

(2011) 04 OHC CK 0037
In the Orissa High Court
Case No : O.J.C. No. 1588 of 1999

Sourindra Narayan Bhanja Deo

APPELLANT

Vs

Member, Board of Revenue, Orissa and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 3(4)

Citation : (2011) 04 OHC CK 0037

Hon'ble Judges : B.P. Das, J;B.K. Misra, J

Bench : Division Bench

Advocate : S.J. Pradhan, Prasanta Kumar Mohanty, P.K. Khuntia and P.K. Pradhan, for the Appellant; J.P. Patnaik Addl. govt. Advocate, P.K. Routray, P.R. Sutar, M.R. Das, N.K. Deo and R.K. Rout, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The petitioner in this writ application prays to quash the proceeding initiated by the Collector, Puri (O.P.2) in Resumption Case No. 3 of 1993 and the order of the Member, Board of Revenue under Annexure-5 sanctioning the resumption of land and to direct that the land in question be permanently settled with the petitioner and opposite parties 4, 5 and 6 with heritable and transferable rights in terms of Section-3(4) of the Orissa Government Land Settlement Act, 1962 as amended by Orissa Act 1 of 1991.

2. During pendency of the writ application, opposite party No. 5 having died has been substituted by his legal heirs i.e. opposite part No. 5 (a) and 5 (b). Subsequently opposite party no.4 also died. Since the legal heirs of opposite party no.4 are already on record, no substitution was made as against the said opposite party.

3. The case of the petitioner in this writ application is that his father late Raja Sailendra Narayan Bhanja Deo of Kanika was the lessee in occupation of the land in Mouza-Bankimuhna (Unit No.26), Tahasil-Puri Sadar, Dist-Puri under

Khasmahal Lease. The particulars of the land are given here in below:

SI. No.

Date of Khasmal Lease

Period of land

Particulars of land

Area

Resumption Case No.

1.

8.1047

09.06.47 to 08.06.77

Khata No. 85

Plot No. 63/330

Plot No. 64/331

Plot No. 66/332

A0.227

A0.033

A0.043

3/1993

Total

A0.353

4. The petitioner's father died on 19.7.1982 and at the time of his death, the lease had already expired. At the time of death of the father of the petitioner, he was fully and exclusively in possession of the aforesaid leasehold land, even after expiry of the lease period. After the death of the petitioner's father, the petitioner, his mother and brothers remained in possession of the leasehold land, having succeeded to the interest of the petitioner's deceased father. The land under the aforesaid lease and the land under two other leases consist of one compact block having a total area of Ac.2.292. The petitioner's father had built a huge building over the aforesaid land and after using it for residential purpose for some years, the said building was let out to the Deputy Accountant General, Government of India for using the same as the office and residence and the tenant is still continuing. The said premises have been assessed to the Municipal holding

tax and have been assigned a holding number of the Puri Municipality in the

name of the father of the petitioner. The record-of-rights have been published in the name of the father of the petitioner. Rent has been paid up to the date of expiry of the lease, but thereafter the Tahasildar-opposite party no.3 has not been accepting the rent.

According to the petitioner, the lease granted in favour of the petitioner's father expired on 8.6.1977. Even though the renewal application has been filed before the Tahasildar being Lease Case No. 23 of 1996 in Annexure-1, the same is still pending before the Tahasildar. According to him, by virtue of Section 3 (4) of the Orissa Government Land Settlement Act, 1962, as amended by Orissa Act 1 of 1991, which came into force on 2.9.1992, vide notification bearing S.R.O. No. 837/93 published in the Orissa Gazette (Extraordinary) dated 2.9.1993, opposite party no.3 is to settle the case land with the petitioner and opposite parties 4, 5 and 6 on permanent basis with heritable and transferable rights. While the renewal application filed by the petitioner was pending with the Tahasildar-O.P.3, the Collector, Puri-O.P.2 initiated a proceeding in Resumption Case No. 3 of 1993 for resumption of the case land in which a show cause notice was issued on 27.11.1993 under Annexure-3 against the father of the petitioner. The petitioner filed the show cause reply on 8.7.1997 in Annexure-4 contending that the resumption proceeding was without jurisdiction and void. Thereafter the Collector by order dated 15.7.1989 rejected the show cause reply without affording an opportunity of hearing and referred the matter to the Member, Board of Revenue, seeking sanction for resumption of the case land. Thereafter the Under Secretary (Revenue) of the Board of Revenue by letter dated 11.1.1999 (Annexure-5) conveyed to the Collector, Puri, the sanction of the Member, Board of Revenue to various resumption proceedings including Resumption Case No. 3/93 over the land in question. Aggrieved thereby, the petitioner has approached this Court for the reliefs indicated in the foregoing paragraph.

The show cause notice in Annexure-3 as well as the letter in Annexure-5 conveying sanction of the Member Board of Revenue to the resumption proceeding shows that the leasehold land on resumption is intended to be utilized for construction of public building for use of the Government Departments.

