

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2632 of 2022

Sudhamani Behera

....

Petitioner

Mr. Susanta Kumar Nayak, Advocate
being authorized by Mr. Bhagaban Behera, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party Nos. 1 to 5)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
29.03.2022**

Order No.

3. This matter is taken up through hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 15th July, 2013 (Annexure-1) passed by the Assistant Settlement Officer, Camp Court at Rental Colony, Bhubaneswar in Rent Object Case No.1561 of 2013.
3. Mr. Nayak, learned counsel being authorized by Mr. Behera, learned counsel for the Petitioner, submits that Sabik Plot No.785/1318/1465 under Sabik Khata No.233/163 to an extent of Ac.5.00 decimal in mouza Sampur under Bhubaneswar tahasil was settled in favour of one Major Shyam Sundar Mohanty under the provisions of Government Grants Act, 1895 in W.L. Case No.1168 of 1973. Due to his legal necessity, the Lessee transferred an area Ac.0.084 decimal out of Ac.5.00 decimal from Sabik Plot No.785/1318/1465 under Sabik Khata No.233/163 to the Petitioner vide RSD No.4729

dated 15th September, 2004 and delivered possession to her. Subsequently, the Petitioner filed Conversion Case No.417 of 2004 under Section 8(A) of the Odisha Land Reforms Act, 1960 and on deposit of the premium and ground rent, the case land was converted to Gharabari. Thereafter, the Petitioner constructed her residential house on approval of building plan by the Bhubaneswar Development Authority and is enjoying the same peacefully being in possession thereof.

3.1 During settlement operation, Yadast No.7587/8406 in respect of Hal Plot No.7587/8406 to an extent of Hc.0.0340 (Ac.0.084 decimal) (for short 'the case land') was also prepared in her name. Accordingly, she received draft ROR in respect of the said plot (Annexure-5 series). Subsequently, she filed Rent Objection Case No.1516 of 2013 to settle the rent in respect of the case land. But, while rejecting the claim of the Petitioner the ASO directed to record the case land in the name of Government vide order dated 15th July, 2013 (Annexure-1). The Petitioner, being not noticed could not know about such direction. When she learnt about the impugned order under Annexure-1, she, finding no other alternative, has filed the present writ petition for the aforesaid relief.

4. Mr. Nayak, learned counsel for the Petitioner submits that the land in question was recorded in the name of Major Shyam Sundar Mohanty under lease principles in W.L. Case No.1168 of 1973. Said Lessee for his legal necessity has sold different portions of the said land settled with him to different persons and similar orders were passed by the ASO, which were challenged by the respective purchasers before this Court and this Court was pleased to set aside the same and remitted

the matter back to the ASO for fresh adjudication of the case giving opportunity of hearing to the parties concerned. It is his submission that since the land was settled under the provisions of Government Grants Act in favour of Major Shyam Sundar Mohanty, the Settlement Authority has no jurisdiction to sit over the same and direct to record the case land in the name of the Government. Lease granted in favour of the Lessee in W.L. Case No.1168 of 1973 was neither cancelled nor the same was resumed by following due procedure of law. Hence, the impugned order under Annexure-1 is illegal and without jurisdiction and is liable to be set aside.

5. Mr. Mishra, learned ASC submits that final ROR in respect of Sampur mouza has not yet been published. Hence, the Settlement Authorities have jurisdiction to entertain the grievance of the Petitioner. The Petitioner has a remedy under Section 22 (1) of the Odisha Survey and Settlement Act, 1958 (for short 'the Act') to assail the order passed by the ASO under Section 21 of the said Act. He further submits on instruction that no such case in which lease was settled in favour of a Lessee under the Government Grants Act was remitted by this Court for fresh adjudication. Contentions raised by learned counsel for the Petitioner requires consideration with reference to the records available with the Settlement Authority. Hence, the Petitioner before approaching this Court in the present writ petition ought to have availed the remedy under Section 22(1) of the Act in assailing the impugned order under Annexure-1. As such, the writ petition is not maintainable.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of record, it

transpires that final ROR under Section 12(B) of the Act has not yet been published in mouza Sampur. The Settlement operation is still going on in the said area.

7. On perusal of the impugned order, it transpires that although vide order dated 7th April, 2013, a direction was made to issue notice to the parties of the said Objection Case adjourning the matter to 16th April, 2013, but there is no material on record to ascertain that a notice was ever served on the Petitioner. However, the impugned order discloses that the Petitioner was present and heard. She could not produce any document in support of her case justifying the transfer of the property in her name. Accordingly, the ASO rejected the claim of the Petitioner and directed to record the land in Government khata.

8. Learned State Counsel could not produce any document to show that the notice was served on the Petitioner to appear on 16th April, 2013. In that view of the matter, this Court is of the considered opinion that the Petitioner was not given reasonable opportunity to place her case before the ASO, as she had no notice in Objection Case No.1561 of 2013. On perusal of record, it *prima facie* appears that the lease granted in favour of Major Shyam Sundar Mohanty was neither canceled nor resumed following due procedure of law. Thus, it appears that the lease granted is still in force. As such, the Settlement Authority could not have sat over the said lease granted under the provisions of Government Grants Act and directed to record the land in question in Government khata. So far as the claim of the Petitioner is concerned, it is open for the Petitioner to prove that she had validly purchased the case land from the Lessee.

All these material aspects were not taken into consideration by the ASO while adjudicating the Rent Objection Case.

9. In view of the above, the impugned order under Annexure-1 is not sustainable. Accordingly, the same is set aside and the matter is remitted back to the ASO, Major Settlement, Rental Colony, Bhubaneswar (now functioning at Major Settlement Office, Jobra, Cuttack) to adjudicate the Rent Objection Case No.1561 of 2013 afresh giving opportunity of hearing to the parties concerned.

10. In order to avoid delay, the Petitioner is directed to appear before the ASO, Major Settlement, Rental Colony, Bhubaneswar (now functioning at Major Settlement Office, Jobra, Cuttack) on 25th April, 2022 along with certified copy of this order to receive further instruction in the matter.

11. With the aforesaid observation and direction, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy