

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19651 of 2010

Subasini Rout and others

Petitioners
....
Mr. A.K. Patra, Advocate

-Versus-

State of Odisha and others

Opp. Parties
....
Mr. S.N. Das, ASC

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

DATE OF JUDGMENT:23.03.2022

R.K. Pattanaik, J

1. Present writ application invoking jurisdiction of this Court under Article(s) 226 and 227 of the Constitution of India, 1950 is at the behest of the Petitioners assailing the impugned order dated 5th February, 2010 (Annexure-11) passed in Misc.(Lease) Case No.01 of 2009 by the Collector, Khurda (OP No.3) as void and inoperative and order dated 2nd August, 2006 (Annexure-7) passed in Lease Revision Case No.01 of 2004 by the learned ADM, Bhubaneswar (OP No.4) to be non-existent in the eye of law on the grounds *inter alia* that the lease granted under the Lease Principles, 1961 could not have been revoked under the Orissa Government Land Settlement Act, 1962 (hereinafter referred to as 'the OGLS Act') and OP No.4 in exercise of revisional jurisdiction under Section 7-A(3) of the OGLS Act ought not to have recalled it under Annexure-7 and hence, liable to be interfered with.

2. As pleaded, the predecessor-in-interest of the Petitioner was in possession of schedule land measuring an area of Ac.0.85 decimals appertaining to Plot No.44, Khata No.493 of Mouza-Patia, Bhubaneswar since 1950 after leased out in his favour. It is claimed that the original Petitioner had filed an application on 18th August, 1980 for settlement of the case land which was registered as W.L. Lease Case No.1409 of 1980, where after, proclamation dated 30th September, 1980 was issued inviting objections but since no objection was received, considering the report of the R.I., Kalarahang, land of Ac.0.50 decimals was leased out in his favour in view of its long possession and thereafter, correction of record of rights was directed by order dated 16th January, 1981 (Annexure-4). It is further pleaded that application under Section 7-A(3) of the OGLS Act was submitted before OP No.4 against the Petitioners to cancel the lease granted in Lease Revision Case No.01 of 2004, wherein, it was held that there was no fraud or mistake of fact or material irregularity being committed in sanctioning the lease and consequently, the proceeding was dropped as time barred by order under Annexure-7 later to which W.P.(C) No.1714 of 2008 was filed which was disposed of with a direction to the Tahasildar, Bhubaneswar (OP No.5) to pass appropriate order in respect of the demised land. As pleaded further, a PIL was filed in W.P.(C) No.275 of 2009 again by raising a dispute to cancel the lease granted in favour of the original Petitioner on false and frivolous grounds, wherein, he was arrayed as OP No.7 but it was disposed of by order dated 11th February, 2009 at the admission stage itself directing the Petitioners therein to make a *W.P.(C) No.19651 of 2010*

representation before OP No.3, who shall dispose of the same within a period of three months after hearing all the parties, later to which, OP No.3 passed the impugned order under Annexure-11 which is alleged to be without jurisdiction leading to the cancellation of lease long after 23 years.

3. Heard Mr. A.K. Patra, learned counsel for the Petitioners and Mr. S.N. Das, learned ASC appearing for the State.

4. Mr. A.K. Patra contends that when the revisional jurisdiction under Section 7-A(3) of the OGLS Act was exercised by OP No.4 in Lease Revision Case No.01 of 2004 and order under Annexure-7 was passed, it could not have been recalled in Misc. (Lease) Case No.01 of 2009 under the impugned order Annexure-11 since both the authorities have concurrent jurisdiction and therefore, the representation filed by the Petitioners pursuant to the direction in W.P.(C) No.275 of 2009 should have been rejected on the ground that such power was not exercisable once again. Mr. A.K. Patra further contends that when vide Annexure-7 no fraud or mistake of fact or material irregularity in complying the provisions of the OGLS Act was detected by OP No.4, while entertaining Lease Revision Case No.01 of 2004, the lease could not have been cancelled and that too after 23 years which is grossly arbitrary.

