

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.7511 of 2012

(Through Hybrid mode)

Rajni Kanta Sahoo and others ***Petitioners***

-Versus-

State of Odisha and others ***Opposite Parties***

For Petitioners: Mr. Sanjay Kumar Samantaray, Advocate
For Opposite Parties: Mr. A. K. Nanda, Addl. Govt. Advocate

CORAM:

**JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA**

**JUDGMENT
23.11.2022**

ARINDAM SINHA, J.

1. Mr. Samantaray, learned advocate appears on behalf of petitioners and submits, his clients purchased the land upon prior permission obtained under section 22(1)(b) and (4) in Orissa Land Reforms Act, 1960 on order dated 30th June, 1980 in Revenue Misc. Case no.26 of 1980 and further obtained permission under section 6-A on order dated 7th July, 1980 in Misc. Case no.55 of 1980.

2. His client has challenged order dated 14th January, 2002 of the Additional Tahasildar in directing resumption of the land. He submits, the resumption proceeding was commenced

purportedly relying on **judgment dated 29th January, 1996** of a Division Bench of this Court in **Sarata Kumar Sahoo v. Additional District Magistrate**. He relies on a later Division Bench **judgment dated 12th January, 2002** in **Uttama v. State**, reported in **2008 (1) CLR-169**. He submits, the latter judgment clearly said that this Court per se did not authorize the Additional Tahasildar, Bhubaneswar to initiate proceeding under section 3B of the Act in all lease cases.

3. Mr. Nanda, learned advocate, Additional Government Advocate appears on behalf of State and draws attention to impugned order. He submits, there is clear recital regarding authority for commencing the case. Following from impugned order is reproduced below.

“Case record is put up to me today. Hon’ble High Court of Orissa, while disposing of the O.J.C. No.9449/1993 in its order dated 29.1.96 has directed the State Govt. to enquire into the matter relating to lease of land in Bhubaneswar Tahasil through a senior officer in the rank of Secretary and to enquire whether Tahasildar has settled the land by misuse of power, Hon’ble High Court further in its order dated 15.10.98 has also directed to Govt. to examine whether the cases are covered under 3-B of the OGLS Act, 1962.

In obedience to the direction of the Hon’ble High Court of Orissa in the above OJC, this case was initiated and notice was issued to the lessee, affected parties local Sarapanch and concerned R.I. and affixed the same in the office of the Tahasildar, Bhubaneswar’s notice Board for wide

publication and inviting objection within a stipulated period by beat of drum.”

He submits further, the land was leased out for agricultural purposes. It will appear from impugned order that on enquiry, no trace of agricultural activity was found in the land. Furthermore, under section 6-A there was bar on transfer of the land for ten years but, petitioner obtained transfer within that period.

4. On query from Court parties submit, the land falls within area declared prior to year 2002, to be a municipal area.

5. We extract and reproduce a passage from the last paragraph in **Sarat Kumar Sahoo** (supra).

“xx xx xx A probe is necessary to ascertain as to the extent of such lands settled by the Tahasildar and their present use. We, therefore, direct the State Government to enquire into the matter through a senior Officer in the rank of Secretary and on enquiry if it comes to light that the Tahasildar by misuse of power has settled the lands, then necessary legal and administrative action should be taken against him and further if the lands so settled are used otherwise than the purpose, Government should proceed against the lessees in accordance with law. In the result, the application is dismissed, but in the circumstances of the case, there shall be no order as to costs. A copy of this judgment be sent to Chief Secretary to Government of Orissa.”

(emphasis supplied)

So it was that in **Uttama v. State** (supra) the later Division Bench said by the passage as in the paragraph reproduced below.

*“It has been held in the case of **Smt. Sandhya Rout & Ors. (supra) and Krushna Chandra Panda & Anr. (supra)** that by the order of this Court passed in O.J.C. No.9449 of 1993, a direction was issued to cause enquiry with regard to the properties leased out in Bhubanesar to different persons by the Tahasildar and if irregularities are found, to initiate necessary proceedings. Such enquiry was directed to be conducted by an officer not below the rank of Secretary. No such enquiry has been conducted and, as such, the order of this Court per se did not authorize the Addl. Tahasildar, Bhubaneswar to initiate proceeding under Section 3-B of the Act in all lease cases. We further find that Section 3-B of the Act contemplates that any officer authorized under Clause (e) of Section 3 may resume any land settled by him, if he has reasons to believe that the person with whom the land was settled has used it for any purpose other than that for which it was settled.”*

(emphasis supplied)

6. From above judgments we find that direction upon State made in **Sarat Kumar Sahoo** (supra) to initiate a probe and the direction upon State made in the case considered in **Uttama v. State** (supra), appear to be the same. We are in respectful agreement with view taken in **Uttama v. State** (supra) in that, the direction did not require State to initiate probe in all lease cases.

7. Petitioner in paragraph 4 has said, inter alia, as extracted therefrom and reproduced below.

“xx xx xx After expiry of more than seven years from the date of issue of Patta, due to requirement of funds he wanted to transfer the said land as he belongs to schedule caste category prior to execution of Regd. Sale Deed also obtained necessary permission from the competent authority as required under section 22(1)(b) and 4 of The Orissa Land Reforms Act, 1960 vide D. R. No.293 dated 30.06.1980 in Revenue Misc. Case No.26 of 1980 and further obtained permission under Section 6-A granted by the then learned Tahasildar vide Memo No.2993 dated 07.07.1980 in Misc. Case No.55 of 1980 and transferred the entire land in favour of the petitioner no.1 and one Antrayami Sahoo vide Regd. Sale Deed bearing No.5006, dated 18.07.1980 jointly on payment of Rs.4,000/- in presence of two witnesses namely Alekha Kandi and Kulamani Bhoi of his own village and handed over the physical possession to them accordingly. xx xx xx”

(emphasis supplied)

The writ petition was presented on 23rd April, 2012 and interim order obtained by petitioner on 17th May, 2012. On said date itself copy of the writ petition was served upon learned advocate appearing on behalf of State, who, thereafter, neither applied for vacating the interim order nor filed counter. At this stage, Mr. Nanda prays for direction to file counter.

8. We have no reason to disbelieve assertion of petitioner that by order dated 30th June, 1980, predecessor-in-interest of petitioner had obtained permission under section 22(1)(b) and (4) and thereafter by order dated 7th July, 1980, had obtained permission under section 6-A. In the circumstances, State's objection regarding original lessee having dealt with the land within seven years of settlement has no legs to stand. We have perused impugned order very carefully but do not find any reference therein to enquiry made by senior officer regarding grant of original lease.

9. Impugned order is set aside and quashed.

10. The writ petition is disposed of.

(Arindam Sinha)
Judge

(S. K. Mishra)
Judge

R.K.Sethi