

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4642 of 2022

Jugal Kishore Panda

.....

Petitioner

Miss Deepali Mahapatra, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr.Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

02.05.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition prays for a direction to set aside order dated 16th August, 2013 (Annexure-10) passed by Additional Sub-Collector, Bhubaneswar-Settlement Officer, Major Settlement (for short, 'the SO') in Appeal (Suit) Case No.1244 of 2013, whereby confirming the order passed by the Assistant Settlement Officer, Rental Colony (now functioning at Major Settlement Office, Jobra) (for short, 'the ASO') in Objection Case No.13159 of 2013, the SO directed to record the land in question in the name of government khata under 'Abadajogya Anabadi' status.
3. Miss Mahapatra, learned counsel of the Petitioner submits that the Sabik Plot No.1257/1671 under Sabik Khata No.420 (325/79) to an extent of area Ac.1.500 decimal situated in Pathargadia mouza under Bhubaneswar tahasil was settled/leased out in the name of one Kalandi Behera in W.L. Case No.1662 of 1974 observing due procedure of law as

provided under the Odisha Government Land Settlement Act, 1962 (for convenience referred to as 'OGLS Act') and Rules framed thereunder. While the matter stood thus, said Kalandi Behera for his legal necessity transferred Ac.0.500 decimal out of Ac.1.500 decimal to one Sanjukta Dash vide RSD dated 31st July, 1983 (Annexure-1) and delivered possession thereof. Said Smt. Sanjukta Dash got the land mutated in her name in Mutation Case No.2204 of 1991 and ROR (Annexure-2) was accordingly corrected by the Tahasildar, Bhubaneswar. Ultimately, the Petitioner purchased an area of Ac.0.100 decimal vide RSD dated 11th March, 2008 (Annexure-5) from out of the land purchased by said Smt. Sanjukta Dash and is in peaceful possession over the same exercising his right, title and interest thereon. In the meantime, Lease Revision Case No.850 of 1998 was initiated against the Lessee-Kalandi Behera under Section 7-A (3) of the OGLS Act and the lease granted in his favour was cancelled vide order dated 28th July, 1998 (Annexure-6) passed by Additional District Magistrate, Khordha. Assailing the same, Smt. Sanjukta Dash and another person, namely, Mihir Kumar Dash, who had purchased a portion of leasehold property from Smt. Sanjukta Dash, approached this Court in W.P.(C) No.7448 of 2006.

3.1 This Court, vide its order dated 24th August, 2006 (Annexure-7) set aside the order of cancellation of the lease passed in Lease Revision Case No.850 of 1998. Accordingly, the lease granted in favour of said Kalandi Behera was restored and transactions made therefrom remained valid. As such, the Petitioner is the rightful owner in possession over the land in

question. When the matter stood thus, Settlement operation started in the village and Yadast No.5439 (Annexure-8) was prepared in the name of the vendor of the Petitioner, namely, Dr. Asutosh Pattnaik. Thus, the Petitioner filed Objection Case No.13159 of 2013 impleading Dr. Asutosh Pattnaik, his vendor as a party to the said case. But most surprisingly, the ASO, Rental Colony, Bhubaneswar-Opposite Party No.7 directed to record the land in question in government khata under '*Abadajogya Anabadi*' status. Thus, being aggrieved, the Petitioner filed Appeal (Suit) no.1244 of 2013 before the Settlement Officer, Bhubaneswar and the impugned order dated 16th August, 2013 under Annexure-10 has been passed.

4. Miss Mahapatra, learned counsel for the Petitioner submits that the Settlement authority has no jurisdiction to sit over the lease granted under the provisions of OGLS Act. Further, grant of lease in favour of the Lessee, namely, Kalandi Behera has already been held to be valid by this Court in W.P.(C) No.7448 of 2006. Thus, the Settlement authority had no other option but to record the land in question in favour of the Petitioner. In the instant case, although the Additional Sub-Collector, Bhubaneswar-cum-Settlement Officer has held that the Tahasildar is competent to redress the grievance of the Petitioner as per order of this Court referred to supra and the ASO/SO has no such authority to grant/restore the lease granted under the OGLS Act; but acting to the contrary, the Additional Sub-Collector directed to maintain the land in question in government khata under '*Abadajogya Anabadi*' status. Hence, this writ petition has been filed.