5. On the contrary, Mr. S.N. Das contended that the schedule land which is part of Plot No.441 measures an area of Ac.25.300 decimals with kisam '*kanta jungle*' stands recorded in the name of Government under *Rakhit* Khata No.493 in Hal

ROR published in 1973-74 which is not at all leasable and therefore, institution of W.L. Lease Case No.1409 of 1980 by OP No.5 on the application dated 18th August, 1980 does not stand the test of legality moreover in view of the admission of encroachment of the land in question by the Petitioner for which a proceeding under OPLE Act, 1972 instead should have been initiated. It is further contended that report of the R.I. suppressed the fact that the schedule land is of *kisam 'kanta jungle'* per se not leasable for agriculture and also revealed no information regarding the income of the family of the Petitioner and that apart, Annexure-4 does not appear to have been dealt with as per the provisions of the OGLS Act and Rules. Furthermore, according to Mr. S.N. Das, OP No.5 was not competent to settle a forest land recorded under *Rakhit Khata* for cultivation purpose, particularly when, the Forest (Conservation) Act, 1980 had already come into force with effect from 25th October, 1980 and therefore, in the facts and circumstances, lease granted by OP No.5 in the year 1981 was in breach of the statutory provisions of law and thus, illegal and void which is also contrary to the provisions of Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 and as such, there was sufficient ground for intervention by OP No.4.

6. In fact, vide Annexure-11, OP No.3 recalled order under Annexure-7 with the conclusion that the order sheets of the proceeding in W.L. Lease Case No.1409 of 1980, application for lease, proclamation, R.I. report and possession report etc.

were not available in the case record, moreover on verification of lease case register of the relevant year, it was shown as rejected and in order to substantiate grant of lease, copies of order sheet dated 15th January, 1981 as well as proclamation and R.I. report were relied on by failing to furnish certified copies of said documents for examination and that apart, neither the Tahasildar did take any step or follow up action nor the Petitioner attempted to record the land settled in his favour for nearly 25 years albeit observed that OP No.4 in Lease Revision Case No.1 of 2004 found no fraud or mistake of fact or material irregularity in the procedure in granting the lease and dropped the proceeding as beyond limitation of 14 years specified in Section 7-A(3) of the OGLS Act.

7. Initially, on an objection being made, Lease Revision Case No.01 of 2004 was initiated which ended with a result that the lease was duly granted in favour of the original Petitioner in W.L. Lease Case No.1409 of 1980 observing that there was no irregularity, inasmuch as, it was granted under the Lease Principles 1961 which cannot be tinkered with in exercise of powers under Section 7-A (3) of the OGLS Act. In any case, the revisional authority did not find any material in the case record as to illegality being committed while granting the lease in question. Rather, no act of fraud, mistake of fact or material irregularity in the procedure was noticed by OP No.4, while examining the lease sanctioned in favour of the original Petitioner in W.L. Lease Case No.1409 of 1980. Once again an objection was filed which resulted in the passing of the

impugned order under Annexure-11 preceded by the order in W.P.(C) No.275 of 2009, wherein, the Petitioner though arrayed as OP No.7 was yet to appear, as at the initial stage, it was disposed of with a direction therein to submit a representation before OP No.3, who shall dispose it of within the stipulated time. In compliance thereof, a representation (Annexure-8) was submitted which was responded by a written defence (Annexure-10) from the side of the Petitioner. In that proceeding vide Misc. (Lease) Case No.01 of 2009, OP No.3 considered it proper to recall the order under Annexure-7.

8. Admittedly, the schedule land stands recorded as '*Anabadi*'. In W.L. Lease Case No.1409 of 1980, the lease in question was granted by the Tahasildar, Bhubaneswar. It is not disputed that the land was leased out in favour of the original Petitioner by OP No.5 and thereafter, the case was transferred to the Additional Tahasildar, Bhubaneswar in charge of the record room for correction of ROR, fixation of rent, issue of intimation slip and *patta*. However, from Annexure-11, it is made to appear that OP No.3 could not have had the order sheets of the proceeding, application for lease, proclamation, R.I. report, etc. as the documents were not available in the record. As suggested, the land case register revealed rejection of the lease. As a matter of fact, the Petitioner said to have produced copies of the order sheet dated 15th January, 1981, proclamation and R.I. report but OP No.3 declined to rely upon it when the certified copies of the originals were not furnished. Such was never an issue before OP No.4, who rather proceeded to decide

the legality of the lease on the premise that it had been granted in favour of the original Petitioner in W.L. Lease Case No.1409 of 1980. In the considered view of the Court, OP No.3 considering the claim of the Petitioner and production of copies of documents in relation to the alleged lease, was required to enquire and verify the original record in W.L. Lease Case No.1409 of 1980. Such a question as to grant of lease or otherwise was necessarily to be examined by OP No.3 against the backdrop of its acceptance in an earlier proceeding.

