

IN THE HIGH COURT OF ORISSA AT CUTTACK**WP(C) No.8953 of 2021**

(Through Hybrid mode)

M/s. Green Square Infratech Private Limited and another ***Petitioners***

-versus-

State of Odisha and others ***Opposite Parties***

Advocates appeared in this case :

For Petitioners : Mr. P. K. Rath, Advocate

For Opposite Parties: Mr. G.N. Rout, Advocate (ASC)

CORAM:

**JUSTICE ARINDAM SINHA
JUSTICE SASHIKANTA MISHRA**

JUDGMENT

02.11.2022

ARINDAM SINHA, J.

1. Mr. Rath, learned advocate appears on behalf of petitioners and submits, impugned is, inter alia, order dated 20th February, 2020 made by Sub-Collector, Bhubaneswar. By it, the authority refused to confirm impugned therein order dated 19th April, 1994 passed by the Tahasildar in the remand case by holding that case land needed to continue in Government holding.

2. Mr. Rath submits, his clients are purchasers from original allottee. Said allottee was a Jawan, who was entitled to settlement of 5 acres of land. The settlement was made initially at village Shyampur in Bhubaneswar Tahasil and thereafter exchanged to village Sundarpur. There was purported revision from the order of settlement on exchange. The settlement was set aside. Original allottee challenged the same by writ petition and by order dated 6th December, 1991 there was direction upon the Tahasildar to reconsider the matter. The Tahasildar initiated remand case and disposed of it on 19th April, 1994 holding that original allottee is entitled for settlement sanctioned earlier and ordered to submit the case record for confirmation. Original allottee again filed writ petition, disposed of by order dated 4th May, 2009 redirecting him to the Tahasildar with direction upon the office to consider the application in accordance with law. Pursuant thereto the waste land (WL) misc. case went in favour of original allottee. The Additional Tahasildar, by order dated 6th December, 2010, directed correction of the RoR. It is thereafter that the Tahasildar initiated misc case no.17 of 2012 to recall said order dated 6th December, 2010 directing correction of the RoR. This was disposed of on 24th May, 2012 by recalling said order dated 6th December, 2010. Accordingly, pursuant to direction made in order dated 8th January, 2018 passed by this Court in WP(C) no.22696 of

2012 and further order made in the misc cases, impugned order came to be made.

3. He submits further, the Sub-Collector acted in excess of jurisdiction by converting the confirmation proceeding, to be appeal against said order dated 19th April, 1994 of the Tahasildar. The office had no authority to do so in face of order dated 6th December, 1991 made in his clients' first writ petition, by which order for setting aside the settlement was quashed and matter restored to the Tahasildar to reconsider. When, thereafter, the Tahasildar found that original allottee is entitled for settlement sanctioned earlier and ordered to submit the case for confirmation, there should have been confirmation. In the circumstances, impugned order should be set aside and quashed.

4. On query from Court regarding eligibility of original allottee, Mr. Rath draws attention to annexure-7 being letter dated 15th December, 1970 of Government of Odisha, Home Department to the Collector, Puri. Contents of the letter are extracted and reproduced below.

"I am directed to say that the Home Deptt. declare him eligible for concession of land as per the Home Deptt. Resolution No.20827/Poll, Dated 7.7.69, subject to condition that he should submit a declaration to the effect that he and all members of his family in a common mess have got less than 5 acres of land and have got no more land in the State and provided he is permanent resident of

Orissa in terms of Resolution No.4741/Poll, dated 6.2.70. A copy of this is being forwarded to the applicant for necessary action.”

Following annexure-8 is letter dated 6th February, 1971 also from said department to original allottee, contents of which are also extracted and reproduced below.

*“The undersigned is directed to **forward herewith a copy of this Department letter No.42061-Poll dated 15.12.70** declaring him eligible to the concession of land as desired.”*

(emphasis supplied)

5. Mr. Rout, learned advocate, Additional Standing Counsel appears on behalf of State and relies upon impugned order to submit, letter dated 15th December, 1970 of the Home Department cannot be and was not relied upon. The letter had not been attested nor does it bear signature. There was no reason as to why the application, pursuant thereto, was sent to Bhubaneswar Tahasil instead of Puri Tahasil. In the circumstances, conclusion drawn by the authority in impugned order that due to failure of non-production of authenticated records, eligibility criteria of original allottee remains under cloud, being a finding on fact, cannot be interfered with in judicial review.

6. On query made we have been shown resolution dated 14th May, 1963 of Government of Odisha. Under concession paragraph 3, clause-(d) says, inter alia, each person will retain 5 acres of land, free and made ready for cultivation at

government cost. We have also seen Government of Odisha letter dated 2nd August, 1986 from the Joint Secretary to Secretary, Board of Revenue. Three paragraphs therefrom are extracted and reproduced below.

“According to the provisions in the DGLS Act and Rules Jawan’s as such do not qualify for settlement of Govt. Land. Besides settlement of Govt. waste land for agricultural purposes with any one cannot exceed one standard acre. So according to the O.G.L.S. Act and rules made thereunder a Jawan as such is not eligible for Settlement of Agricultural Land. Some collectors have rightly expressed doubts regarding Settlement of Land with Jawans.

Since it is not possible for settlement of Govt. Waste Land upto 5 acres with the Jawans in terms of the aforesaid resolution of the Home Deptt. within the existing provisions of OGLS Act and Rules thereunder. Government after careful consideration have been pleased to decide that such settlement shall be made within the ambit of Govt. Grants Act, 1895 keeping in view the nature of concession as a reward.

Under Govt. Grants Act, 1895 sanction of Govt. Land is to be done, by the Govt. There would be considerable delay if all such cases are referred to the Govt. for sanction. In consideration of this difficulty it has further been decided that Tahasildars will be competent to settle land with aforesaid category of Jawans under provisions of the Govt. Grants Act, 1895 conferring the status of a raiyat as defined under the GLR Act, 1960.”

7. It transpires that the Jawans were to be given the concession of settlement of land, as reward. It could not be given under existing land laws. Hence, there was direction by the Government to make the settlement under Government Grants Act, 1895 and confirm status of raiyat, as defined under Orissa Land Reforms Act, 1960, to the allottees. The controversy here is whether original allottee was eligible to obtain the concession as a Jawan, who had served in the front.

8. Dispute raised by State is regarding aforesaid letter dated 15th December, 1970. We enquired of Mr. Rout as to from whose custody this letter was produced for purpose of making impugned order. Mr. Rout submits, the letter was produced from custody of State. Yet the finding is, the letter does not bear signature nor is attested. We are conscious that instead of the original, the forwarded copy may have been produced by the original allottee before the Tahasildar. Impugned order itself records that said Tahasildar did not dispute the same.

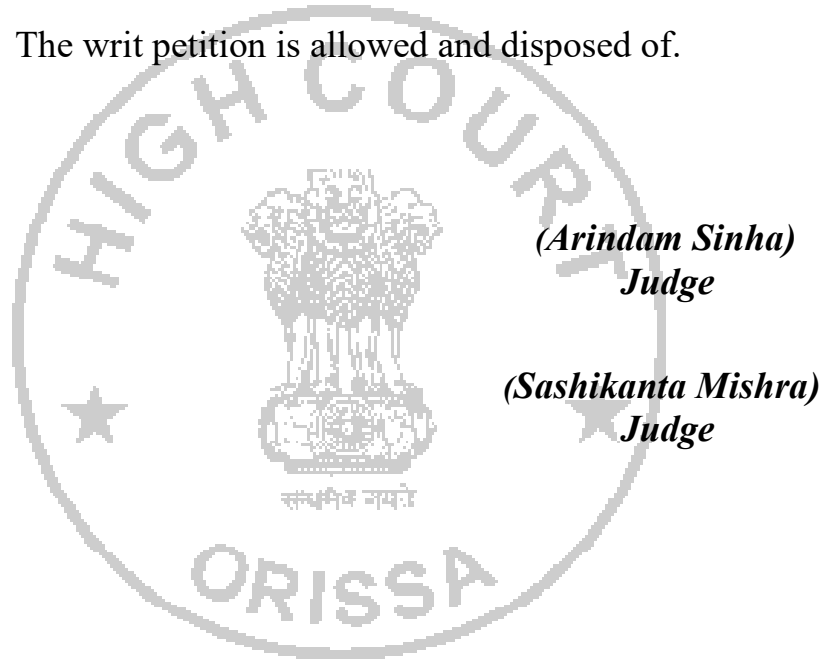
9. The dispute on genuineness of the document dated 15th December, 1970 was raised by aforesaid misc. case no.17 of 2012, resulting in impugned order dated 20th February, 2020. The document was earlier accepted by the Tahasildar as long back as by order dated 12th January, 1975. No finding in the meantime thereafter, on genuineness of the document, has been brought to our notice. This in absence of initial

requirement on proof of genuineness of the document leads us to presume, as aforesaid, the tender was of the forwarded copy. We are inclined to infer, the Tahasildar accepted the forwarded copy to be genuine relying on the original letter addressed to original allottee, under cover of which it was forwarded. There is no dispute regarding genuineness of aforesaid forwarding letter dated 6th February, 1971. There was no adjudication on whether the document could be relied upon as secondary evidence. In the circumstances, original allottee having been given to think that there was no dispute on genuineness of the document, led to his omission to secure production of the original. He sold away when order of the Additional Tahasildar was subsisting. It was his position taken on State having had theretofore accepted the letter as genuine. As such State was thereafter estopped from questioning the document in the confirmation proceeding, culminating in impugned order. The authority could not have found dispute on genuineness of the document, to conclude that due to failure of non-production of authenticated records, eligibility criteria of original allottee remains under cloud. Since the authority committed error of law in the finding of fact, interference by judicial review has to be made.

10. We are satisfied that impugned order is illegal and was made with material irregularity. It is set aside and quashed. The authority is directed to confirm the settlement forthwith, within four weeks of communication.

11. Mr. Rout draws attention to resolution dated 19th February, 2014, published by authority in Odisha Gazette Extraordinary on 10th March, 2014. He submits, thereby it was resolved that allottees such as original allottee could also be compensated in terms of money. We are not inclined to be drawn into this aspect of the concession, to be granted. State is at liberty to agitate the same by independent proceeding, if so advised.

12. The writ petition is allowed and disposed of.



R.K.Sethi