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**(2008) 07 OHC CK 0051**  
**In the Orissa High Court**

Sri Narana Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 14-07-2008

**Acts Referred:**

ORISSA GOVERNMENT LAND SETTLEMENT ACT, 1962 — Section 3B

**Citation :** (2008) 2 OLR 806

**Hon'ble Judges :** L. Mohapatra, J;I. Mahanty, J

**Bench :** Division Bench

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**Judgement**

1. This writ application is directed against the order dated 31.8.2002 passed by the Tahasildar, Bhubaneswar in OGLS Case No. 1037 of 2000 (W.L. 605/1970) resuming the land settled in favour of the petitioner in exercise of power u/s 3-B of the OGLS Act.

2. As it appears from the record in W.L. Case No. 605 of 1970, Ac.1.000 decimals or land appertaining to Khata No. 229/32, plot No. 462/621 in Mouza-Alkar had been settled in favour of the petitioner. Pursuant to a general direction issued by this Court in a writ application calling upon the State Government to enquire into the matter regarding misuse of power by the Tahasildar in settling the land, an inquiry was conducted and the present case u/s 3-B of the Act was initiated for resumption. In the impugned order the Tahasildar having found irregularities in the matter of settlement of the land in favour of the petitioner, passed an order of resumption which is assailed before this Court.

3. Shri Samantaray, the learned Counsel appearing for the petitioner assails the impugned order solely on the ground that the petitioner was not given notice of the case and the order has been passed behind his back. Reliance was placed by the learned Counsel for the petitioner in the cases of Krushna Ch. Panda and Ors. v. State of Orissa and Ors. reported in 2006 1 CLR 40 : 2006 1 OLR 1 Asit Kumar Nayak Vs. State of Orissa and Another, and Smt. Sandhya Rout and Others Vs. State of Orissa and Others, to substantiate his contention that the impugned order having been passed without notice to the petitioner, the same is liable to

be quashed even if Section 3-B of the Act does not specifically prescribe for issuance of notice before passing an order. There is no dispute that even in a proceeding initiated u/s 3-B of the Act, the land holder is required to be heard and, therefore, notice is required to be issued before passing an order. So far as the present case is concerned, it appears that in course of enquiry 1578 cases were identified where such irregularities had been committed and since it was not possible to issue notice in each individual case, a paper publication was made in the daily "The Samaj" on 25.6.2002 indicating the names of the parties who are likely to be affected by the order that may be passed in the resumption proceeding. In view of such notice given through paper publication, there is hardly any scope for the petitioner now to say that no notice was issued. It is a fact that individual notice had not been issued, but the notice having been published in the newspaper, which is widely circulated in the State, such notice is to be accepted as sufficient notice. Therefore, we do not find any force in the contention of the learned Counsel for the petitioner in this regard.

4. On perusal of the impugned order, we also find that the land had been settled in favour of the petitioner for agricultural purpose and at the time of enquiry it was found that the land is not being used. Section 3-B of the Act provides that if the land settled is being used for any purpose other than the purpose for which it had been settled, the Tahasildar may resume the same. There is no evidence on record or finding to the effect that the land settled in favour of the petitioner is being used for any purpose other than the purpose for which it had been settled. If any agricultural activity is not carried on the land and it is not used for any purpose, it will not amount to use of the land for some other purpose. We are therefore of the view that the matter is required to be reconsidered in the light of the above observation and the Tahasildar is required to find out as to whether Section 3-B has any application to the facts of this case.

5. We, therefore, set aside the impugned order and remit the matter back to the Tahasildar for a decision as to whether Section 3-B of the Act has any application to the present case when specific finding of the Tahasildar is that the land is not being used for any purpose.

6. The writ application is disposed of accordingly.