Learned counsel for the petitioner in this regard draws our attention to a judgment of this Court in the case of Sourindra Narayan Bhanja Deo v. Member, Board of Revenue, Orissa and others, (O.J.C. No. 6736 of 1999, decided on 14.7.2004) and submits that the facts of that case are also similar to the case at hand. In O.J.C. No. 6736 of 1999 resumption of the INDIAN LAW REPORTS, CUTTACK SERIES [2011] land was sought on the ground that the lease had already been expired and no steps had been taken for renewal of the lease and there was also violation of the terms of the lease agreement and the land which was sought to be resumed was to be used for public purpose by the Government.

Regarding the status of Khasmahal land, the same is no more resintegra in view of the decision of this Court in the case of Republic of India v. Prafulla Kumar

Samal, ILR 1976 Cuttack 1392 and in paragraph-4 of the said judgment it has been held that:

...Rights of a lessee in Khasmahal lands are in no way different from those which one has in his own private land. Clause (15) of the lease-deed confers a right of renewal on the lessee, and as has been pointed out earlier, the said right cannot be denied by the lessor. Besides the lessee's right in the Khasmahal land being heritable and transferable the lessee can create a permanent right of tenancy in his holding. Thus, in all respect the rights of a lessee are just similar to those of an owner of a private land. (See 1935 CLT 34: Munshi Abdul Kadir Khan v. Munshi Abdul Latif Khan and 1937 CLT 67: Madhusudan Swain v. Durga Prasad Bhagat)

The decisions rendered by this Court in Sankarlal Verma v. Smt. Ima Sahu, 1993 (1) OLR 187, and Satyapriya Mohapatra Vs. Ashok Pandit and Others, , make it crystal clear that Khasmahal land is heritable and transferable with a right of renewal and right of lessee in respect of such land is in no way different from that which one has in his own private land.

So far as the public purpose is concerned, let us have a look at sub-Rule (5) of Rule-28 of Bihar and Orissa Government Estates Manual, 1919, which speaks as follows:-

xxx When a tenant holds land from Government under a lease containing a clause which authorizes the lessor to resume possession of the whole or part of the lands of the tenancy, this power of resumption shall only be exercised if the land is required for a public purpose, and the power of resumption shall not be exercised without the sanction of the Board of Revenue.

If such land be required for the use of persons other than Government, e.g., for a local body, it should ordinarily be acquired under the provisions of the Land Acquisition Act, and not under the power of resumption given by the lease.

So far as the law regarding the Khasmahal leasehold land is concerned, such land shall be treated as private land of the lessee, having heritable and transferable rights. In this regard we have already referred to the decision in the case of Republic of India (supra).

In the present case, the lease of the land in question has already expired. In the matter of renewal, option is left with the lessee and not with the Khasmahal authorities. Such authorities cannot refuse renewal of the lease, if the lessee opts for the same. Even if the renewal is sought for after expiry of the term, the lessor cannot deny the same. If the lessee, who is entitled to renewal, fails to apply for the same, then the only course open to the Khasmahal authorities is to resume the land with the consent of the lessee and take possession thereof. If the lessee does not consent for resumption and does not give up possession, the only course open to the Khasmahal authorities is to take possession through the process of Civil Court as provided in Rule-20, Chapter-1 of the Bihar and Orissa

Government Estates Manual 1919.

In the case at hand, the resumption proceeding has been started but the application of the legal heirs of the original lessee for renewal of the lease is pending and no action has been taken on the same. So, in our considered opinion, in view of the settled position of law, the mere assertion that resumption is necessary for public purpose cannot be the ground to resume of the land. Mere saying that it is required for public purpose is not enough. There should be indication of definite public purpose, which is absent in the order/show cause notice passed by the Collector as well as the order of sanction passed by the Board of Revenue. The orders appear to be vague and indefinite in the absence of details about the so called public purpose for which the property was sought to be resumed. It is further indicated that the authorities are not sure about the public purpose for which the land was sought to be resumed.

From a bare reading of the provisions of Rule 28 of the Bihar and Orissa Government Estates Manual 1919, it appears that the power of resumption can only be exercised if the land is required for public purpose. Clause- 11 of the lease deed provides that should the land leased or any portion thereof be at any time required by the Government of Orissa for any purpose declared by Government to be a public purpose, the Collector may resume giving three months notice in writing, through any officer or person authorized on that behalf re-enter and take possession of the said land or portion thereof the lessee shall thereupon be entitled to a reduction in the rent payable under the lease proportionate to the area taken by the Collector. It therefore follows that there should be a declaration by the Government that the case land is required for a specific public purpose, which is totally absent in this case.

Now the fact remains that after death of the original leaseholder on 19.7.1982, the petitioner and his other co-heirs are in joint possession of the land. It is well settled that the land in question is heritable and transferable and the same has devolved upon the petitioner and his co-heirs. So this question does not require further deliberation.

So, there is no other alternative than to allow the writ application. Accordingly, the proceedings initiated in Resumption Case No. 3 of 1993 under Annexure-3 and the order conveying sanction passed by opposite party no.1 in Annexure-5 are quashed. The authorities are directed to take recourse to Section 3(4) (c) of the Orissa Government Land Settlement Act.

The writ petition is accordingly allowed. No order as to the cost.