

(2010) 07 OHC CK 0063

In the Orissa High Court

Case No : Writ Petition (C) No. 2990 of 2008

Surendranath Ghosh, Trust Estate

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 15, 2, 3, 3(4), 5
Orissa Government Land Settlement Rules, 1983 — Rule 2(2), 3, 5B
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 111

Citation : (2010) 110 CLT 770

Hon'ble Judges : B.P. Das, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—The Petitioner, which is a Trust called "Surendranath Ghosh, Trust Estate, Calcutta", being represented through its trustees has filed this Writ Petition with a prayer for quashing the condition Nos. 2, 3, 4, 7, 8, 9 & 10 imposed under Order Dated 25.09.2007 (Annexure-2) passed by Opp. Party No. 2-Collector, Puri while approving the lease of permanent Pattadar status as settled by O.P. No. 3-Tahasildar in favour of the Petitioner.

2. Bereft of unnecessary details, the facts & circumstances giving rise to the present Writ Petition are that, according to the Petitioner, the land measuring an area Ac 0.193 decimals under Khata No. 79, Sabik Plot No. 87 in Sabik Mouza: Balukhand Khasmahal corresponding to Hal Khata No. 67, Hal Plot No. 126 measuring an area Ac. 0.193 decimals under Puri Municipality, Ward No. 12, Holding No. 754 in Hal Mouza Nolia Sahi, Unit No. 12, Puri Town, P.S. Sea Beach, Puri was originally leased out on 07.11.1924 in favour of one Surendranath Ghosh, son of Late Bhola Nath Ghosh of Sheorapalli, P.S. Srirampur, Dist: Hoogly for sixteen years. On 08.11.1940, the said lease was renewed in favour of said Surendranath Ghosh for thirty years extending the lease period up to 07.11.1970. Opp. Party No. 2-Collector, Puri on the basis of recommendation of

O.P. No. 3-Tahasildar, vide his Order Dated 10.09.2004 passed in Balu Lease Renewal Case No. 4/2004, renewed the lease granted on 08.11.1940 to Surendranath Ghosh in favour of Surendranath Ghosh Trust Estate, Calcutta for two consecutive terms of 30 years each with retrospective effect from 08.11.1970. Pursuant to said Order Dated 10.09.2004 of O.P. No. 2, the Renewal Lease Agreement (Annexure-1) was executed on 3rd October, 2005 & the same was registered on 25.10.2005. After the Renewal Lease Agreement was registered on 25.10.2005, the Petitioner made an application to O.P. No. 3-Tahasildar, Puri for grant of permanent lease of the said land which was registered as BPL Case No. 20/2005. The Tahasildar settled the land in question in favour of the Petitioner-Trust on permanent Pattadar status & sent the BPL case record to O.P. No. 2-Collector, Puri for approval. The O.P. No. 2 while approving the lease of permanent Pattadar status under the Orissa Government Land Settlement Act, 1962 (for short "the OGLS Act") imposed certain terms & conditions as per Annexure-2 & directed the Tahasildar to incorporate the said terms & conditions in the lease deed. Being dissatisfied with the said terms & conditions, the Petitioner has filed the present Writ Petition for quashing those conditions. This Court vide ex parte Order Dated 25.06.2009 dismissed the Writ Petition on merit with the following observation.

In view of the above mentioned facts & circumstances as well as the facts that the period of lease has already expired on 08.11.1970 & the lessee is not utilizing the lease hold land for homestead purpose for not less than five years on the appointed dated i.e. 9.1.1991 & no rent having been collected from the lessee since 1975 & also that the land had been recorded as Sarakari Khata since 1988, no case in favour of the Petitioners is made out.

Misc. Case No. 8396 of 2009 was filed by the Petitioner with a prayer to recall the above Order Dated 25.06.2009 & to restore the case to original file & to rehear the matter on merit. Vide Order Dated 02.12.2009, this Court recalled its earlier Order Dated 25.06.2009. Thereafter, the matter was heard at length on 06.05.2010 & 10.05.2010.

3. Mr. R. Mohanty, Learned Counsel appearing for the Petitioner, submitted that originally the land in question was leased out in favour of late Surendranath Ghosh on 07.11.1924 for sixteen years. On 08.11.1940, it was renewed for another thirty years. Surendranath Ghosh died on 19.01.1973. Before his death, an unregistered private Trust was created by said Surendranath Ghosh consisting of his family members on 30.06.1971. On 26.11.1971 this Trust applied for renewal of the lease before the Collector, Puri. Accordingly, Khasmahal lease was renewed in favour of the Petitioner-Trust in Balu Lease Renewal Case No. 4 of 2004 for two consecutive terms of 30 years each with retrospective effect from 08.11.1970 & the lease deed was executed on 03.10.2005. The OGLS Act prescribes the modalities for settlement of the Government land. u/s 2(b), Explanation (i) of the OGLS Act Khasmahal land has been included as Government land. Section 3 of the OGLS Act prescribes the modalities for

settlement of such Government land. Sub-Section 4(a) of Section 3 of the OGLS Act prescribes that renewal of such Khasmahal land shall be deemed to have been leased out under the OGLS Act. Section 3(4)(c) of the OGLS Act mandates such settlement on permanent basis with heritable & transferable rights. In view of the aforesaid position of law, the Petitioner-Trust applied for permanent settlement of the land in question leased out to it under Annexure-1. The same was registered as Balu Permanent Lease Case No. 20/ 2005. under the provisions of the OGLS Act & Rule 5B of the Orissa Government Land Settlement Rules, 1983 (for short "the OGLS Rules"). The manner of settlement of such Khasmahal land has been prescribed under Schedule-V appended to the Rules in Paragraph 3 thereof. In fact, considering all this, O.P. No. 2-Collector, Puri by the impugned Order Dated 25.09.2007 (Annexure-2) approved the settlement of leasehold property in favour of the Petitioner on permanent basis. While so ordering, the Collector has imposed certain conditions particularly condition Nos. 2, 3, 4, 7, 8, 9 & 10, which are contrary to law & without any authority. Nowhere under the provisions of the OGLS Act & OGLS Rules & Schedule-V appended thereto, the authority is empowered to impose such conditions while recognizing the permanent right of a lessee. The O.P. No. 2 has basically failed to understand the provisions prescribed for grant of permanent lease where the right accrues in favour of the lessee is heritable & transferable. In support of his contention, Mr. Mohanty placed reliance upon the decisions of this Court in *Republic of India v. Prafulla Ku. Samal and Ors.* ILR 1976 CUT 1392, *Sunil Kumar Dass (dead) by L.Rs. and Others Vs. The Revenue Divisional Commissioner, Central Division and Others, Sourindra Narayan Bhanja Deo v. Member, Board of Revenue, Orissa and Ors.* 2004 (II) OLR 332 and OJC No. 3417/96 disposed of on 11.12.2007.

4. Relying on the decision of this Court in *Sourindra Narayan Bhanja Deo's* case (supra), Mr. Mohanty vehemently argued that in the matter of renewal of Khasmahal lease option is left to the lessee & the Khasmahal authorities cannot refuse renewal of lease if the lessee opts for the same. The Opp. Parties for the first time are taking the stand that the impugned conditions have been imposed keeping in view the provisions contained in the Trust Deed. Such a stand is wholly misconceived & has no legal sanction. So far as the Petitioner-Trust is concerned, it has no bearing on the rights conferred on the Petitioner-Trust under law. The Trust is a Juristic person & is entitled to be conferred with all the permanent right that law has prescribed in respect of the leasehold property. If there is any violation of the terms of the Trust, the provisions of the Indian Trust Act will take care of the situation. But in no event, after conferring valid permanent title on the Petitioner, the State Government" has further power to limit such a permanent right. The right accrues in respect of Khasmahal land is in no way different from that which one reserves in his own private land. Therefore, O.P. No. 2 has no right to impose any terms & conditions while approving the lease of permanent Pattadar status as settled by O.P. No. 3-Tahasildar in favour of the Petitioner Trust. 4. On being noticed, the Opp. Part Nos. 2 & 3 have filed counter affidavit. Mr. M. Sahoo, Learned Addl. Standing Counsel for the State

repudiating the stand taken by the Petitioner contended that the land in question is Khasmahal property of the Government & the Collector, Puri is the administrator of the property under the provisions of the Estate Manual, 1990. The Petitioner has no locus standi to challenge the order passed by the Khasmahal authority. Since the Petitioner has filed this Writ Petition by suppressing the material facts, the same is not maintainable. Due to non-renewal of lease after expiry of the lease period on 07.11.1970, the leasehold land had been recorded in the Sarakari Khata No. 67 in Hal ROR finally published in the year 1988. The Petitioner-Trust through its Trustees applied for lease of the land in question in Balu Lease Renewal Case No. 4 of 2004. Considering the charitable activities of the Trust, Collector, Puri was pleased to renew the lease for two consecutive terms of thirty years each with retrospective effect from 08.11.1970 with certain conditions. Otherwise, it would have been resumed due to gross violation of lease conditions & non-use of the leasehold land for which the same had been sanctioned. In pursuance of the orders of the Commissioner of Consolidation, Orissa, Bhubaneswar passed in RP No. 69 of 2005, the record was corrected in the name of-Sri Surendranath Ghosh Trust Estate, represented through its Trustee, namely, Nimai Kumar Ghosh vide new Khata No. 61/18. When the lease was in force till 2030, the Trust applied for permanent lease by filing BPL Case No. 20/2005. After expiry of the term of lease on 07.11.1970, no family member of the lessee was using the land in question for residential purpose. There was no scope for permanent lease under the provisions of the OGLS (Amendment) Rules, 1993 due to the fact that such lease was renewed up to 07.11.2030. The Trust Estate with an intention to transfer the leasehold land applied for permanent lease in BPL Case No. 20/2005. So, the Collector has rightly imposed the conditions to prevent the Trust Estate from utilizing the property for personal benefits. The provisions of the OGLS (Amendment) Act, 1993 are not applicable to the case of the Petitioner as the term of the lease had already expired since 08.11.1970. The lessee was not using the leasehold land for homestead purpose for a period of not less than five years as on the appointed date, i.e., 09.01.1991. The land in question was under the Government Khata & no rent was being collected from anybody since 1975, as such lease was not in force on the appointed date, i.e., 09.01.1991 as prescribed in the OGLS (Amendment) Rules. Referring to Clauses-5(Kha) & 5(Cha) of the Trust deed it is contended that the lease sanctioning authority has every right to impose any conditions to safeguard the leasehold property from any alienation or misuse. The Government of Orissa in Revenue & Disaster Management Department have cancelled the lease sanctioned in favour of Raibahadur Hazarimal Trust Fund& resumed the land due to transfer of the same for personal benefit by the trust members. Therefore, the Writ Petition is not at all maintainable & is liable to be dismissed.

5. The rival contentions raised at the Bar drive us to go to the genesis of the case to appreciate the respective contentions & for effectual adjudication of the relevant issues involved.

6. It would be appropriate to decide first the issue relating to the relief sought for by the Petitioner-Trust in the present Writ Petition. The Petitioner's grievance is that Opp. Part No. 2-Collector is not justified in imposing the terms & conditions while approving the leasehold land in question in favour of the Petitioner-Trust on permanent Pattadar status in his Order Dated 25.9.2007 (Annexure-2) passed in BPL Case No. 20/2005. In order to deal with the said issue, it is necessary to decide whether the Petitioner-Trust was entitled to be settled with the land in question on permanent Pattadar status under the OGLS Act & Rules. In other words, as to whether O.P. No. 3-Tahasildar & O.P. No. 2-Collector are respectively justified in settling & approving the land in question on permanent Pattadar status in favour of the Petitioner-Trust in BPL Case No. 20/2005. The order of the Collector dated 25.09.2007 (Annexure-2) reveals that the Tahasildar, Puri has settled the land in question in favour of Sunrendranath Ghosh Trust Estate, Calcutta & Marfatdars Gautam Kumar Ghosh, Nimain Kumar Ghosh, Partha Ghosh of 19/1 Rahasbehari Ghosh, Calcutta on permanent Pattadar status as per Sub-Rule 3(a) of Rule 5-B of the OGLS (Amendment) Rules, 1993. Relying on the said Rules the Collector, Puri approved the Settlement of the land in question in favour of the Petitioner-Trust on permanent Pattadar status as made by the Tahasildar. The letter No. 294 dated 28.09.2007 of the Deputy Collector, Puri reveals that the land in question as settled by the Tahasildar, Puri has been approved by the Collector, Puri in favour of the Petitioner-Trust as per Sub-Rule 3(a) or Rule 5-B of the OGLS (Amendment) Rules, 1993. The Petitioner also relied upon the provisions of Rule 5-B of the OGLS Rules & schedule-V appended to Rule 5-8 in terms of paragraph-3 thereof in support of its claim. The Petitioner-Trust through its power of Attorney Holder also made an application to Tahasildar, Puri on 03.11.2005 in Form No. 1 for permanent settlement of the leasehold land relying on the OGLS (Amendment) Rules, 1993. Now, it is necessary to examine what is contemplated in Rule 5-B & Sub-Rule 3(a) of the said Rule of the OGLS (Amendment) Rules, 1993 on which both the parties have placed reliance. The relevant provisions of Rule 5-B & Sub-Rule 3(a) of Rule 5-B are reproduced below.

5-B. Notwithstanding anything contained in Rules 3, 5, 5-A, 8, 11, 12, 13, Settlement of Khasmahal & Nazul land, Gramakantha Parmbok & Abadi land leased out prior to the 9.1.1991 shall be made in the manner prescribed in Schedule-V."

3(a) Tahasildar on being satisfied after enquiry that any Nazul/ Khasmahal land is used & in occupation by any person as homestead for a period of not less than five years as on the appointed day shall settle the said land in favour of the person holding such land, on execution of lease deed in Form

IV. In case of a sub-lessee & subsequent sub-lessee such settlement shall take effect on production of the stamped receipt in Form I from the date of payment of such compensation to the person (s) immediately under whom they held the land; Provided that on each such settlement, approval of the Collector shall be

obtained.

