IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 3927 OF 2021

Ankura Mallick .... ***Petitioner***
Mr. Badrinarayan Panda, Advocate

-versus-

Collector, Jajpur and others .... ***Opp. Parties***
Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opp. Party Nos.1 and 2)
Ms. Supriya Patra, Advocate
(For Opp. Party No.3)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **19.04.2022**

4. 1. This matter is taken up through hybrid mode.

2. The Petitioner in this writ petition seek to assail the order dated 31st December, 2020 (Annexure-4) passed in OLR (Revision) Case No.09 of 2017, whereby the Collector, Jajpur held that Section 6-A of the O.L.R. Act, 1960 (for short 'the Act') has no application to the case at hand as the land in question is not an agricultural land.

3. Mr. Panda, learned counsel for the Petitioner submits that the predecessor of the Petitioner, namely, Dayanidhi Mallick (father of the Petitioner) being a displaced person was settled with Plot No.489/2635 to an extent of Ac.0.10 decimals under Khata No.497/289 situated in mouza Trijanga under Sukinda Tahasil (for short 'the case land') in Rehabilitation Misc. Case No.237 of 1995 for acquisition of his land for the purpose of establishment of Duburi Integrated Steel Plant. Accordingly, the Tahasildar, Sukinda issued R.O.R. in his favour under Annexure-1. Due to his legal necessity, said Dayanidhi Mallick alienated the case land in favour of Opposite

Party No.3 by obtaining permission under Section 22 of the Act from the competent authority. When the matter stood thus, the matter was placed before the 5th RPDAC meeting held in the year, 2012 and the Committee headed by the Revenue Divisional Commissioner, Central Division, Cuttack directed the Collector, Jajpur for enquiry and action with regard to the alienation made. Accordingly, the Additional District Magistrate, Kalinga Nagar vide his Letter No.842 dated 6th October, 2012 intimated the Collector, Jajpur, who directed the Sub-Collector, Jajpur to take action as per law. Accordingly, Misc. Case No.164 of 2013 was initiated by the Sub-Collector, Jajpur and notices were issued to both the vendor and vendee, i.e. present Petitioner and Opposite Party No.3, to show cause. Accordingly, both the parties appeared and filed their respective show cause along with relevant documents. Upon consideration of the materials on record, the Sub-Collector, Jajpur vide its order dated 30th January, 2014 (Annexure-2) held as follows:

> "*In view of the facts I am of the opinion that the above sale is illegal and improper in eye of law. Hence the transfer made by the petitioner is void. Since the Ex-Sub-Collector has granted permission this court should not act upon it and Tahasildar Danagadi should file petition under section 23 of the act for restoration of the land to the displaced person.*
>
> *Accordingly the case is disposed of and intimate the Tahasildar, Danagadi for taking further action at his level and report compliance.*"

4. Assailing the order dated 30th January, 2014 passed by the Sub-Collector, Jajpur, the Opposite Party No.3 preferred O.L.R. Appeal Case No.12 of 2016 before the Additional District Magistrate, Jajpur, who entertained the appeal along with other appeals filed by similarly displaced persons and dismissed all the appeals vide common order dated 28th December, 2016. The Opposite Party No.3 being aggrieved by the said order preferred

O.L.R. (Revision) Case No.09 of 2017 before the Collector, Jajpur and the impugned order under Annexure-4 has been passed.

5. Mr. Panda, learned counsel for the Petitioner further submits that the Collector, Jajpur while adjudicating the matter erroneously held that Section 6-A of the Act has no application to the case at hand. Referring to the definition of land under Section 2(14) of the Act, he submitted that the land means different classes of land used or capable of being used for agricultural purpose and includes homestead. Thus, Section 6-A of the Act is squarely applicable to the case at hand. The Collector, Jajpur without considering the matter from its proper prospective and without taking into consideration that fraud has been practised in alienating the property settled in favour of the land oustee, passed the impugned order. He also relied upon the decisions in the case of ***Dukhishyam Panda –v- Land Reform Commissioner, Orissa and others***, reported in 2005 (II) OLR 694, and ***(Sri) Muchiram Barik –v- Revenue Officer, Sadar, Sambalpur and others***, reported in 2019 (Supp.II) OLR 124, wherein it is held that the person in unauthorized occupation of the land is liable to be evicted summarily. Since the case land was alienated in favour of Opposite Party No. 3 without complying with the provisions of Section 6-A of the Act, the Opposite Party No. 3 is an unauthorized occupant in respect of the case land. As such, he is liable to be summarily evicted from the case land. He, therefore, prays for setting aside the impugned order under Annexure-4.

6. Ms. Patra, learned counsel for the Opposite Party No.3 contended that Section 6-A of the Act has application to the land used for agricultural purpose only. The case land was settled in favour of Dayanidhi Mallick and R.O.R. was issued in respect of the case land under '*Gharabari*' kissam. As such, Section 6-A of the

Act has no application to the case at hand. As such, the Collector, Jajpur has committed no error in passing the impugned order.

7. Mr. Mishra, learned Additional Standing Counsel supported the findings of the Collector, Jajpur in the impugned order under Annexure-4 and submitted that the language and tenor of Section 6-A of the Act clearly envisages that the case land being homestead in nature, Section 6-A of the Act has no application to the case at hand.

8. I have heard learned counsel for the parties at length and perused the materials available on record. Section 6-A of the Act reads as follows:

> *6-A.* ***Temporary ban on transfer of land settled by Government-***
>
> *(1) Notwithstanding anything contained in Sub-section (1) of Section 6, but subject to the provisions of Sub-section (3) thereof any transfer by a raiyat of any land which has been settled with him for agricultural purposes under a permanent lease from Government shall, if such transfer is made within a period of ten years from the date of such settlement without obtaining the previous permission in writing of the Revenue Officer, be void.*
>
> *(2) No right, title or interest held by a raiyat in any such land as aforesaid shall, unless permission in writing is accorded by the Revenue Officer to that effect, be attached and sold in execution of a money decree passed against such raiyat.*
>
> *(3) Notwithstanding anything contained in any other law for the time being in force, where any documents required to be registered under the provision of Clause (a) to Clause (e) of Sub-section (1) of Section 17 of the Registration Act, 1908, (16 of 1908) purports to transfer any such land within the period specified in Sub-section (1) no Registering Officer appointed under that Act shall register any such document unless such document is accompanied by the written permission of the Revenue Officer for such transfer.*
>
> *(4) Nothing in Sub-section (1) or Sub-section (3) shall apply to any transfer by way of mortgage executed in favour of any Scheduled Bank or in favour of any Bank to which the Orissa Co-operative Societies Act, 1962 (2 of 1963) applies and nothing in sub-section*

> *(2) shall apply to a money decree obtained by any such Bank."*

9. The tenor and language of Section 6-A of the Act clearly stipulate that it is applicable for the lands which are used for agricultural purpose only. Since the case land has been recorded as *'homestead'*, Section 6-A of the Act has no application to the case at hand. The Sub-Collector, Jajpur as well as Additional District Magistrate, Jajpur did not at all take into consideration this legal aspect. The Collector, Jajpur taking into consideration the same has rightly held that Section 6-A of the Act has no application to the case at hand and the Opposite Party No. 3 was not at fault in purchasing the case land without complying with the said provisions. Thus, I find no infirmity in the impugned order.

10. Accordingly, this writ petition being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

HIGH COURT ORISSA सत्यमेव जयते