

(2019) 02 OHC CK 0009

In the Orissa High Court

Case No : Original Jurisdiction Case No. 16823, 16824 Of 2001

Subala Tarai And Others

APPELLANT

Vs

Collector, Puri And Others

RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 7A(3)
Limitation Act, 1963 — Section 17, 22
Constitution Of India, 1950 — Article 14, 21, 300A

Citation : (2019) 02 OHC CK 0009

Hon'ble Judges : Sanju Panda, J; S.K. Sahoo, J

Bench : Division Bench

Advocate : Kali Prasanna Misra, J.K. Khandayatray, S. Dash, Kishore Kumar Misra

Final Decision : Dismissed

Judgement

S. K. Sahoo, J

1. The petitioner Subala Tarai in O.J.C. No. 16823 of 2001 and the petitioner Diriba Swain in O.J.C. No. 16824 of 2001 have prayed to quash the impugned common order dated 01.10.2001 of the Addl. District Magistrate, Puri passed in O.G.L.S. Revision No.92 of 1999 and O.G.L.S. Revision No.113 of 1989 respectively invoking power under section 7-A(3) of the Orissa Government Land Settlement Act, 1962 (hereafter 'O.G.L.S. Act') in cancelling the leases sanctioned in favour of the petitioners by the Tahasildar, Puri.

2. It is the case of the petitioners that they were landless persons and belonged to scheduled caste community. The forefathers of the petitioners were in possession of Government land for last sixty to seventy years. The Tahasildar, Puri (opposite party no.3) with the aid of his staff verified the eligibility of the petitioners for grant of lease of the land in the year 1974 in Lease Case No.5465 of 1974 and Lease Case No.5462 of 1974. It was duly proclaimed by beat of drum and the local Gram Panchayat was also consulted. Public objection was invited by the Tahasildar but there was no objection from any quarter

whatsoever. Consequently in the year 1975-76, Ac. 02.00 dec. of land in Mouza-Jagadal, P.S.-Brahmagiri, Tahasil-Puri Sadar, Dist.-Puri was settled in favour of each of the petitioners by the Tahasildar which were subsequently recorded in the names of the petitioners through mutation by the Tahasildar.

It is the further case of the petitioners that at the behest of some of the staff of the office of the Tahasildar (opposite party no.3), the Addl. District Magistrate (opposite party no.2) issued show cause notices to the petitioners by initiating lease revision cases bearing O.G.L.S. Revision No.92 of 1999 and O.G.L.S. Revision No.113 of 1989 under section 7-A(3) of the O.G.L.S. Act. No specific reason was assigned in the show cause notices regarding the initiation of the revision cases. The petitioners submitted their written notes of objection in the said lease revision cases and pleaded that invoking of provision under sub-section (3) of section 7-A of the O.G.L.S. Act after expiry of fourteen years from the date of grant of lease is hopelessly barred by law of limitation. The notices were in cyclostyled format, vague and it did not disclose the reasons/grounds which necessitated to the authority to initiate such proceeding. The opp. party no.2 without proper application of mind and in a preconceived and predetermined manner, cancelled the leases already granted in favour of the petitioners.

3. Mr. Kali Prasanna Misra, learned counsel appearing for the petitioners contended that the grounds taken by the Addl. District Magistrate, Puri in cancelling the leases are based on no materials and no reasonable opportunity of hearing as provided under the proviso to sub-section (3) of section 7-A of 1962 Act was granted and on surmise and suspicion, the opposite party no.2 has passed the impugned order. The notices were defective and the petitioners were kept in darkness about the nature of the proceedings and they were not supplied with the relevant documents which have resulted in causing serious prejudice to the petitioners. According to Mr. Misra, it is stipulated in the second proviso to sub-section (3) of section 7-A of the O.G.L.S. Act that no proceeding under this sub-section shall be initiated after the expiry of fourteen years from the date of the order passed by the subordinate authority and therefore, the initiation of the revision proceeding in the year 1999 is illegal. It is contended that since the impugned order violates the fundamental rights guaranteed under Articles 14 and 21 so also Article 300-A of the Constitution of India, it should be quashed.

Mr. Kishore Kumar Misra, learned Addl. Govt. Advocate refuting the submissions of the learned counsel for the petitioners on the other hand supported the impugned order and contended that after receipt of the notices, the petitioners engaged their counsel who submitted written note of argument and therefore, the non-compliance of opportunity of hearing as contended by the learned counsel for the petitioners is not acceptable. He further submitted that gross irregularities were committed while granting lease of lands to the petitioners. The eligibility of the lessees for grant of lease was not enquired into, no public objection was invited by beat of drum, the signature of Tahasildar was found to

be fictitious, the proclamation copy was not available in the case records and the lease orders were passed in cyclostyled formats. In the order sheet, it was found that neither the marginal date has been given nor the Presiding Officer has given the date while signing the order sheet. It is contended that when fraud has been committed in obtaining the lease, limitation aspect cannot be taken into consideration and therefore, the writ petitions should be dismissed.

4. Adverting to the submissions made by the learned counsel for the parties and on perusal of the records, the following issues need to be addressed:-

(a) Whether power of revision was exercised by the Additional District Magistrate, Puri beyond the prescribed period of limitation?

(b) Whether reasonable opportunity of hearing was provided to the petitioners in the revision proceedings?

(c) Whether the impugned order is legally sustainable?

Whether power of revision was exercised beyond the prescribed period of limitation:

5. There is no dispute that the revision cases under section 7-A (3) of O.G.L.S. Act were initiated on the basis of the report submitted by Tahasildar, Puri in the year 1999 and the common impugned order was passed on 01.10.2001. At the relevant point of time, sub-section (3) of section 7-A read as follows:

"S.7-A(3). The Collector may, on his own motion or otherwise, call for and examine the records of any proceeding in which any authority, subordinate to it has passed an order under this Act for the purpose of satisfying himself that any such order was not passed under a mistake of fact or owing to a fraud or misrepresentation or on account of any material irregularity of procedure and may pass such order thereon as he thinks fit;

Provided that no order shall be passed under this sub-section unless the person affected by the proposed order has been given a reasonable opportunity of being heard in the matter.

Provided further that no proceeding under this sub-section shall be initiated after the expiry of fourteen years from the date of the order."

By virtue of the Odisha Government Land Settlement (Amendment) Act, 2013, for sub-section (3), the following sub-section was substituted.

"S.7-A(3). Notwithstanding anything contained in this Act or any other law, the Collector may, on his own motion or otherwise, call for and examine the records of any proceeding, in which any authority subordinate to him has passed an order under this Act, for the purpose of satisfying himself that any such order was not passed under a mistake of facts or owing to a fraud or misrepresentation or on account of any material irregularity of procedure and may pass such order thereon as he thinks fit:

Provided that no order shall be passed under this sub-section unless the person affected by the proposed order has been given a reasonable opportunity of being heard in the matter."

Therefore, the period of limitation of fourteen years which was there for initiating the revision proceeding by the Collector against an order passed by its subordinate authority was taken away by the Amendment Act of 2013. Since at the relevant point of time, the limitation of fourteen years was applicable, it is to be seen whether in fact there was any limitation at all. It is the case of the petitioners that lease was granted in the year 1975-76. The particular date on which such lease was granted has not been indicated. Since the revision cases were initiated in the year 1999, it cannot be said with certainty that the power revision was exercised beyond the prescribed period of fourteen years. Moreover, since it is the case of the opposite parties that fraud was committed at the time of obtaining lease, in such a situation, it is to be seen whether any limitation period for exercise of revision is applicable or not.

Section 17 of the Limitation Act, 1963 prescribes that the limitation will start running only when the plaintiff or applicant got knowledge of the fraud or discovered fraud committed by the defendant or respondent or his agent. It is a continuing wrong and therefore, the period of limitation would begin to run at every moment of time during which such wrong continues. In such a situation, the principles enshrined in section 22 of the Limitation Act will apply and an action initiated on discovery of fraud cannot be held to be barred by limitation. When a fraud is practised on a Court or on an authority to get an order, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not required to be complied with. By reason of commission of a fraud, an order or a decree is rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity. However, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean endless uncertainty in human affairs, which is not the policy of law. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

In case of Joint Collector Ranga Reddy -Vrs.- D. Narsing Rao reported in (2015) 3 Supreme Court Cases 695, it is held as follows:-

"25. The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power."

In case of S.B. Gurbaksh Singh -Vrs.- Union of India reported in (1976) 2 Supreme Court Cases 181, Hon'ble Supreme Court held that exercise of suo motu power of revision must also be within a reasonable time and that any unreasonable delay in the exercise may affect the validity. But what would constitute reasonable time would depend upon the facts of each case.

In case of Ibrahimpatnam Taluk -Vrs.- K. Suresh Reddy reported in (2003) 7 Supreme Court Cases 667, it is held as follows:-

9..... In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act)."

It appears that after receipt of the report of Tahasildar, Puri relating to grant of leases in contravention of the provisions of O.G.L.S. Act and without following the mandatory provisions of law, the revisional power was exercised within a reasonable period.

In view of the foregoing discussions, since fraud is stated to have been committed at the time of obtaining lease, we are of the view that the contention of the learned counsel for the petitioners that the revision proceedings which were initiated under section 7-A(3) of the O.G.L.S. Act in the year 1999 were beyond the prescribed period of limitation and therefore, it is illegal, cannot be accepted.

Whether reasonable opportunity of hearing was provided to the petitioners in the revision proceedings:

6. It is not disputed that the first proviso to sub-section (3) of section 7-A of the O.G.L.S. Act prescribes for giving reasonable opportunity of hearing to the affected person before passing any order. It is contended that the notice which was issued to the petitioners was in a format and it merely indicates the date and time of hearing. There is nothing in the notice as to on what point, the petitioners were to be heard. Such type of notice, according to Mr. Mishra, was a surprise to the petitioners and they could not know the nature of proceeding before the authority and thereby they were precluded from defending the cases properly. It is argued that issuance of such type of notice smacks of arbitrariness and the relevant documents sought for by the petitioners were not supplied to them which have caused serious prejudice to the petitioners.

The purport of the notice was to give a reasonable opportunity of hearing to the petitioners. The date, time and place of appearance and the name of the authority before whom to appear were indicated. It is not blurred or made unintelligible and therefore, the notice cannot be termed as bad. On a plain reading of the impugned order, it appears that after receipt of the notice, the

petitioners engaged their counsel who submitted written note of objection and participated in the hearing of revision proceeding. The written note of objection annexed to the writ petitions as Annexure-4 clearly indicates that the petitioners were very much aware about the nature of proceeding initiated against them and they have raised objections on different points. The Addl. District Magistrate has also taken note of the contentions raised by the counsel for the petitioners. There is no averment in the writ petitions as to what sort of documents were sought for by the petitioners and on what date. Such petition copy has also not been annexed to the writ petitions. The written note of objection filed by the petitioners before the Addl. District Magistrate is also silent in that respect. Therefore, we are of the view that the contention of the learned counsel for the petitioners that the documents sought for by the petitioners were not supplied to them appears to be an afterthought story and further contention that no reasonable opportunity of hearing was provided to the petitioners in the revision proceedings cannot be accepted.

Legality of the impugned order:

7. The impugned order indicates that the Addl. District Magistrate, Puri perused the written notes of argument filed by the learned counsel for the petitioners as well as learned Addl. Government Pleader appearing on behalf of the State. He also verified the lower court record. He found that the served copy of proclamation was not available in the case records. The orders were passed in a cyclostyle carbon copy. No date has been given in the order sheet and no date is mentioned below the signature of the Presiding Officer. The signature of the officer appeared to be fictitious. It was further found that the leases were granted in violation of the mandatory provisions of law which vitiated the proceeding.

There is no dispute that procedure has been laid down for grant of lease of Government land in O.G.L.S. Act and the Orissa Government Land Settlement Rules, 1974 which was in force at the relevant time. When the authority exercising revisional jurisdiction found that there were gross irregularities in settling the land with the lessees petitioners, he was justified in cancelling the leases and directing the Tahasildar to make necessary corrections in the relevant register and in the record of rights. Lease of government land obtained fraudulently and surreptitiously and without following due procedure of law, rob such grant of all its legal effect and cannot found a claim to valid possessory rights.

There is no apparent error on the face of the impugned order. It cannot be said that the findings arrived at by the Addl. District Magistrate, Puri are either perverse or unreasonable or based on no materials and therefore, we are not inclined to interfere with the same in a writ of certiorari.

Accordingly, both the writ applications being devoid of merits, stand dismissed.