

IN THE HIGH COURT OF ORISSA AT CUTTACK
O.J.C. No.5244 of 2002

Damodar Mohapatra

....

Petitioner(s).

Mr.Ashok Mohanty, Sr.Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr.S.Ghose, AGA

CORAM:
JUSTICE BISWANATH RATH
ORDER
21.09.2022

Order No.

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1. Heard learned counsel appearing for the parties.
2. This writ petition involves the following prayer:

“It is, therefore, prayed that Your Lordships be graciously pleased to admit this writ application, issue a Rule Nisi asking the opp. parties to show cause as to why the order dt. 28.2.2001 passed in Municipality Misc. Case No.1/2001 under Annexure-6 shall not be quashed and if the Opp. Parties fails to show cause or show insufficient cause to make the said rule absolute and issue a writ in the nature of Mandamus/Certiorari directing the Opp. Parties to accord necessary permission to the petitioner to alienate Plot No.136(Pt.) measuring an area of Ac.072.6 decimals bearing Holding No.836 L Circle IV, Zamabandi No.166 170 correspond to Hal Khata No.843. Hal Plot No.1077 of Mouza-Bali Sahi, Unit-II, Puri;

And pass any other order/orders affording complete relief to the petitioner;;

And for this act of kindness, the petitioner as in duty bound shall ever pray.”

3. In the challenge of the petitioner to the order at Annexure-5 whereby the collector Puri has declined to entertain the prayer of the petitioner for permission of sale of land involved therein vide Municipality Misc. Case No.1 of 2001. Taking to the pleading in the writ petition and also the discussion in Annexure-5 reading together with input given in annexure-4, Mr. Mohnaty, learned senior counsel claims once the Collector has come to observe the first lease involved was granted on 10.01.1944 by Puri Municipality in favour of one Pramodebara Devi, Wife of Anathabandhu Bhattacharya and also records further sale of the land involved therein to different parties

involving once such property in favour of Damodar Mohapatra, the present petitioner, there was no other option on the part of the Collector than to allow the application keeping in view the benefit provided through Annexure-4. Request is thus made for interfering in the impugned order and setting aside the same thereby allowing Municipality Misc. Case No.1 of 2001.

4. Mr.Ghose, learned counsel appearing for the contesting opposite party in reference to disclosure in the lease deed submitted by way of foundation involving such application appears to be on the basis of Annexure-1, a document was created on 30.07.1983 thereby there arose doubt if the transaction involving petitioner involving the property in the lease is prior to 1974 or not so as to attract the benefit under Annexure-4?. It is in the circumstance, Mr,Ghose, submits there has been right consideration of the issue by the Collector thereby rightly rejecting the request of the petitioner requiring no interference in the impugned order by this Court.

5. Considering the rival contentions of the parties, this Court from the pleadings of the petitioner finds, as discussed by the Collector in his order impugned herein in paragraph-6, petitioner has a pleading where along with Gangadhar Mohapatra and Ananta Mohapatra renewed lease from Puri Municipality in 1984 and thus there is existence of renewed lease vide Annexure-1. It is also claimed in paragraph-7 that there has been consequential preparation of mutation record in favour of Gangadhar Mohapatra and Ananta Mohapatra vide Annexure-2. In 1998, it appears the land involved therein has been alienated in favour of Ramesh Chandra Panda and the petitioner along with Gangadhar and Ananta Mohapatra. By registered deed on 5.5.1998 Gangadhar Mohapatra and Ananta Mohapatra relinquished their share in the aforesaid property for

petitioner consideration amount and the petitioner became exclusive owner in possession in respect of rest 72.5 decimals. Petitioner also claims support through Annexure-3, the relinquishment deed. It is in this background, proceeding to the discussion by the Collector in the impugned order, this Court finds on the factual aspect the Collector appears to have recorded as follows:-

“From the record it is seen that the land has been recorded as Gharabari and in the Hal R.O.R. there is a note in the remarks column regarding possession of Damodar Mohapatra, Gangadhar Mohapatra Ananta Mohapatra S/o. Lokanath Mohapatra by way of lease. In the special column it has been mentioned that the land is under control of the Municipality as per Municipal Act. The 1st lease of the land was granted on 10th Jan. 1944 by Puri Municipality in favour of Smt. Pramodebara Devi W/o. Anathabandhu Bhattacharya. Thereafter this land has been sold to several persons and ultimately Municipality sanctioned lease of 116.6 dec. of land in favour of Gangadhar Mohapatra, Ananta Mohapatra, Damodar Mohapatra. Damodar Mohapatra purchased the share of other two brothers of this lease hold land and became the exclusive owner in possession over 72.6 dec. of land which was mutated in favour of Damodar Mohapatra by Municipality and the lease is in force till 29.7.2003. Now Damodar Mohapatra has applied for permission for sale of the land in order to meet the expenses relating to legal necessity and medical treatment.

Sri Mohapatra had approached the Hon'ble High Court in this connection and the Hon'ble Court has given direction in OJC No.11213/2000 calling upon the Collector, Puri to dispose of the application as per annexure-V i.e. (prayer for permission to sale the lease hold property) in accordance with law within a period of two weeks of the date of communication of the present order. While considering the application the Collector is required to consider the relevant notification including the annexure-V.

The Revenue Department vide their letter No.28892 dt.21.6.97 (Annexure-IV to the application in OJC No.11213/2000) have delineated the principles governing lease of Municipal land at Puri. The present case land comes within the perview of paragraph 3 of the said letter where it has been stipulated that the lease granted by the Municipality as are valid otherwise under Orissa Municipal Act should be examined and decided through suomotu case. This suomotu case should be initiated u/s 25 of the O.S.S. Act 1958. After the letter was received a notice was published in the daily news papers for information of general public regarding filing of application for regularization of Municipal lease in May, 1999. The applicant has not indicated if he has applied for regularization of the lease in his favour in response to the said advertisement or any suomotu case has been initiated by the Tahasildar.”

Reading the above, this Court finds there is clear recording of the claim of the petitioner that there already involved a first lease of the land by Puri Municipality on 10.01.1944 in favour of Pramodebara Devi, Wife of Anathabandhu Bhattacharya and there has been subsequent sale of this land to several persons including the petitioner and thus the petitioner along with other purchasers are in

exclusive possession of the property of 72.6 decimals. There has been also recording this land has already been mutated in favour of the Damodar Mohapatra, the petitioner herein by the Municipality and the lease was in force till 29.07.2003. This Court here for the parties relying Annexure-4, looking to the benefit provided through Annexure-4 finds Annexure-4 is a notification issued by the competent authority making it clear that all lease transactions taking place prior to 1974 are all regularized and land rent involving all such land can be collected or to be paid to the Tahasildar. It is in the circumstance, this Court finds a clear recording by the Collector that the application involved the land coming through the lease prior to 1974. In the circumstance and for the benefit granted through Annexure-4, this Court finds decision of the Collector in declining to grant the application of the petitioner became contrary to his own recording as well as the benefit provided through Annexure-4.

6. In the circumstance, this court finds the impugned order at Annexure-4 is not sustainable in the eye of law. Interfering in the order at Annexure-4 and for finding there is clear recording by the Collector that the land involved flows through lease deed prior to 1974, this Court finds there is no difficulty in allowing the permission to the Petitioner. This Court therefore allows the Municipality Misc. Case No. 1 of 2001 in allowing the required permission in favour of the petitioner to sale the land involved.

7. In the result the Writ Petition succeeds. There is no order as to cost.

(Biswanath Rath)
Judge