

(2009) 01 OHC CK 0043
In the Orissa High Court

Sri Awadhram Dubey and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Citation : (2009) 107 CLT 312 : (2009) 1 OLR 697 Supp

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Judgement

1. Heard further argument and the Judgment is as follows.

2. The Petitioners have filed this Writ Petition with the following prayers:

The Petitioners humbly pray that this Hon"ble Court may be graciously pleased to issue rule nisi calling upon the Opposite Parties to show cause as to why they should not be directed to extend the rehabilitation benefits to the Petitioners and they should not be enjoined from demolishing the structure standing on A 0.08 decimals of land pertaining to M.S. Plot No. 214 and from interfering with the use, occupation, access and possession of the Petitioners over the same till this land is acquired under a valid notification and if the Opposite Parties fail to show cause or show insufficient cause make the rule absolute by issuing appropriate writ/writs which the Hon"ble Court deems fit and proper in the facts and circumstances of this case.

3. An area of 0.08 dec. of land in Major Settlement plot No. 214 is the disputed area. The admitted case of the parties is that a compact area of Ac 2.63 decs. Appertaining to Hamid Settlement plot No. 319 was acquired. During Major Settlement that plot was converted to plot No. 212 to 216 totally measuring Ac 2.63 decs. Amongst them plot No. 214 measuring an area of Ac. 0. 08 dec. is the disputed plot in this case. Petitioners claim reclamation and possession of that plot by constructing a house over it by his ancestor. Encroachment Proceeding No. 13 of 1986 was initiated against Balaram Dube, the ancestor of the Petitioners. Learned Tahasildar on 12.1.1988 passed order of eviction on the

ground that the encroachers were not landless persons. It is the admitted case of the parties that Kissam of the disputed land was homestead. Petitioners challenged the order passed by the Tahasildar before the superior Court and ultimately the case was remanded by the Revisional Authority. After re-hearing of the matter, Learned Tahasildar, Lakhanpur on 9.4.1992 passed the following order:

In view of the above facts I.e., as the possession of the encroacher as well as his successor in interest is not disputed and as the suit Plot No. 214 Ac. 0.08 decimals corresponds to \$*il|ilNo.319 (P) Ac. 0.08 decimal which was given to Balaram Dubey by Addl.Deputy Commissioner, Sambalpur vide his L. No. 1698/H.L.O.Rs dated 12.04.1957 and in view of direction of Revisional Court in case No. 2/1990 as well as the order of Government vide circular No. 22925/date 17.05.1990.I find there is no merit in this . case and as such the order to dismiss case No. 13/86.

In other words, Learned Tahasildar upheld the right and possession of the Petitioners and dismissed the encroachment proceedings.

4. In the meantime, State Government acquired the area around plot No. 214 and settled the same in favour of the Orissa Power Generation Corporation. It is the admitted case of the parties that though the disputed area is in the midst of the acquired area and lease was granted for the entire area including the disputed area, but before entire area settlement of such land with Opp. Party No. 4, the Opp.Party No. 1-State did not acquire the disputed area.

5. The contention of Mr. Sinha, Learned Sr. Advocate is to the effect that the aforesaid area be acquired by the State and compensation as per the market value of house site be paid to him. Mr. Sahoo, Learned Counsel for the Opp. Party No. 4 and Mr. Nanda, Learned Addl. Government Advocate argue that the Petitioners have no right to seek for acquisition and payment of compensation, inasmuch as by the date i.e., 19.5.1987 delivery of possession of the land was given to Opp. Party No. 4, title of the Petitioner over the land had not matured and in the record of right and Khatian the disputed land stood recorded in favour of the State Government as Gochar Kissam Land.

5. (SIC) In view of the admitted fact situation of settlement of the land in question in favour of the Petitioners as per the Order Dated 9.4.1992 of the Tahasildar and in view of the order of eviction dated 12.1.1988 of the Tahasildar which pre-supposed that the Petitioners were in possession of the property at all relevant times the State Government would not have delivered possession of the disputed property to Opp. Party No. 4 even in 1987 without physically evicting the Petitioners from the disputed land. Under such circumstances, action of the State Government in giving delivery of possession and executing lease deed in respect of the disputed land in favour of the Opp. Party No. 4 without acquisition of the property or evicting the Petitioners as the case may be is not valid. From that point of view, we find that the State Government has to take a decision if it

wants to a lease out the disputed land to Opp. Party No. 4 and in that event, it has to acquire the property by making payment of compensation to the Petitioner in accordance with law. Therefore, the State Government is to take a decision in that respect expeditiously, inasmuch as, the dispute is pending before this Court since 1994 and the delay in disposal is mostly attributed to the callousness of the State by not filing the relevant and proper documents at the time of hearing.

6. Be that as it may, as stated above a decision be taken by the State Government within two months from the date of receipt of a copy of this order. For the sake of clarity we mention that if the State Government does not opt to lease out the land to Opp. Party No. 4, then it is open to the Petitioners to claim for easement right of egress and ingress to his land, if situation so demands. The Writ Petition is accordingly allowed. Under the given fact and circumstances, we do not award any cost. Requisites by Registered post with A.D. be filed by 2nd February 2009 to communicate this order to Opp. Party-members.