

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20622 of 2014

Kailash Chandra Sahoo ***Petitioner***
Mr. Prabuddha Kumar Pattanaik, Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. Dillip Kumar Mishra,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.04.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. This writ petition has been filed assailing order dated 30th September, 2013 (Annexure-3) passed by the Additional Sub-Collector-Additional Settlement Officer, Bhubaneswar in Appeal Case (Suit) No.2203 of 2013.
3. Learned counsel for the Petitioner submits that in the year 1959-60 the land in question was settled in favour one Sauri Kandi in W.L. Case No.1381 of 1959-60 following due procedure laid down in Odisha Government Land Settlement Act, 1962. Said Sauri Kandi for his legal necessity, sold Ac.1.153 decimal in favour of Smt. Shantilata Mallick, the vender of the present Petitioner vide registered sale deed No.4538 dated 23rd June, 1980. Thereafter, said Shantilata Mallick sold Ac.0.200 decimal out of Ac.1.153 decimal to the present Petitioner vide registered Sale Deed No.4315 dated 9th May, 1983. Accordingly, the Petitioner was in possession over the same paying revenue rent. In the meantime, Additional

Tahasildar, Bhubaneswar initiated Resumption Misc. Case No.296 of 2000 against the vendor's vendor of the Petitioner. However, the Additional Tahasildar after making due enquiry allowed the said resumption misc. case vide his order dated 10th May, 2002 pursuant to observation made by this Court in OJC No.9449 of 1993. The said order was challenged before this Court in W.P.(C) No.10216 of 2006 and this Court vide its order dated 20th November, 2006, quashed the order dated 10th May, 2002 passed by the Additional Tahasildar, Bhubaneswar, and the Tahasildar, Bhubaneswar again confirmed the lease as per the order passed by this Court on 11th January, 2007. Thereafter, the settlement operation started in the village and after proper enquiry draft ROR was issued in the name of Petitioner. Subsequently, the Assistant Settlement Officer, Rental Colony, Bhubaneswar initiated *Suo Motu* Rent Case No.6545 of 2013 and without issuing any notice to the Petitioner directed to record the land in the name of General Administration Department, Government of Odisha vide his order dated 15th July, 2013 (Annexure-2). Assailing the same, the Petitioner preferred Settlement Appeal Case No.2203 of 2013. The Additional Sub-Collector-cum-Additional Settlement Officer, Bhubaneswar, without considering the case of the Petitioner from its proper perspective, erroneously relying upon the order of this Court in OJC No.9449 of 1993, confirmed the order of the Assistant Settlement Officer, Bhubaneswar vide his order dated 30th September, 2013 (Annexure-3), which has no application to the case at hand.

4. It is submitted by learned counsel for the Petitioner that the Petitioner was not given reasonable opportunity to put forth his case before the Assistant Settlement Officer. Further, the Settlement authority has no jurisdiction to sit over the lease granted in favour of the vendor of the Petitioner under the provisions of the Odisha Government Land Settlement Act, 1962 in W.L. Case No.1381 of 1959-60 and issue direction for recording of the land in question in favour of General Administration Department. He further submitted that although he had produced materials and relevant records before the Additional Sub-Collector, Bhubaneswar for consideration, those were not taken into consideration. He instead, passed a cryptic order confirming the order of the Assistant Settlement Officer, Rental Colony, Bhubaneswar without application of judicial mind. It is further submitted that final R.O.R. in respect of mouza- Sampur has not yet been published under Section 12-B of the Odisha Survey and Settlement Act, 1958. (for short 'the Act') Hence, this writ petition has been filed for the aforesaid relief.

5. Mr. Mishra, learned AGA, although does not dispute the legal position, but he submitted that the case of the Petitioner has to be considered on its own merit. In the facts and circumstances of the case, it appears that the Petitioner has not produced materials to establish his right over the land in question. He further submits that it is due to the laches on the part of the Petitioner the impugned order has been passed. He, however, does not dispute that ROR in respect of mouza Sampur has not yet been published.

6. Taking into consideration the submissions of learned counsel for the parties, this Court finds that the Assistant Settlement Officer as well as the Additional Sub-Collector-cum-Additional Settlement Officer, Bhubaneswar while entertaining the Rent case as well as the Settlement Appeal respectively, has not taken into consideration the position of law that the Settlement Authority cannot sit over the lease granted under the provisions of the OGLS Act. In the instant case, there is no material on record to show that the lease granted in favour of Sauri Kandi, the vender's vender of the Petitioner in W.L. Case No.1381 of 1959-60 was ever cancelled. On the other hand, learned counsel for the Petitioner submits that although resumption case was initiated in Misc. Case No.296 of 2000, the Additional Tahasildar, Bhubaneswar after making due enquiry dropped the same vide his order dated 10th May, 2002.

7. In that view of the matter, the ratio decided in ***Smt. Lily Nanda and two others-vs.- State of Odisha and others***, reported in 2018 (I) OLR 559 is squarely applicable to the case at hand. Therefore, the Assistant Settlement Officer as well as the Additional Sub-Collector-cum-Additional Settlement Officer, Bhubaneswar committed error in directing to record the land in Government khata. The Settlement authority while entertaining the matter under Section 22 of the Act cannot scrutinize the validity of the lease pursuant to direction made in OJC No.9449 of 1993. Accordingly, the impugned order dated 30th September, 2013 (Annexure-3) passed by the Additional Sub-Collector, Bhubaneswar in Appeal Case (Suit) No.2203 of 2013

and the order dated 15th July, 2013 (Annexure-2) passed by Assistant Settlement Officer, Rental Colony, Bhubaneswar in *Suo Motu* Rent Case No.6545 of 2013 are set aside and the matter is remitted back to the Assistant Settlement Officer, Rental Colony, Bhubaneswar to adjudicate the matter afresh keeping in mind the ratio in the case of ***Lily Nanda*** (supra) giving opportunity of hearing the parties concerned.

8. Since the matter is of the year 2013, this Court, in order to avoid further delay, this Court directs the Petitioner to appear before the Assistant Settlement Officer, Rental Colony, Bhubaneswar (now functioning at Major Settlement Office, Jobra, Cuttack) on 18th May, 2022 along with relevant records and certified copy of this order to receive further instruction in the matter.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge