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**(2016) 06 OHC CK 0016**

**In the Orissa High Court**

**Case No :** W.P. (C) No. 14296 of 2015 (In the matter of an application under Articles 226 and 227 of the Constitution of India)

Usthi Foundation India

APPELLANT

Vs

State of Odisha

RESPONDENT

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**Date of Decision :** 20-06-2016

**Acts Referred:**

**Citation :** (2016) 164 AIC 911

**Hon'ble Judges :** Kumari S. Panda and Shri K.R. Mohapatra, JJ.

**Bench :** Division Bench

**Advocate :** M/s. S.K. Samantaray, S.C. Tripathy, N. Sahoo, M. Das and B. Panda, Advocates, for the Appellant; Mr. S.N. Mishra, Addl. Government Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K.R. Mohapatra, J.&mdash;The petitioner in this writ petition assails the decision/order dated 16.02.2015 passed by the Chief Minister of Odisha in File No. GAD-CA4-INST-0008-2014 (for short, 'the Government file) communicated by the Additional Land Officer vide letter No. 9941 dated 22.04.2015. The petitioner further seeks for a direction to the Chief Secretary-opposite party No. 1 to place the file along with the application dated 29.05.2015 (Annexure-7) before the Chief Minister for reconsideration of its case for allotment of a piece of land in its favour.

2. The petitioner, a registered Welfare Society, established 'Usthi Hospital & Research Centre' over a piece of land allotted to it by the Government of Odisha under the provisions of Government Grants Act, 1895. On the adjacent vacant plot of the allotted land over which the hospital is running, the petitioner installed a transformer for smooth power supply to the hospital. Subsequently, the petitioner submitted an application on 18.5.2009 to the Director of Estate (opposite party No. 3) for allotment of an additional piece of land measuring 65 ft. x 100 ft. in Revenue Plot No. 1592(P) under Khata No. 1427 of Mouza Jaydev

Vihar, Bhubaneswar, Unit-16, (for short 'the case land') over which it has already installed a transformer. The case land situates adjacent to the allotted Plot No. N4-1/1, IRC Village, Nayapalli, Bhubaneswar measuring Ac.0.138 decimals over which 'Usthi Hospital and Research Centre' exists. The petitioner applied for allotment of the case land for the purpose of expansion of the existing hospital and upgrading it to a Multi Super Speciality Hospital with different modern facilities and technology. As usual, the authorities did not take any action on the application submitted by the petitioner. On the other hand, Bhubaneswar Development Authority (for short 'BDA') initiated UAP case No. 345 of 2009 for removal of the transformer from the case land. The petitioner finding no other alternative, filed W.P.(C) No. 13703 of 2009 before this Court. By order dated 16.09.2009, this Court disposed of the writ petition with a direction to consider the application dated 18.05.2009 of the petitioner and to dispose of the same in accordance with law on its own merit. It was further directed to maintain status quo in respect of possession of the case land till disposal of the application of the petitioner. On receipt of the order passed by this Court, the Director of Estate-opposite party No. 3 sought for certain clarification from the BDA to which BDA vide its letter dated 21.6.2010 (Annexure-5) replied that as per the provisions of the Zoning Regulation, only public utility facilities like health centres are permissible in the zone. Accordingly, the Director of Estate in its Noting No. 24 dated 19.12.2014 in the Government file noted that Government orders may be obtained for allotment of the case land in favour of the petitioner. Subsequ No. entry, after a detailed discussion, the Director of Estate in its Noting No. 28 dated 30.12.2014 in the said Government file recommended for approval of the Government for allotment of the case land in favour of the petitioner. Vide Noting No. 29 dated 31.12.2014, the Special Secretary, G.A. Department also recommended in the said file to obtain the approval of the Government. Vide Noting No. 30 dated 04.01.2015, the Chief Secretary approved the proposal given by the Special Secretary, G.A. Department and forwarded the file to the Chief Minister for his approval for allotment of the case land in favour of the petitioner. The Chief Minister, however, vide Noting No. 31 dated 16.2.2015 in the said Government file rejected the proposal/recommendation of the authorities of the Government of Odisha with the following observation.

"As a matter of principle GA Department should not settle encroached land in Bhubaneswar as it gives the impression that encroachments can be regularised at a later date and encourage others to take a similar course of action. Hence, the proposal is rejected."

