
(2013) 02 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 9910 of 2001

Sri Ram Prasad Pattanayak

APPELLANT

Vs

State of Orissa and Five Others

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Citation : (2013) 115 CLT 1098 : (2013) 1 OLR 656

Hon'ble Judges : R. Dash, J; I. Mahanty, J

Bench : Division Bench

Advocate : D. Chatterjee and A.K. Mishra-2, for the Appellant; M. Sahu, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. D. Chatterjee, learned counsel for the petitioner and Mr. M. Sahu, learned Additional Standing Counsel on behalf of the State. This writ application has been filed by one Ram Prasad Pattanayak-petitioner seeking a direction to opposite party No. 6-Tahasildar, Phulbani to dispose of the U.L.S.C. No. 187 of 1968 within a stipulated time and also to register the land in his favour and to handover vacant possession of the same to him.

2. It appears from the averments made in the writ application that the petitioner's father being a landless person had applied for lease for house site measuring an area of land Ac. 0.05 decimal of Plot No. 25 of Block A-VI in Phulbani Town. Necessary enquiry on being conducted, the father of the petitioner was found eligible and therefore, the Lease Deed No. 15/80 was executed in the name of the father of the petitioner, who deposited the premium amount along with the ground rent.

3. Even though lease was executed in favour of the father of the petitioner, possession could not be given due to occupation of the said land by certain encroachers.

4. It appears that though the land was leased out and deed was executed in

favour of the petitioner's father, possession could not be given due to pendency of litigation. Hence, the petitioner's father filed a petition bearing U.L.S.C. No. 187 of 1968 for grant of an alternative site. Accordingly, on the direction of the Tahasildar, Phulbani, opposite party No. 6 vide order dated 5.10.1996, the Amin enquired into the matter and submitted his proposal for allotment of alternative site in Plot No. 3 (part) comprising an area of Ac. 0.020R in Khata No. 40 of Mouza-Penjisaahi. Such alternative proposal was forwarded by the Amin to the opposite party No. 4-Sub-Collector, Kandhamal, Phulbani. It appears that subsequently the matter was placed before the Lease Committee for sanction of the alternative site, which was duly approved.

5. In the interregnum, the father of the petitioner passed away on 24.4.1998. Thereafter, opposite party No. 6-Tahasildar, Phulbani, visited the proposed alternative site and finding the same lying vacant and free from encroachment, recommended the matter to opposite party No. 3-Collector, Kandhamal for sanction of the same in favour of the petitioner (in view of the death of the petitioner's father). Accordingly, opposite party No. 3-Collector, Kandhamal cancelled the original lease, which has been granted in favour of the petitioner's father.

6. Being aggrieved with the order of the opposite party No. 3-Collector, Kandhamal, petitioner preferred an appeal before opposite party No. 2-Revenue Divisional Commissioner (South Division), Berhampur, Ganjam numbered as O.G.L.S.A.C. No. 2 of 2000 and such appeal having been allowed, the matter was remanded to the Tahasildar, Phulbani for sanction of an alternative site in favour of the petitioner. During the entire period, the petitioner's father and thereafter the petitioner paid the annual rent revenue of the original site which had been allotted and while the matter was under active consideration of opposite party No. 6-Tahasildar, Phulbani, it was found that the proposed land has been encroached by one Tapan Padhi for which Encroachment Case No. 104 of 1999 was initiated against him. It is further stated by the learned counsel for the petitioner that the said encroachment case initiated against the said Tapan Padhi was concluded by order dated 31.7.2002 and the State authorities have demolished the house and the area was made free from encroachment. It is further asserted that thereafter no appeal or any proceeding has been initiated in the matter. In view of the facts as noted above, we are of the considered view that since there is exists no impediment regarding the alternative site for which the petitioner's father had applied for prior to his death, the Tahasildar, Phulbani, opposite party No. 6 is directed to dispose of the U.L.S.C. No. 187 of 1968 for allotment of the alternative site and to execute lease deed. Accordingly, the writ petition is allowed with a direction to the Tahasildar, Phulbani, opposite party No. 6 to take up the aforesaid proceeding within a period of two months from the date of filing of certified copy of this order and after completion of all formalities, register the alternative land in favour of the petitioner and handover the possession of alternative site to Him within a further period of two months thereafter.

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