lease case record to the Sub-Collector for onward transmission to the Collector, Kalahandi. After receipt of the Lease Case Record No. 2/01, the Sub-Collector examined the same and on being agreed with the findings of the Tahasildar, recommended the case to the Collector, Kalahandi for sanction of lease of Government land in favour of the petitioner. Ultimately, the Collector after going through the recommendation of the Sub-Collector and the report of the Tahasildar and by applying Rule-II (Item-3 of Schedule-II) of the O.G.L.S. Rules, 1983 and G.O. No.42563/Rev dated 24.09.1996 of Revenue & Excise Department, Orissa, vide order dated 24.11.2001 accorded the sanction for lease of Government Land in question in favour of the petitioner for construction of Hotel-cum-Lodge under Industrial purposes with certain conditions.

3. The lease was granted for a period of 99 years and the petitioner was directed to pay the premium. After the order of the Collector dated 24.11.2001 was passed, lease deed was executed between the Government and the petitioner on 21.12.2001.

After the lease was granted in favour of the petitioner, the land in question was demarcated by the office of opposite party No.3 on the application of the petitioner and the R.O.R. was corrected in the name of the petitioner and accordingly the petitioner paid the rent. The petitioner also obtained a license for three years for construction of a hotel building from the Special Planning Authority, Bhawanipatna on 02.02.2002 and obtained permission from Bhawanipatna Municipality on 05.02.2002 for construction of Hotel Building within a period of one year. Apart from that, the petitioner also got approval of her hotel project in the name of M/s Hotel Khushi from the Government of Orissa, Department of Tourism & Culture on 04.07.2002.

4. According to the petitioner, while she was running her hotel peacefully, on the basis of complaints made by some enemical persons, the Collector called for the

case records from Tahasil Office, Kalahandi and by invoking Section-7A (1) of the Orissa Government Land Settlement Act, 1962 initiated a revision case bearing OGLS Revision Case No. 13 of 2002 for cancellation of order No. 1980 dated 24.11.2001 on the following grounds:-

- a) The lessee has violated the terms & conditions of the lease.
- b) Demarcation of the site has not been made accurately & properly.
- c) The face of the building has been proposed to be made towards the bus stand, which should have been made towards other side.
- d) The proclamation has not been published according to rules. The persons of whom signature has been obtained as witness on the body of the proclamation actually do not exist and there has been only paper work instead of clamping of the proclamation in the locality.

5. The petitioner while raising the question of delay in filing the OGLS Revision Case, objected the grounds which were taken in the Revision Application. However, opposite party no.1 vide order dated 30.01.2004 allowed OGLSRC No. 13/2002, quashed the order dated 24.11.2001, whereby the lease was sanctioned in favour of the petitioner and directed the Tahasildar, Kalahandi to restore the classification of suit land to "Jalachara" Kissam.

6. The petitioner challenged such order passed by the Revenue Divisional Commissioner dated 30.01.2004, before this Court in W.P.(C) No.2024 of 2004 and this Court after hearing the parties at length vide judgment dated 22.08.2007 quashed the impugned order dated 30.01.2004 passed in OGLSRC No. 13 of 2002 and remanded the matter to opposite party no.1 for fresh disposal of the OGLSRC in the light of the direction/observation made in the order.

After remand of the matter from this Court, the revision case was registered as OGLSRC No. 24 of 2007 and opposite party no.1 clubbed OGLSRC No. 24 of 2007 along with OGLSRC No. 13 of 2002 and passed a common order on 27.09.2008 by declaring the de-reservation made by the Collector, Kalahandi on 25.11.1997 as illegal and setting aside order No.1980 dated 24.11.2001 of the Collector, Kalahandi passed in Lease Case No. 2 of 2001, wherein the lease was granted in favour of the petitioner.

7. The aforesaid order dated 27.09.2008 passed by opposite party no.1 has been assailed in the present writ applications on the following grounds:-

- 1. Proclamation has been properly made, which is evident from Annexure-2 while inviting objections from the public for leasing out the land in question and affixing the notice in the notice board.
- 2. The complainants of the so called complains basing on which the OGLS Revision Case was initiated have sworn in affidavits stating therein that they have no grievance against the petitioner for such establishment.

3. Though the revision was to be preferred within a period of 90 days, in this case the same was preferred 238 days after, which should not be entertained on the ground of delay since the same is hit by the limitation as provided under Section 7 (A) (1) of the OGLS Act.

4. The Revisional Authority lost sight of the finding of this Hon"ble Court with regard to re-consideration of the aspect since the character of the land has been changed in as much as construction has been made over the land with the permission of the appropriate authority with the running of hotel over the suit land.

5. Since the Collector has been authorised vide notification dated 29.01.1974 to de-reserve Government Land for settlement purpose and since the Collector inviting public objections recorded the suit land as "Ghaspadia" kissam, the finding of the Revisional Authority in faulting with Collector's Action for de-reservation from "Jalachar" kissam to "Ghasapadia", is wrong.