3. The petitioner received the said order/decision of the Chief Minister vide Letter No. 9941/CA/Ind-43/97 dated 22.4.2015 of the Additional Land Officer, G.A. Department, Government of Odisha. The petitioner subsequently made a representation on 21.5.2015 (Annexure-7) to the Chief Minister to reconsider its case for allotment of the case land in its favour. It is alleged by the petitioner that no action has yet been taken on the said representation of the petitioner. On the other hand, pursuant to the order of the Chief Minister as per Noting No. 31

dated 16.2.2015, the Estate Officer, G.A. Department initiated suo motu O.P.P. Case No. 21 of 2015 against the petitioner under the provisions of the Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972 for eviction of the petitioner from the case land over which he has installed a transformer. In such circumstances, the petitioner prayed for the aforesaid relief.

4. In course of hearing, Mr. S.N. Mishra, learned Addl. Government Advocate raised an objection with regard to maintainability of the writ petition for which this Court vide order dated 5.1.2016 directed the learned counsel for the petitioner to appraise this Court about the maintainability of the writ petition since a prayer has been made in the writ petition to quash the noting of the Chief Minister made in the note sheets.

5. Mr. Samantray, learned counsel for the petitioner reiterating the pleadings of the writ petition and referring to the relevant documents including the relevant note sheets of the Government as under Annexure-6 series contended that since Noting No. 31 dated 16.2.2015 is a decision taken by the Chief Minister rejecting the proposal for allotment of the case land in favour of the petitioner, the same is amenable to the writ jurisdiction under Article 226 of the Constitution of India. He further contended that the decision taken by the Chief Minister is neither supported by reasons nor he has given an opportunity to the petitioner to place the materials in support of its case. The Chief Minister has not given any opinion or finding on the recommendation made by the authorities of the Government of Odisha and has passed the impugned order. He further contended that at the time of allotment of Plot No. N4-1/1 measuring an area of Ac. 0.138 decimals over which Usthi Hospital & Research Centre is existing, the Government has assured it to allot more land. As vacant place was available adjacent to the petitioner's hospital, Lion's Club has encroached a piece of land. Another portion is being occupied unauthorisedly by some Milkmen by putting up 'Khatal's' (cow-shed) over the same. Thus, in order to prevent further encroachment and with a bona fide expectation that the case land would be allotted in favour of the petitioner, the petitioner installed a transformer for smooth supply of electricity to the hospital. The land is earmarked for establishment of Health Centres as per the provisions of Zoning Regulation of the State Government. All the authorities of the Government of Odisha including the Chief Secretary recommended for allotment of the case land in favour of the petitioner. There is also no impediment in allotting the case land in favour of the petitioner. He further submitted that the Director of Estate vide its Noting No. 28 dated 30.12.2014 has also recommended for payment of double the land premium to the tune of Rs. 1,36,11,112/- by the petitioner in case the Government approves the allotment of the case land. The Chief Minister without taking into consideration any of the developments stated above most mechanically rejected the proposal for allotment of the case land in favour of the petitioner, which is patently illegal and violative of the principles of natural justice and the same is perverse. Thus, he prayed to quash the impugned order rejecting the proposal for allotment of the case land by the Chief Minister.

6. Mr. S.N. Mishra, learned Addl. Government Advocate reiterating the stand taken in the counter affidavit submitted that the writ petition is thoroughly misconceived and the same is not maintainable as the petitioner has only challenged the Noting No. 31 dated 16.2.2015 of the Chief Minister. The Government in a drive for eviction of unauthorized occupants have initiated O.P.P. Case No. 21 of 2015 (L) in respect of the case land. Likewise O.P.P. Case No. 29 of 2015 (L), O.P.P. Case No. 30 of 2015 (L), O.P.P. Case No. 31 of 2015 (L) and O.P.P. Case No. 32 of 2015 have also been initiated against unauthorized occupants, who have put up 'Khatahs' and also against the Secretary of Lion's Club for unauthorized occupation of Plot No. 1592 (P) in the same mouza. Though in the meeting of the Site Selection Committee held on 29.9.2015, a recommendation was made for allotment of the case land in favour of the petitioner subject to payment of prevailing land premium keeping in view the similar instance, it was suggested to charge the land premium at double the prevailing rate which comes to Rs. 1,36,11,112/-. Subsequently, the proposal for leasing out the case land in favour of the petitioner was turned down by the Chief Minister. He further submitted that it was a travesty of truth on the part of the petitioner that he had installed a transformer over the case land as per the assurance of the authorities of the Government for allotment of the same in its favour. The impugned Noting No. 31 dated 16.2.2015 of the concerned Government file is based on sound reasoning and proper appreciation keeping in view the present drive for eviction of encroachment from the Government land in Capital. The Chief Minister, who is the ultimate authority, took into consideration the proposal made by the authorities of the Government of Odisha and he in his wisdom thought it proper not to lease out the case land in favour of the petitioner, which is based on sound reasoning. Thus, the same needs no inference. Further, the petitioner doesn't challenge the competence of the Chief Minister to take such a decision. The so-called representation of the petitioner dated 29.5.2015 stated to have been submitted to the Chief Secretary for reconsideration of its prayer for allotment of additional land is not available on record and the same is an afterthought of the petitioner. The Government have an unfettered discretion under Government Grants Act, 1895 to impose any condition, limitation or restriction in its grants and the rights and obligation of the grantee would be regulated only according to the terms of the grant itself, though they are inconsistent with the provisions of statute or common law. Further, relying upon a decision in the case of M/s. Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. v. The Government of Tamil Nadu, reported in AIR 1997 SC 1368, Mr. Mishra submitted that the Government would stand insulated from the tentacles of statutory law. Sections 2 and 3 of the Government Grants Act, 1895 are so framed as to confirm unfettered discretion on the Government to enforce any condition or limitation or restriction in all types of grant made by the Government to any person. Thus, the petitioner being an unauthorized occupant and an illegal encroacher over the case land has no semblance of right to claim for allotment of the case land and leasing out of the same in its favour. Thus, the decision taken by the Chief Minister is reasonable and no infirmity can be found

