

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.7616 of 2003

Adweta Prasad Ray

.... ***Petitioner***
Mr. G. Rath, Advocate

-Versus-

State of Orissa and others

.... ***Opposite Parties***
Mr. D. Mohanty, AGA

W.P. (C) No.7617 of 2003

***Sri Sri Achutananda Mahapursh,
Bije Garoi & another***

.... ***Petitioners***
Mr. G. Rath, Advocate

-Versus-

State of Orissa and others

.... ***Opposite Parties***

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

**ORDER
28.02.2022**

Order No. R.K.Pattanaik, J

08. 1. The Petitioner in W.P. (C) No. 7616 of 2003 invoking the writ jurisdiction of this Court under Article(s) 226 & 227 of the Constitution of India has assailed the legality and judicial propriety of the impugned order dated 18th September, 1987 (Annexure-4) passed in Revision Case No. 669 of 1983 by O.P.No.3 directing O.P.No.2 to cause a fresh enquiry with respect to W.L. Case No.1598 of 1973 vis-à-vis

lease granted to Proforma Opposite Party and its cancellation by order dated 8th June, 1998 (Annexure-5) primarily on the ground that it was accomplished in his absence as well as the lessee.

2. Whereas in W.P.(C) No. 7617 of 2003, the Petitioners on the selfsame ground challenged the impugned order dated 18th September, 1987 passed by O.P.No.3 under Annexure-5 with a similar direction to hold a fresh enquiry on the lease in question granted to the Proforma Opposite Party and its subsequent cancellation by O.P.No.2 vide Annexure-6 in W.L. Case No.1613 of 1973.

3. Both the writ petitions have been clubbed together for disposal since the contesting parties are same with a similar cause of action and for common question being involved.

4. In so far as, the Petitioner in W.P.(C) No. 7616 of 2003 is concerned, it is contended that O.P.No.2 vide W.L. Case No. 1598 of 1973 after holding an enquiry on the direction of O.P.No.3 cancelled the lease granted in favour of Proforma Opposite Party without affording him any opportunity of hearing which is an illegality and in gross violation of principles of natural justice. In fact, the Tahasildar, Bhubaneswar by order No. 1598/73 dated 30th March, 1974 leased out Plot No.2107/3094 measuring an area of Ac. 0.100 decimals of Khata No. 645/84 of Mouza-Andharua in favour of Proforma Opposite Party, who is an

Scheduled Caste as per the provisions of the Orissa Government Land Settlement Act, 1963(here-in-after referred to as 'the OGLS Act') and accordingly, ROR (Annexure-1) was prepared and thereafter, permission was obtained from the concerned authority in Revenue Misc. Case No. 339 of 1988 to sell it in favour of the Petitioner and consequently, it was allowed under Annexure-2, where after, under a registered sale deed bearing R.S.D. No. 8565 dated 31.07.1989, the case land was transferred. It is further contended that O.P. No. 3 initiated a proceeding under Revision Case No. 669 of 1983 in terms of Section 7-A(3) of the OGLS Act in respect of the land leased out in favour of Proforma Opposite Party and directed O.P.No.2 to conduct a fresh enquiry into the matter later to which O.P.No.2 by order dated 8th June, 1998 cancelled the lease under Annexure-5.

5. Similar is the situation in W.P.(C) No. 7617 of 2003 wherein on the direction of O.P.No.3 vide Annexure-5, O.P.No.2 held an enquiry and cancelled the lease under Annexure-6 granted in favour of Proforma Opposite Party which was carried out in absence of the Petitioners so also their vendor.

6. In both the cases, the leases were granted in the year 1974 in respect of Plot No. 2107/3094, Khata No. 645/84 and Plot No. 2107/3105, Khata No. 645/95 of Mouza- Andharua respectively. But thereafter, O.P. No.3 initiated an action in terms of Section 7-A of the OGLS Act which ultimately

resulted in its cancellation by the respective orders of O.P.No.2 which are under question on a common ground that the lessees and the vendors did not have any opportunity of hearing before taking the decisions.

7. The ground upon which O.P.No.3 said to have interfered with and directed fresh enquiry was on account of certain irregularities being noticed in complying the OGLS Rules, 1974 which was finally stood confirmed by O.P.No.2 leading to the cancellation of leases. The contention is that the leases were granted complying the above Rules and/or Lease Principles and in both the cases, the respective Proforma Opposite Party had obtained permission under Section 22(1)(b) and (4) of the Orissa Land Reforms Act, 1960 (in short 'the OLR Act), where after, the sale deeds were executed in the year 1989. It is contended that O.P.No.3 as well as O.P. No.2, who conducted the enquiry did accomplish it in absence of the Petitioners and the lessees.

8. Mr. D.K. Mohanty, learned AGA conceded that the Petitioners, who are the vendees were not before O.P. Nos. 2 & 3 which led to a direction for fresh enquiry as well as cancellation of leases by the orders of O.P.No.2.

9. From the impugned orders i.e. Annexure-5 & 6, it is made to understand that on the ground of some procedural irregularities, such as, absence of enquiry under Rule 3(3) of the OGLS Rules, 1974 and proclamation inviting objections

under Rule 3(5) thereof etc., the leases were cancelled and admittedly, in both the cases, the Petitioners who are the vendees were absent. It is contended that on such a technical plea, the leases could not have been cancelled by O.P.No.2 and that too, in absence of the Petitioners.

10. A decision of this Court in ***Ram Narayan Mohanty Vrs. State of Orissa & Others*** reported in 2003(1) OLR 486 has been cited by the learned counsel appearing for the Petitioners which is an authority vis-à-vis exercise of revisional jurisdiction and on the aspect of following the principles of natural justice before cancellation of lease to the persons whose interest are likely to be affected thereby. In both the cases, the Court finds that since the Petitioners in particular were not before O.P.Nos.2&3, it would be just and appropriate, if the impugned orders under Annexure-4&5 for fresh enquiry are set aside so as to facilitate them an opportunity of hearing following the principles of *audi alteram partem* in order to do substantial justice and accordingly, it is ordered.

11. In the result, the writ petitions stand allowed and consequently, impugned orders (Annexure- 4 & 5) passed by O.P.No.3 and consequential orders under Annexure-5 &6 in respective cases by O.P.No.2 are hereby quashed with a direction to O.P.No.3 to freshly consider the subject matter in question by providing an opportunity of hearing to the Petitioners, who are directed to remain present before him on

6th April, 2022 and in the event, they appear on the date fixed, O.P.No.3 shall do well to dispose it of within four months and in any case, not later than 31st August, 2022.

12. LCR, if any, lying at the disposal of this Court be returned to O.P.No.3 forthwith.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

T.TUDU