5. Mr. Mishra, learned ASC submits that since final ROR under Section 12-B of the Odisha Survey and Settlement Act, 1958 (for convenience referred to as 'OSS Act') has already been published in respect of mouza Patharagadia, the Settlement authority has no jurisdiction to entertain the appeal and rightly the Petitioner has been advised to seek redressal of his grievance before the Tahasildar, Bhubaneswar. It is his submission that the impugned order was passed on 16th August, 2013 and the present writ petition has been filed in February, 2022, which is hopelessly barred by limitation. He, however, referring to counter affidavit, made a fair submission that since the ROR under Section 12-B of the OSS Act in respect of Patharagadia mouza was published on 21st November, 2013, the observation in the impugned order by the Additional Sub-Collector, Bhubaneswar is not sustainable. At the relevant time, the Additional Sub-Collector-cum-Settlement Officer had jurisdiction to entertain the appeal. He, however, further submits that the final ROR under Section 12-B of the OSS Act being published, the Petitioner has remedy under Section 15(b) of the OSS Act to assail the correctness of the ROR by filing Revision before the learned Member, Board of Revenue, Odisha, Cuttack. Hence, this writ petition is not maintainable.

6. Upon hearing learned counsel for the parties, this Court at the outset hold that the Settlement authority has no jurisdiction to sit over the correctness of the lease granted under the provisions of OGLS Act and Rules framed thereunder in view of the ratio decided in the case of *Lily Nanda and two others-vs.- State of Odisha and others*, reported in 2018 (I)

OLR 559. It further appears that the Addl. Sub-Collector holding that he has no jurisdiction to entertain the appeal, has further directed to retain the land in question in government khata. Mr. Mishra, learned ASC also invites attention of this Court to the fact that during pendency of the appeal before the Additional Sub-Collector, Bhubaneswar, the ROR in respect of Patharagadia mouza was not published. Hence, he had jurisdiction to entertain the appeal. It further appears that the Petitioner has *prima facie* subsisting right over the land in question.

7. Taking into consideration the aforesaid facts and circumstances, this Court is of the considered opinion that delay in filing the writ petition should not stand as a bar to entertain this writ petition filed to assert his civil right. Further, the Petitioner has also explained the delay in para-13 of the writ petition stating that he was all through under an impression that the land in question stands recorded in his name. When his son went to the office of the Tahasildar, Bhubaneswar to pay land revenue, he came to know that the land has been recorded in the name of the Government. Thus, after obtaining certified copy, this writ petition has been filed.

8. This Court time and again has reiterated that the Settlement Authority has no jurisdiction to sit over the lease granted under the OGLS Act, as held in *Lily Nanda (supra)*. It further appears that the Settlement authority, without respecting the direction of this Court, are repeatedly committing the same mistake either cancelling the lease granted under the OGLS Act or by ignoring the direction made by this Court. The procedure

the Settlement authorities are adopting is against the object and intent of OSS Act. As such, while entertaining the matter under the OSS Act and Rules framed thereunder, the Settlement authority must take care and precaution in adjudicating the matter keeping in mind the position of law prevailing at the relevant time. In the instant case, as discussed earlier, the Petitioner is admittedly the ultimate purchaser of the land in question, which was settled under the OGLS Act in the name of the Lessee. Although the lease was subsequently cancelled by exercising power under Section 7-A(3) of the OGLS Act, but subsequently this Court in W.P.(C) No.7448 of 2006 set aside the same. Thus, the lease granted in favour of the Lessee, namely, Kalandi Behera is held to be valid. Thus, there was no impediment on the part of the Settlement authority in directing to record the land in question in favour of the Petitioner. Hence, the impugned order under Annexures-9 and 10 are not sustainable and the same are set aside.

9. Although the ROR has already been published in the meantime in respect of the land in question, but the same is an outcome of infraction of provisions of law. The Petitioner has also prayed for setting aside of the ROR in question under Annexure-11.

10. In that view of the matter, this Court has no hesitation to set aside the ROR under Annexure-11. Thus, the Settlement Officer assumes jurisdiction to entertain the Appeal (Suit) Case No.1244 of 2013 on its own merit. Since the Additional Sub-Collector did not apply judicial mind to the case of the Petitioner, the matter is remitted back to the appellate authority

to adjudicate Suit (Appeal) Case No.1244 of 2013 afresh giving opportunity of hearing to the parties giving opportunity of hearing to the parties concerned keeping in mind the observations made hereinabove.

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

12. In order to avoid further delay, the Petitioner is directed to appear before Additional Sub-Collector-cum-Settlement Officer, Bhubaneswar on 16th May, 2022 along with 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