with the same. Thus, he prayed for dismissal of the writ petition.

7. Though a specific stand is taken by the petitioner to the effect that it was given assurance for allotment of additional land, no material was produced before this Court in support of such plea. The opposite parties in their counter affidavit specifically denied the contention of the petitioner regarding assurance for allotment of additional land. In that view of the matter, the plea taken by the petitioner to the effect that it was given assurance for allotment of additional land is not acceptable.

8. It is pleaded and contended by the opposite parties that the writ petition is not maintainable for the reason that the petitioner has only challenged the Noting No. 31 dated 16.02.2015 of the Chief Minister in the concerned Government file. However, the petitioner along with Misc. Case No. 807 of 2016 arising out of this writ petition has filed the decision of the Chief Minister (Noting No. 31 dated 16.02.2015) with a communication vide Letter No. 9941 dated 22.04.2015 by the Additional Land Officer, G.A. Department, Government of Odisha (Annexure-9), wherein the petitioner is intimated that the Government after careful consideration rejected the proposal for allotment of additional land adjacent to Usthi Hospital & Research Centre to the petitioner. Thus, on a conjoint reading of Annexure-6 series, i.e., the note sheets of the Government in the concerned Government file and Annexure-9, rejecting the proposal for allotment of the case land, it is crystal clear that the Government has taken a decision not to lease out the case land in favour of the petitioner by rejecting the proposal of the authorities of the Government of Odisha. Since the authorities of the Government of Odisha as well as the Chief Minister, who is the Chief of the Executive, in exercise of their public duty, have either recommended the case of the petitioner for allotment of additional land or rejected such recommendation, the same are subject to judicial scrutiny in exercise of power conferred on this Court under Article 226 of the Constitution of India. Thus, this writ application is maintainable.

9. Admittedly, before making an application for allotment/lease of additional land (the case land), the petitioner had installed a transformer over the case land, which is nothing but an encroachment. As held earlier, no material was placed before this Court to come to a conclusion that the State Government while leasing out Plot No. N4-1/1 in favour of the petitioner over which the hospital is existing had assured that additional land would be leased out in favour of the petitioner. In that view of the matter, the petitioner is an encroacher in respect of the suit land. The impugned Noting No. 31 dated 16.02.2015 discloses that the Government has decided on principles that G.A. Department should not settle the encroached land in Bhubaneswar in favour of the encroacher. The Government as a matter of principle has taken a conscious decision not to settle/allot land in favour of an encroacher. This Court should not interfere with the same, more particularly when it is neither opposed to the public interest nor the same is violative of any statutory provision or Constitution. On the other hand, if

an encroacher is settled with the land which he has encroached, it will give a wrong message to the society and would encourage others to take similar course of action as observed by the Chief Minister. This Court does not find any unreasonableness or illegality in such decision. It is submitted by the learned Additional Government Advocate that encroachers, namely, Lion's Club as well as some of the individuals, who have put up 'Khatahs' (cow-shed) over a portion of Plot No. 1592 (P), have been booked under the provisions of the Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972 and O.P.P. Case Nos. 29(L), 30(L), 31(L) and 32 (L) of 2015 have been initiated against them. In that view of the matter, this Court does not find any infirmity or illegality in the impugned order/decision of the Chief Minister dated 16.2.2015 passed in File No. GAD-CA4-INST-0008-2014, which was communicated to the petitioner vide Annexure-9. Thus, this writ petition merits no consideration and the same is accordingly dismissed.

10. S. Panda, J.—I agree.