Perusal of the above provisions makes it amply clear that settlement of Khasmahal & Nazul land leased out prior to 9.1.1991 shall be made in the manner prescribed in Schedule-V. Rule 3(a) of Schedule-V provides that the Tahasildar on being satisfied after enquiry that any Khasmahal land is used & in occupation of any person as homestead for a period of not less than five years as on the appointed day i.e. 09.01.1991 shall settle the said land in favour of the person holding such land on execution of lease deed in Form No. IV. Thus Rule 5-B is applicable only in respect of those Khasmahal lands leased out prior to the 9th day of January, 1991. In the present case, Khasmahal land in question was not leased out to the Petitioner-Trust prior to the 9.1.1991. It is only for the first time the land in question was leased out in Balu Lease Renewal Case No. 20/2005. vide Order Dated 10.09.2004 passed by O.P. No. 2-Collector, Puri in favour of the Petitioner-Trust. That apart, as per Sub-rule 3(a), the land in question must be in use & in occupation by any person as homestead. The term "person" has not been defined in the OGLS Rules. But the term "person" has been defined in the OGLS Act. Sub-rule (2) of Rule 2 to the OGLS Rules provides that "words & expressions used but not defined in these rules shall have the same meaning as are respectively assigned to them in the Act". The term "Person" as has been defined in Section 2(b2) in the OGLS Act runs as follows:

(b-2) "Person" means any person, the total extent of whole land excluding homestead, together with lands held by all the members of his family who are living with him in common mess is less than one standard acre & whose total annual income together with the total annual income of all the members of his family living with him in common mess, does not exceed rupees three thousand & six hundred or an amount which the State Government may, by notification from time to time, specify in that behalf.

The Petitioner is a Trust & not a person as defined in Section 2(b2) of the OGLS Act, 1962. This position is clear from the fact that the relevant expressions are "homestead" & "held by all the members of the family", "living in common mess" "annual income of all the members of the family". Therefore, no Khasmahal land can be settled in favour of the present Petitioner-Trust in terms of Sub-rule 3(a) of Rule 5-B read with Rule-5B of the OGLS (Amendment) Rules, 1993. Moreover, Sub-Rule 3(a) of Rule-5B further requires that the Khasmahal land should be used by a person as homestead for a period of not less than five years on the appointed date. But the order of the Collector dated 10.09.2004 reveals that a building constructed on the Khasmahal land is used for commercial purpose without permission of Khasmahal authority & no resumption proceeding has been initiated. Thus, in the present case, the competent authorities failed to exercise their mind to the above preconditions stipulated in the statute before settling/approving lease of Khasmahal land on permanent Pattadar status in favour of the Petitioner-Trust. As it appears, O.P. No. 3-Tahasildar, Puri vide his Order Dated 30.03.2007 passed in BPL Case No. 20 /2005 has settled the land in

question in favour of the Petitioner-Trust on permanent Pattadar status with heritable & transferable right closing his eyes towards the statutory requirement of the OGLS Act & the Rules. The Collector, Puri also without examining the validity/legality of the Tahasildar's recommendation accepted the settlement made by the Tahasildar ignoring the relevant provisions of the statute though of course has imposed certain terms & conditions.

7. It is the settled law that when any action of the State or its instrumentalities is not in accordance with the rules or regulations & supported by the statute, the Court must exercise its jurisdiction to declare such an act as illegal & invalid. In *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, , the Supreme Court observed that the rules or the regulations are binding on the authorities. Whenever any action of the authority is in violation of the provisions of the statute or the action is constitutionally illegal, it cannot claim any sanctity in law, & there is no obligation on the part of the Court to sanctify such an illegal act. Wherever the statutory provision is ignored, the Court cannot become a silent spectator to such an illegality & it becomes the solemn duty of the Court to deal with the person(s) violating the law with heavy hands. (See *R.N. Nanjundappa Vs. T. Thimmiah and Another*, , *Sultan Sadik Vs. Sanjay Raj Subba and Others*,).

Thus, the legal position remains, every statutory provision requires strict adherence; for the reason, the statute creates rights in favour of the citizens & if any order is passed de hors the same, it cannot be held to be a valid order & cannot be enforced.

[See *Swastik Agency and Others Vs. State Bank of India, Main Branch and Others*, .

Non-compliance of mandatory requirements vitiates the proceedings. The Collector & the Tahasildar are responsible Government officers working in the Revenue Department. They are supposed to know the law relating to leasing out of Government properties. Ignorance of the same cannot be considered as bliss. Apart from the above, in paragraph 9 of the counter affidavit, it is stated that the OGLS (Amendment) Act is not applicable to the case of the Petitioner due to the fact that the term of lease had expired since 8.11.1970. The lessee was not using the leasehold land for homestead purposes for a period of not less than five years as on the appointed date i.e. 9.1.1991. The Khasmahal land in question was recorded in Sarakari Khata since 1988. These averments have not been denied by the Petitioner in his rejoinder. However, the Petitioner in paragraph 11 of the Writ Petition has averred that as per Section 3(4)(c)(i) of the OGLS Act, right accrued under the provisions of the permanent lease is heritable & transferable. For the reasons stated above, since the Petitioner is not a person as defined in Section 2(b2) of the OGLS Act, Section 3(4)(a) & Section 3(4)(c)(i), relied upon by the Petitioner which speak of a person have no application to the case of the Petitioner. Besides, the Petitioner also does not fulfill the other conditions provided under those Sections.

8. The Apex Court in *New India Assurance Co., Shimla Vs. Kamla and Others etc.* etc., held as follows:

As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry." No licensing authority has the power to renew a fake licence & therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

Thus, merely because some Revenue Officers have settled & approved the lease in favour of Petitioner-Trust on permanent Pattadar status that cannot confer any right on the Petitioner-Trust over the land in question as the same has been granted illegally without adhering to the statutory provisions. Therefore, settlement of the land in question in favour of the Petitioner- Trust on permanent Pattadar status as made by the Tahasildar & approved by the Collector in BPL Case No. 20/2005 being not in consonance with law is abinitio void & unsustainable.

9. In view of our findings that grant of lease of permanent Pattadar status in BPL Case No. 20/2005 in favour of the Petitioner-Trust is void abinitio because of the illegalities, irregularities committed by the Revenue authorities, the relief sought for by the Petitioner-Trust in the present Writ Petition does not merit consideration. Consequently, even though there is no quarrel over the legal propositions settled by this Court in the cases relied upon by the Petitioner, they are of no help to the Petitioner. The Apex. Court in *Badrinath Vs. Government of Tamil Nadu and Others*, , observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically.

10. Law is well settled that the writ jurisdiction is discretionary in nature & must be exercised in furtherance of justice. The Court has to keep in mind that its order should not defeat the interest of justice nor it should permit an order to secure dishonest advantage or perpetuate an unjust gain or approve an order which has been passed in contravention of the statutory provisions. (See *Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others*, , *K.D. Sharma v. Steel Authority of India Ltd. and Ors.* 2008 AIR SCW 6654)

In view of the above settled legal position, it is felt necessary to examine the other relevant issues involved in the present context. One of such relevant issues that needs determination by this Court is whether any lease could have been granted in favour of the Petitioner-Trust at the first instance vide Order Dated 10.09.2004 in *Balu Lease Renewal Case No. 4/2004* pursuant to which the

renewal lease agreement (Annexure-1) was executed on 3rd October, 2005.

Admittedly in the present case, the land in question had been leased out for the first time in favour of the Petitioner-Trust by O.P. No. 2- Collector, Puri vide Order Dated 10.09.2004 in Balu Lease Renewal Case No. 4/2004. The said order of the Collector dated 10.09.2004 reveals that the Collector had renewed the leasehold land in favour of the Petitioner-Trust for 30 years from 08.11.1970 to 07.11.2000 and Anr. spell of 30 years from 08.11.2000 to 07.11.2030 on the basis of the recommendation of the Tahasildar, Puri made as per report No. 6556 dated 31.07.2004 & letter No. 7757 dated 09.09.2004. The said order further reveals that the Tahasildar, Puri reported that as per Hal ROR. published on 27.08.1988 the land in question was recorded under Sarakari Khata with a note of illegal possession of Surendranath Ghosh, son of Bholanath. The report No. 6556 dated 31.07.2004 of the Tahasildar is not available on record. The letter of the Tahasildar dated 09.09.2004 reveals that the land in question was recorded in Sarakari Khata as the lease had expired in the year 1970 during pendency of settlement operation. In spite of the above factual observations, the O.P. No. 3- Tahasildar, Puri; without any rhyme or reason & without referring to any provision of law prevalent during the relevant period recommended for renewal of lease in favour of the Petitioner- Trust. The Opp. Part No. 2-Collector has also mechanically accepted the recommendation of the Tahasildar & accorded approval just on the next day, vide Order Dated 10.09.2004 by giving colour of legitimacy to the apparently illegal act of the Tahasildar.

It is not understood how in absence of any lease in favour of the Petitioner- Trust in respect of the land in question the Tahasildar could recommend for renewal of a non-existent lease in favour of the Petitioner- Trust & the same got approval of the Collector on 10.9.2004. Admittedly, in the instant case, S.N. Ghosh died on 19.01.1973 & no lease was granted in favour of the Petitioner-Trust prior to 10.09.2004. Neither the letter of the Tahasildar dated 09.09.2004 nor the order of the Collector dated 10.09.2004 reveals any provisions of law under which the Tahasildar & the Collector assumed powers to recommend/approve such renewal of lease in respect of the land in question for sixty years with retrospective effect from 08.11.1970.

Admittedly the lessee Surendranath Ghosh had never applied for renewal of lease in respect of the land in question after expiry of the lease period on 7.11.1970 during his life time. The lease granted to him in respect of the land in question expired on 7.11.1970 in terms of the lease deed as well as by operation of Section 111 of the T.P. Act, 1981 by efflux of time limited by the lease. Therefore, the question of renewal of lease does not arise. On the other hand, any application of the Petitioner Trust can only be an application for consideration of fresh lease.

As it appears the Tahasildar vide his letter No. 7757 dated 09.09.2004 & the Collector vide his Order Dated 10.9.2004 respectively have recommended & granted renewal of lease of Khasmahal land in Mouza - Balukhanda

Khasmahal-108 in favour of the Petitioner-Trust. Thus the only enabling provision that was governing the field for grant of Khasmahal land in urban area during the relevant period, i.e. in the year 2004 is Rule 5-B & Sub-rule 3(a) to Rule 5-B of the OGLS (Amendment) Rules, 1993. In the foregoing paragraphs we have already dealt in detail how the Petitioner-Trust is not entitled to be settled with the Khasmahal land under the OGLS Act & Rules.

Law is also well settled that when the statute provides for a particular procedure, the authority has to follow the same & is not permitted to act in contravention of the prescribed provisions. It has been hitherto an uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly & necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusion altens*", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner & in no other manner & following other course is not permissible. (See *Taylor v. Taylor* (1876) 1 Ch.D. 426; *Nazir Ahmed v. King Emperor* AIR 1036 PC 253; *Ram Phal Kundu v. Kamal Sharma*; and *Indian Bank's Association v. Devkala Consultancy Service* AIR 2004 SC 2615. In view of the above, renewal of the lease in favour of the Petitioner-Trust in BPL case No. 4 of 2004 is abinitio void.

11. The other glaring illegality that comes to our notice is renewal of the lease in the year 2004 with retrospective effect from 08.11.1970 for 60 years in the name of the Petitioner-Trust without any basis & sanction of law. To justify retrospective renewal of lease, the Petitioner-Trust claimed in course of hearing & in the written note of submission dated 11.05.2010 that it had applied for renewal of the lease before the Collector, Puri on 26.11.1971 & the same was renewed for 60 years with retrospective effect commencing from 08.11.1970. The submission of the Petitioner that it had made an application on 26.11.1971 for renewal of lease before the Collector, Puri is not borne by record. There is no pleading in the Writ Petition to the effect that on 26.11.1971 an application was made to the Collector for renewal of lease granted in the name of Surendranath Ghosh in favour of the Petitioner-Trust much less any evidence was either enclosed to the Writ Petition or rejoinder supporting such contention. In course of hearing, no evidence has also been adduced before us in support of such contention.

Law is well settled that a party has to plead its case & produce/ adduce sufficient evidence to substantiate its stand taken in the petition &, in case the pleadings are not complete, the Court is under no obligation to entertain such plea. (See *Bharat Singh and Others Vs. State of Haryana and Others*,

Neither the order of the Collector dated 10.9.2004 passed in BPL Case No. 4 of 2004 nor the renewal deed executed on 3rd Day of October, 2005 shows that any such application had been filed on 26.11.1971 by the Petitioner-Trustee either before the Collector or before the Tahasildar for renewal of lease. Surprisingly,

even though in the renewal lease deed agreement dated 03.10.2005 it is recited that the lessee had applied for renewal of lease granted on 18.6.1941, it remained silent as to when any such renewal application was filed. In the case record of Renewal Lease Case No. 4 of 2004, application dated 26.11.1971 claimed to have been filed does not find place. Therefore, the Petitioner's claim that it had applied for renewal of lease on 26.11.1971 is nothing but a misleading approach, which is not sustainable in the eye of law. It is a clear case of misrepresentation. In view of the above, grant of lease in the name of Surendranath Ghosh Trust Estate in Balu Lease Renewal Case No. 4 of 2004 for sixty years with retrospective effect from 8.11.1970 is not only unsustainable but also goes to show how undue favouritism has been shown by the Revenue authorities to the Petitioner-Trust.

12. The Petitioner Trust is otherwise also not entitled to be granted lease under the OGLS Act & the Rules as it is an unregistered Trust. In paragraph 8 of the Writ Petition it is averred that one unregistered private Trust was created on 30.06.1971 by Surendranath Ghosh keeping his family members as trustees. The photocopy of the Deed of Trust, which has been filed before us, shows that late Surendranath Ghosh formed Surendranath Ghosh Trust Estate on 30.6.1971 in respect of immovable properties situated in different parts of West Bengal & the property in question situated in Puri. Section 5 of the Indian Trust Act, 1982 says "no trust in relation to immovable property is valid unless declared by non-testamentary instrument in writing signed by the author of the trust or the trustees & registered or by the will of the author of the trust or the trustees". In the instant case the trust being an unregistered trust, it is not valid.

Moreover, Clause 5(kha) of the Trust deed categorically authorizes the trustees to utilize the income & usufructs of the immovable properties described in the schedule for charitable purpose after meeting various expenses relating to the said immovable properties, salary of the employees etc. Since the author of the Trust purports to create, declare, assign right & interest on several immovable properties worth more than Rs. 100 in favour of the Trust, the same is also required to be registered as per Section 17(b) of the Indian Registration Act, 1908. Unless the Trust is registered the said Trust deed does not become operative. (See *Gostha Behar Ghose Vs. University of Calcutta*, . The Petitioner-Trust being an unregistered Trust, the claim that the Petitioner-Trust is a juristic person does not merit consideration. The Trust in question being not a legal entity it can neither make any application for grant of lease in respect of any land in its favour nor any lease can be granted in favour of an unregistered Trust.

13. We are shocked to note that the Revenue authorities have renewed Khasmahal lease in favour of the Petitioner-Trust in Balu Lease Renewal Case No. 4 of 2004 for 60 years with retrospective effect from 08.11.1970, executed Renewal Lease Agreement (Annexure-1) & granted permanent Pattadar status in BPL Case No. 20 of 2005 without any authority of law. We have no hesitation to hold that it is a clear case of collusion & fraud.

14. The other irregularities/illegalities that cast suspicion in the minds of the Court are that by virtue of Power of Attorney dated 26.02.2005 the Trust has given power to one Mr. Madhususudhan Khuntia, the Power of Attorney holder, to sell away the land in question in favour of one Govinda Chandra Khuntia & his brothers & one Smt. Sandhyarani Mohanty to whom the Trustees had agreed to sell the said land & received the consideration money of Rupees Thirteen Lakhs although, as per the trust deed, the trustees are not competent to transfer the Trust properties by effecting gift, sale & mortgage etc. Clause-5(Kha) of the Trust deed categorically provides that the Trust has been formed for charitable purpose & Clause-5(Cha) clearly debars the trustees from selling away the Trust properties, but the activities of the Trustees to sell away the property unveils their hidden mala fide intention & connivance with the proposed buyers. The relevant portion of Clause-5(Cha) is reproduced below.

(cha) The trustees shall not be competent to raise claim to the effect that the scheduled properties are their personal properties at any point of time & the property described in the schedule shall not be sold or put to auction for the personal debts of the trustees. The trustees shall not be competent to transfer or charge the properties described in the schedule by effecting gift, sale, mortgage etc. whatsoever & if that is so done the same shall be void & inadmissible everywhere & in all Courts of law.

The Trustees being the creatures of the Trust cannot act contrary to the purpose for which the Trust has been created. In the instant case the power of attorney had been executed on 26.02.2005 in favour of Mr. Khuntia inter alia authorizing him to sell the property at Puri for which the trustees received consideration money & thereafter the renewal lease deed agreement has been executed by the said Power of Attorney holder Mr. Khuntia on 3rd day of October, 2005. Thus, all these documents appear to have been created in the year 2005 only with an intention to grab the government land.

Moreover, in the Trust deed dated 30.06.1971, the author of the Trust late Surendranath Ghosh declared that he had decided to execute a deed of trust for performing the works as stated in the Trust deed properly from out of the income of the properties received by him by way of inheritance from paternal side & being purchased by him having his right & possession over the properties. The property at Puri does not come within the purview of these two categories. The author of the Trust who included the land in question at Puri in the schedule to the trust deed dated 30.6.1971 was by that time no more a lease holder of the said land, as the term of lease had expired on 7.11.1970. As stated above, after expiry of the lease on 7.11.1970, renewal of lease was never asked for by the said Surendranath Ghosh during his life time till he expired on 19.1.1973. In any event, on the date of execution of the Trust Deed the author of the Trust was not the leaseholder/owner of the land in question at Puri. The Commissioner of Consolidation, Orissa, Bhubaneswar in his Order Dated 14.7.2006 passed in R.P. No. 69/2005 while dealing with the matter regarding mutation of the land in

question in favour of the Petitioner-Trust remanded the matter to the Tahasildar, Puri for disposal according to law with the following observation:

A perusal of material evidence on record shows that 1988 Settlement Plot No. 126 Ac. 0.218 under Gharbari EK Classification stands recorded in Govt. Khata No. 67 with a note of illegal possession of Surendranath Ghose S 10-Bholanath. The Petitioner prays for mutation of case land on the strength of the Renewal lease deed agreement bearing. Regd. No. 5327 dt. 25.10.2005 executed by the Hon'ble Governor of Orissa in favour of Surendranath Ghosh Trust Estate, Kolkata. In this deed, lease has been granted for two consecutive terms of 60 years from 8.11.1970 to 7.11.2030. In the meantime the record of right for the case land has been finally published on 27.8.1988. The Renewal lease deed has been executed in 2005. As such, the R.P. is remanded to the Tahasildar, Puri for disposal according to law.

In spite of the above observation of the Commissioner of Consolidation, the Tahasildar, Puri recorded the land in question in the name of the Petitioner-Trust without assigning any cogent reason & with utter disregard to the statutory provisions. The Executive Officer, Puri Municipality vide his letter dated 5277 dated 23.11.2005 filed its objection in Municipal Lease Case No. BPL 20/05 before the Tahasildar, Puri to the effect that the land in question belonged to Puri Municipality & as such the Tahasildar, Puri was not competent to grant lease patta in favour of anybody as Writ Petition bearing O.J.C. No. 17404/97 was pending in the High Court & the matter was sub-judice. This objection of the Executive Officer, Puri Municipality has not been considered by Opp. Parties in its proper perspective.

The Lease Case Record No. 20 of 2005 further shows that an application was made to the Collector & District Magistrate, Puri by one Jagannath Bastia on 07.04.2007 with a prayer not to approve Balu Khanda Permanent lease settled by Tahasildar, Puri in Lease Case No. 20 of 2005 in favour of the Petitioner-Trust & to take necessary immediate steps to stop illegal transfer of the said Government land & for resumption as it involves larger interest of the State. Request was also made to enquire into the matter & to give opportunity to the applicant at the time of enquiry to substantiate his allegations. As it appears, this objection has not been considered by the Collector, Puri while approving the settlement made by Opp. Part No. 3, the Tahasildar on permanent Pattadar Status in favour of the Petitioner-Trust vide his Order Dated 25.09.2007 (Annexure-2). In the Writ Petition & written note of submission though it is stated that originally the land in question was leased out in favour of late Surendranath Ghosh on 07.11.1924 for a period of sixteen years, the order of the Collector dated 10.09.2004 reveals that the land in question was leased out in favour of one Binod Behari Dey of West Bengal under lease Agreement Deed No. 1094 of 1928 for a period of sixteen years from 07.11.1924 as per letter No. 122 dated 24.07.2004 of R.I., Puri.

15. The fact situation shows that the renewal of lease with retrospective effect

from 08.11.1970 for sixty years in favour of the Petitioner-Trust in Balu Lease Renewal Case No. 4/2004, execution of Renewal Lease deed dated 03.10.2005 & settlement of lease land on permanent Pattadar status in BPL Case No. 20 of 2005 are nothing but the outcome of a massive collusion & fraud. The Apex Court in Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers,), held as under:

Fraud & collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to wing me into the easy hearted man & trap him into snares". It has been defined as an act of trickery of deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives & is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, & therefore a misrepresentation, if it was at the material date false in substance & in fact. Section 17 of the Contract Act defines "fraud" as an act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false.

In a recent decision, the Apex Court in State of Orissa and Ors. v. Harapriya Bisoi (2009) 12 SSC 378 scathingly pulled up government officials for their involvement in dealing with government properties in illegal & collusive manner. The Court cannot be a party to a case founded on massive frauds, illegalities & irregularities. The Court has a solemn duty to lift the veil to arrive at the truth.

16. Law is well settled that every action of the State & its instrumentality should be fair, legitimate & above board & without any affection or aversion. (See Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, ; E.P. Royappa Vs. State of Tamil Nadu and Another, and State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others,).

The land in question appears to be a valuable land because of its locational advantage & commercial use. In case the Government so likes to lease out/ sell such valuable land, the authorities exercising powers for leasing out/selling away the land must not only be alert & vigilant in such matters but also show

awareness of the ways of the present day world as also the ugly realities at their face value or make a less than the closest & best attention approach to guard against all pitfalls. [See Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others,].

17. Considering all the aforesaid facts & circumstances of the case, we are of the view that the present case is a clear case of fraud, manipulation & collusion. We, therefore, direct the Opp. Parties to take immediate steps to take possession of the land in question. It would be appropriate for the State to cause necessary inquiry & fix responsibility on the erring officers at whose instance such valuable property of the Government has been leased out in illegal & fraudulent manner, in the light of the direction of the Apex Court in Harapriya Bisoi's case (supra).

18. With the above observation, the Writ Petition is dismissed No order as to costs.

B.P. Das, J.

I agree.