9. Furthermore, the land in question was also a subject of dispute as one Bansidhar Rout had filed T.S. Case No.594 of 1999 which was disposed of *ex parte* by an order dated 4th September, 2000 declaring him of having acquired right of occupancy over the schedule land measuring an area of Ac.0.034 decimals which according to OP No.3 had not been brought to the notice of OP No.4. It is made to suggest that the G.A. Department filed a case to have the *ex parte* decree set aside. The Petitioner also said to have instituted a suit in T.S. No.47 of 2004 for declaration of title, confirmation of possession and revocation of *ex parte* decree with a direction to OP No.5 to do all follow up action in W.L. Lease Case No.1409 of 1980 which was stated to be still pending before the civil court by the time OP No.3 passed the impugned order under Annexure-11. According to OP No.3, the Petitioner did not act fairly rather suppressed the fact of *ex parte* decree in T.S.No.594 of 1999 and the pendency of C.S. No.47 of 2004 which was filed by him and further observed that being fully

aware of the above facts had approached this Court in W.P.(C) No.1714 of 2008 for a direction to OP No.5 to dispose of the application dated 8th December, 2006 by then pending for consideration. At last, OP No.3 with the conclusion that the land was not leasable and moreover by the alleged date of lease, the Forest Conservation Act, 1980 has already been enforced and since it was of *jungle* kisam and as such, prohibited under the said Act, held the settlement if any made in favour of the Petitioner to be void ab initio and without jurisdiction, hence, recalled order under Annexure-7.

10. According to MR. S.N. Das, the Petitioner was to be booked under the Orissa Prevention of Land Encroachment Act, 1974 considering the possession of the case land to be unlawful and that apart, OP No.5 was not authorized to settle it for agricultural purpose being a forest land. It is also challenged by the State in so far as absence of revisional jurisdiction under Section 7-A (3) of the OGLS Act raised on the ground that the land was settled as per Lease Principles, 1961. It is not denied that the lease was never granted, rather, evidence is on record to show that the authority concerned did examine at one point of time the legality of the lease granted in favour of the Petitioner in W.L. Lease Case No.1409 of 1980. OP No.3 and when a serious doubt was entertained about the lease being granted, OP No.3 was required to call for the original record for that purpose. However, OP No.3 without taking up any such exercise furthermore held the alleged lease to be illegal and the jurisdiction exercised by OP No.5 as without authority. The

Petitioner produced copies of the application and order of lease in respect of the schedule land and also proclamation in respect thereof as Annexures-1, 2 and 3 and also Annexure-4, a copy of the order dated 16th January, 1981. It is not revealed from Annexure-11 as to if fraud was played upon during the grant of lease. It is also not discernable there from if due to any mistake of fact or on account of material irregularity in the procedure while the lease being sanctioned which would have authorized OP No.3 to exercise the jurisdiction under Section 7-A(3) of the OGLS Act. Under such circumstances, OP No.3 was necessarily required to examine and verify the revenue records for the purpose of satisfaction himself regarding any such illegality to have occasioned in respect thereof. Hence, in the considered view of the Court, a detailed examination of records is required to find out and ascertain the legality of the lease whether duly granted in favour of the original Petitioner and if at all, while the lease being sanctioned, there was any fraud perpetrated or it was granted due to mistake of fact or material irregularity in the procedure as against the claim of the State that the schedule land was of *kisam jungle* and was not leasable being violative of Forest Conservation Act, 1980 and also with due regard to the defence that the lease in question could not have been overturned under the provisions of Section 7-A(3) of the OGLS Act after expiry of 14 years.

11. Accordingly, it is ordered.

12. In the result, the writ petition stands allowed. As a corollary, impugned order dated 5th February, 2010 (Annexure-11) passed
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in Misc. (Lease) Case No.1 of 2009 by OP No.3 is hereby set aside. For the reasons aforementioned, the matter is remitted back with a direction to OP No.3 to call for the original record in W.L. Lease Case No.1409 of 1980 and also to examine and verify the revenue records for the purpose of ascertaining whether the lease in question vis-à-vis schedule land was lawfully settled in favour of the original Petitioner and after providing due opportunity of hearing to the parties involved, to pass appropriate order keeping in view the settled position of law and to complete the entire exercise as early as possible preferably within a period of three months from the date of receipt of a copy of the above order.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

K.C. Bisoi/ Secretary