6. Opposite party no.1 was wrong in clubbing the income of the petitioner with her husband for the purpose of determining the lease in question when the petitioner is a separate entity and paying her income tax separately and also has a separate Pan account.

8. A counter affidavit has been filed by opposite parties 1 to 3 through the Tahasildar, Bhwanipatna disputing the submissions made by the petitioner in the writ petition as well as the grounds of challenge taken therein.

9. The opposite parties have denied the existence of a hotel in the suit land and submitted that the land in question was originally "Sagar" kissam and the same has been wrongly changed to "Ghaspadia" in De-Reservation Case No. 1/97 by the then Collector, Kalahandi without following the express provisions of law as contained in Section-3 (1)(a) of the OGLS Act, read with sub Rules-1, 2 and 3 of Rule-3 of OGLS Rules. It has also been averred that with the deviation of principles, the classification of the land has been changed under de-reservation proceedings of O.L.R. Act, which could have been undertaken in tune of principle enumerated in the Orissa Survey and Settlement Act, 1958. Further the fact of water logging and outflow of water during rainy season and the passing of flood water into the town during rainy season has not been taken into consideration while de-reservation was made.

It has also been averred in the counter that the petitioner got the lease on misrepresentation of the fact by mentioning in column 9(b) of the lease application that the occupation of her family members was business, whereas her husband was a State Government servant and then was working as a Sr. Clerk under the control of Collector, Kalahandi. Since the petitioner is a married Hindu women, the plea of separate entity cannot be accepted. So far as construction of hotel and running of the same, the same has been denied and it has been stated that construction up to base level has been made.

With regard to delay in filing the revision case, the opposite parties citing a decision of the Hon"ble Apex Court in the case of State of Haryana v. Chandramani and others reported in AIR 1996 SC 1623 and invoking the provision of Sub-Section (1) of Section-7A contended that opposite party no.1 can admit an application filed beyond the period of 90 days, if he is satisfied that the applicant had sufficient cause for not making the application within that period. So far as general proclamation is concerned, it has been stated that the same has not been published in the Notice Board of the Tahasil Office since the proclamation notice itself does not indicate any such fact of publication of the same in the notice board and the said proclamation notice does not carry any number of the Process Register.

10. For non inclusion of the land in the Master Plan of Bhawanipatna town as well as not reserving the land for any other purpose, it has been countered that since the kissam of the land was "Sagar" which has been wrongly changed to "Ghaspadia" the suit land was not included under the Master Plan nor reserved for any purpose. So far as issuance of permission and approval from District Industries Centre and Department of Tourism and Culture, it has been averred that whether a piece of land is leasable or not, does not go by the principle of the said departments.

11. In the counter it has been contended that considering all such facts, the Revenue Divisional Authority has held that since the de-reservation of land is illegal, the lease has been infructuous and law do not support for any construction on a land which have legal encumbrances. The contentions of the opposite parties 1 to 3 is that there is no wrong in the order of opposite party no.1 dated 27.09.2008 in setting aside the lease granted in favour of the petitioner on 24.11.2001.

12. This Court heard the submissions made by learned counsel for the petitioner and learned Additional Government Advocate and went through the records thoroughly.

The main issue involved in these cases relates to a piece of land which originally by its nature was "Jalachar"/"Sagar" in kissam and subsequently dereserved to "Ghaspadia" which was absolutely uncalled for. Now a days, when the Courts are giving importance for protection of natural resources like water bodies and excess rain water discharge passages, the initiation of a proceeding for de-reservation of a land, which has not been reserved for any specific purposes as detailed under Section 3 (1) (a) of the O.G.L.S. Act found to be an erroneous one and when steps have been taken by the self same authority to rectify such a mistake, the Courts should be restrained itself from interfering in the matter.

13. This Court also went through the vital objection such as water logging of the area, out flow of water during rainy season and passing of flood water from the town during rainy season which has not been taken into consideration while the kissam of the land was changed and it was leased out for construction of a

building, by which not only the fundamental right of the people at large was affected but also the Government failed in its duty in protecting the said land for the specific purpose for interest of public at large.

14. The all other grounds which have been raised by the petitioner with regard to delay in filing the revision application, the authority of the Collector in making de-reservation of a land and granting lease in favour of the petitioner, the petitioner is a separate entity and not to be clubbed with her husband, etc. although taken into consideration by this Court, however this Court does not find any error on the impugned order, which deals with aforementioned vital and sensitive issues like protection of water bodies and keeping the town free from water logging, to be interfered with.

15. Off late when a move was made by the Collector basing on the objections raised by the locality, which have been positively dealt with by the Revenue Divisional Commissioner, opposite party no.1 in the present impugned order, this Court is not inclined to interfere with the impugned order. In view of the observations made above, both the writ petitions stand dismissed.