

(2000) 07 OHC CK 0022

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4792 of 1993

Umesh Ch. Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 12(3)

Citation : (2000) 2 OLR 260

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : J. Patnaik, H.M. Dhal, S.K. Patnaik, A.A. Das and B.B. Ray, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

P.K. Misra, J.—The facts giving rise to the present writ application are as follows :

A proceeding under the Orissa Prevention of Land Encroachment (in short, the "Act") was initiated against the present petitioner in respect of Ac. 0.090 decimals of land as evident from Annexure-A to the counter affidavit filed on behalf of the State. Ultimately, an order of eviction having been passed, the present petitioner filed OPLE Appeal No. 46 of 1972 before the Sub-Collector, Koraput, which was disposed of by the appellate authority by order dated 19.1.1973 as per Annexure-2. The appellate authority while confirming the decision relating to eviction in respect of the vacant land under possession of the petitioner directed that the portion of land on which pucca building has been constructed by the petitioner by availing loan from the Government should be settled with him on payment of Salami and requisite fees. However, neither the Salami was paid, nor any order of settlement was effected, but the petitioner continued to remain in possession of the entire land including the vacant land from which he had been directed to be evicted. Subsequently, in the year 1993, a suo motu Revision No. 4/92 u/s 12(3) of the Act was initiated by the Revenue Divisional Commissioner, Southern Division, Berhampur. The Commissioner held that the present petitioner was in occupation of some other land in the very

same town i.e., plot No. 117 under Khata No. 125/48 and as such, the direction regarding settlement of the portion of land on which the pucca building had been constructed, with the petitioner was not proper. Accordingly, the Commissioner has directed that the petitioner should be evicted from the entire encroached land. The aforesaid order under Annexure-3 is being impugned in the present writ application.

2. It appears that the order passed by the appellate authority in the year 1973 remained unchallenged for a period of twenty years. It further appears from the copy of the sale deed produced by the petitioner that the other land under possession of the petitioner appertaining to Plot No. 117, Khata No. 125/48 has already been sold by him in the year 1977. These aspects were not considered by the Commissioner in the revision. Though there is no period prescribed for initiating a suo motu revision under the Act, several decisions of this Court have laid down that such proceedings should be initiated within a reasonable period. By no stretch of imagination, period of twenty years can be construed as a reasonable period. Moreover, the petitioner having already sold the other land under his occupation, he would suffer immense hardship if he is evicted from the land upon which he has constructed his residential house by availing loan from the Government.

3. Having regard to all the above facts and circumstances, I think interest of justice would be served by modifying the order passed by the revisional authority in OPLE Revision No. 4/93 and confirming the order passed by the appellate authority under Annexure-2. In other words, the land over which the petitioner has constructed a house by obtaining Government loan shall be settled with the petitioner on payment of Salami and fees. The petitioner undertakes to vacate the balance portion of the land as per the direction contained in Annexure-2, within a period of two months from today. The matter relating to fixation of Salami and payment of other fees should be finalised by the opp. parties within a period of three months from the date of receipt of this order and the amount shall be paid by the petitioner within a period of two months thereafter.

4. Subject to the aforesaid direction, the writ application is disposed of.