

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.4359 of 2012

Biswanath Seth

.... ***Petitioner***
Mr. A.K. Mahakud, Advocate

-Versus-

State of Odisha and others

.... ***Opposite Parties***
Mr. D.K. Mohanty, AGA
Mr. B. Patnaik for O.P. No. 5

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER
01.08.2022

Order No.

R.K. Pattanaik, J

05. 1. Impugned order dated 21st September, 2011 in Encroachment Revision No.1 of 2011 passed by the learned Additional District Magistrate, Cuttack (O.P.No2) vide Anenxure-4 confirming order dated 11th October, 2011 in Encroachment Appeal No.13 of 2009 under Annexure-3 has been questioned by the Petitioner in the instant writ petition on the grounds *inter alia* that the same is untenable in law and thus, liable to be interfered with and quashed.
2. The land in question which stands recorded under Government Khatian No.438 (Annexure-1) with kism ‘*Abada Jogya Anabadi*’ is the subject of encroachment proceeding. In fact, the Tahasildar, Tigiria (O.P.No.4) initiated Encroachment Case No.6 of 2000 under Section(s) 4, 6 & 7 of the Orissa Prevention of Land Encroachment Act, 1972 (hereinafter referred to as ‘the

OPLE Act') wherein the Petitioner was declared to be a homesteadless person being in unauthorized possession of the case land and instead of directing his eviction deemed it proper to settle the same in his favour by order dated 15th March, 2002, whereafter, the record of right was prepared. The Petitioner, after such settlement of case land and issuance of ROR in his favour in 2002, claims that it was not challenged till 2009 when O.P.No.5 who does not have any locus standi filed Encroachment Appeal No.13 of 2009 under Section 12(1) of the OPLE Act before the Sub-Collector, Athagarh (O.P.No.3) which was disposed of under Annexure-3 setting aside the settlement allowed in Encroachment Case No.6 of 2000. Thereafter, Annexure-3 was challenged before O.P.No.2 who under Annexure-4 upheld the order of O.P.No.3 passed in Encroachment Appeal No.3 of 2009. In other words, the order of settlement dated 15th March, 2002 set aside in appeal was affirmed by Annexure-4.

3. Heard learned counsel appearing for the parties.

4. Mr. Mahakud submits that the Petitioner was in unauthorized possession of the case land having a dwelling house over the same and being a landless and homesteadless person, it was rightly settled with him in accordance with Section 7(2)(a) of the OPLE Act but then, the authorities below erred in overruling it. It is further contended by Mr. Mahakud that in view of Section 7(2)(a) of the OPLE Act, the Tahasildar may settle the land in unauthorized occupation only if the person is landless subject to satisfaction that he together with the land so settled but excluding homestead if any owned by him and the lands possessed by other members of the family living in common mess does not exceed

one standard acre and shall not include more than one-tenth of an acre of land which is being utilized or can be used for purposes of homestead and the aforesaid aspect was not duly examined by the authorities concerned with reference to Section 2(30) of the Orissa Land Reforms Act, 1960. Hence, according to Mr. Mahakud, the impugned order under Annexure-4 passed by O.P.No.2 is unsustainable in law.

5. Mr. Mohanty, learned AGA justified the impugned order (Annexure-4) by contending that O.P.No.4 without proper examination settled the case land in favour of the Petitioner and not only that, the Petitioner suppressed facts regarding landed properties and homestead being owned and possessed by him and his family members combinedly and therefore, the decision under challenge calls for no interference. Mr. Patnaik appearing for O.P.No.5 would contend that the Petitioner is not a landless and homesteadless person being possessed of a homestead land so revealed from order of O.P.No.4 dated 15th March, 2002 itself and therefore, O.P.No.3 rightly set aside the settlement which was then confirmed by O.P.No.2.

6. The term 'landless person' is defined in Section 3(a-1), whereas, the expression 'homesteadless person' is provided with a meaning in Section 3(a-2) of the OPLE Act which means a person together with all the members of his family who are living with him in common mess does not have any homestead land anywhere in the State and owns less than one standard acre of land other than homestead and whose total annual income, together with the annual income of all the members of his family living jointly, does not exceed Rs. 4200/- or an amount which the

State Government may by notification from time to time specify in that behalf.

7. O.P.No.4 on the basis of a report from RI and after a public proclamation said to have allowed the settlement of the case land in favour of the Petitioner on the ground that he together with other members of his family had less than one standard acre with total annual income of the family in common mess not exceeding Rs.15,000/-. Mr. Mohanty submits that by notification dated 23rd February, 2000, the Government in the Revenue Department enhanced the ceiling limit for the annual income of the homesteadless person as defined in Section 3(a-2) of the OPLE Act to Rs.15,000/- instead in supersession of its notification dated 3rd December, 1993. Mr. Mahakud contended that the authorities below did not examine whether the Petitioner along with his other family members living in common mess have had less than one standard acre with the total annual income not exceeding Rs.15,000/- as prescribed in Section 3(a-2) of the OPLE Act. Admittedly, in Annexure-2 series, O.P.No.4 while considering the settlement of the case land in favour of the Petitioner even though noted that he has homestead land of Ac.0.005 dec. besides other landed properties owned individually and with the family which appears to have been taken cognizance of by O.P.No.3 and thereafter, O.P.No.2.

8. On a reading of Section 3(a-2) of the OPLE Act, it would appear that a person is homesteadless if he does not have any homestead land anywhere in the State and that apart, owns one standard acre of land other than homestead and furthermore, whose total annual income along with the annual income of other

family members living with him in common mess does not exceed Rs.15,000/-/. In other words, the triple conditions, such as, being homesteadless; in possession of less than one standard acre of land other than homestead; and total annual income of the entire family not exceeding of Rs.15,000/- are to be fulfilled so as to claim a settlement under Section 7(2)(b) of the OPLE Act. As earlier noted, O.P.No.4 did have the knowledge that the Petitioner owns homestead land of Ac.0.005 dec. but despite that, proceeded to settle the case land in his favour. The Petitioner is firstly to be declared as a homesteadless person and then only, the other two conditions are required to be satisfied before claiming settlement under Section 7(2)(b) of the OPLE Act. Since one of the conditions of being a homesteadless person as defined in Section 3(a-2) of the OPLE Act could not be fulfilled as the Petitioner was found to have homestead land within the State, O.P.No.4 ought not to have settled the case land in his favour and O.P.Nos.2 and 3 were not obliged to examine fulfillment of the other two conditions and having said that, the Court does not find any reason to interfere with the impugned order under Annexure-4.

9. Accordingly, it is ordered.

10. In the result, the writ petition stands dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice