

IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. No. 5566 of 1998

M/s. Larsen & Toubro Ltd. & Another ***Petitioners***

Mr. N.K.Sahu, Advocate

-versus-

State of Odisha & Others ***Opp. Parties***
Mr. D.K. Mohanty, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAİK**

Order No.

**ORDER
01.08.2022**

17. 1. The challenge in the present petition by Larsen & Tubro Ltd. (Petitioner No.1) (L&T) and its shareholder (Petitioner No.2) is to an order dated 6th April, 1998 passed by the Collector, Sundargarh in Misc. Case No. 3 of 1983 seeking to resume land of an area of Ac. 166.65 dec. in Kansbahal, Sundargarh District. The Collector invoked the proviso to Section 38(b) of the Orissa Land Reforms Act, 1960 (OLR Act) on the ground that the said land had not been utilized for more than five years after it was allotted.
2. The background facts are that the predecessor-in-interest of L&T, Utkal Machinery Ltd. (UML) was allotted the land ad measuring Ac. 236.75 decimals and lease hold area of Ac.386.71 dec. for the construction of a machinery manufacturing factory,

administrative office, colonies, school etc. Two deeds of transfer/assignment for registered in favour of UML on 1st October, 1962 and 22nd May, 1966 respectively.

3. It is stated that the UML did construct the compound wall, factory sheds, Offices, Health Centre, Dispensary etc. and also took up plantation of different varieties of trees inside the factory as far as the land to the extent of Ac.236.75 dec as well as the lease hold land was concerned.

4. UML was amalgamated with L&T by an order dated 7th December, 1982 of the Company Judge of this Court in the Company Act Case No. 8 of 1982. All properties of UML vested in L & T.

5. On 25th April, 1983 the aforementioned Misc. Case No. 3 of 1983 was registered against UML under Section 38(b) of the O.L.R. Act, by the Collector, Sundargarh. For some reasons L & T was not impleaded as a party and no notice be issued to it. At one stage L&T filed OJC No.3657 of 1998 in this Court aggrieved by the continuation of the above proceeding. The said writ petition was disposed of on 18th March, 1998 by this Court granting liberty to the Petitioner to file a comprehensive objection challenging the propriety and justification of continuation of the proceeding. Thereafter the impugned order was passed by the Collector directing resumption of Ac. 165.68 of land.

6. One of the first objection raised by Mr. Sahu, learned counsel appearing for the Petitioners, is the non-applicability of Section 38 (b) of the OLR Act to resumption of lands allotted.

7. Section 38 reads as under:

38. **Exemption from ceiling** - Save as otherwise provided in this section, the provisions of this Chapter shall not apply to-

(a) lands held by a privileged raiyat :

Provided that nothing in this clause shall apply to any land held by a raiyat under a privileged raiyat ;

(b) lands held by industrial or commercial undertakings or comprised in mills, factories or workshops, where such lands are necessary for the use, for any non-agricultural purpose, of such undertakings, mills, factories or work-shops:

Provided that where the said lands are not actually used within a period of five years from the commencement of the Orissa Land Reforms (Amendment) Act, 1973, for the purpose for which they had been set apart, the Collector may, after giving notice to the persons concerned, by order, direct that the provisions of this Chapter shall apply to the said lands:

Provided further that the Collector may, on an application made to him in this behalf and on being satisfied that it is necessary or expedient so to do, extend the said period of five years by such further period or periods as he may deem fit, so, however, that the total period of such extension shall not exceed in any case, eight years;

(c) plantations;

Explanation – “Plantation” means any land used principally for cultivation of coffee, cocoa or tea (hereafter in this Explanation referred to as “plantation crops”) and includes lands used for any purpose ancillary to the cultivation of the plantation crops or for the preservation of the same for their marketing;

(d) lands held by any agricultural university, agricultural school or college, or any institution conducting research in agriculture.”

8. The consequence of the applicability of the proviso to Section 38 (b) of the OLR Act is only that the provisions of the Chapter in which the provision occurs would apply to the lands in question. The Chapter in question is Chapter-IV of the OLR Act which is titled ‘ceiling and disposal of surplus land’. There is nothing in Section 38 (b) of the O.L.R. Act that speaks of resumption of land that has been allotted by the Government to an entity. Even in the counter affidavit filed on behalf of the Collector there is no justification shown for invocation of Section 38 (b) of the OLR Act for resuming the unutilized land.

9. Mr. D.K.Mohanty, learned AGA is unable to provide any satisfactory explanation why the proviso to Section 38 (b) of the OLR Act would apply in a case of this nature. Even assuming that some portion of the land allotted to UML remained unutilized for more than five years, the OLR Act would not come into play for the purpose of resumption of the land.

10. It must be noticed here that while issuing notice in the present petition way back on 21st April, 1998 this Court stayed the operation of the impugned order. In the meanwhile, according to Mr. Sahu even the land to the above extent Ac.169.88 decimals has been utilized. According to him, this includes land encroached by outsiders to an extent of Ac. 34.75dec. It is stated that vacant land to an extent of Ac.47.81 dec has been reserved

for 'expansion of fabrication'. Mr. Mohanty, learned AGA, on the other hand submits that perhaps the above utilization of land was after the interim order was passed by this Court and during the pendency of the present writ petition.

11. In any event, the ground situation has obviously changed in the last 24 years when the interim order was operative. Consequently, while quashing the impugned order dated 6th April, 1998 passed by the Collector, Sundargarh in Misc. Case No. 3 of 1983, the Court permits the Collector, Sundargarh to undertake a survey of the land in question in order to ascertain if any portion thereof still remains unutilized and after issuing notice to the Petitioner No.1 to proceed further in the matter in accordance with law.

12. The writ petition is disposed of in the above terms.

13. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge