

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17732 of 2010

Smt. Subasini Choudhury

.... Petitioner

Mr. B. Baug, Advocate

-versus-

State of Orissa and others

.... Opposite Parties

Mr. Debakanta Mohanty, A.G.A.

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

ORDER

04.04.2022

Order No.

11. 1. The challenge in the present petition is to a notice dated 29th August 1991 issued by the General Administration Department, Government of Odisha determining the lease of Plot No.3, Unit-III, Bhubaneswar allotted in favour of “The Matrubhumi”, the Managing Proprietor of which was one Mr. Ram Chandra Kar son of Mr. Banchhanidhi Kar.
2. The plea of the present Petitioner is that she was a beneficiary under a Will executed by Mr. Kar on 14th November 1995. She applied for probate of the said will by filing Probate Misc. Case No.5 of 2003. However, the probate was refused by the Trial Court by an order dated 15th May 2004. It appears that the said order dated 15th May 2004 has been challenged by the present Petitioner in FAO No.251 of 2004 which is pending.
3. It is pointed out by Mr. Debakanta Mohanty, learned Additional Government Advocate appearing for the State that even during the lifetime of Mr. Ram Chandra Kar the lease stood resumed. He draws attention to the third unnumbered paragraph

of the preamble to the Office Order dated 29th August 1991 which reads as under:

“And whereas the lessee was directed in this Department letter No.8819 dt.24.6.91 to show cause as to why the lease shall not be terminated under clause 4 (i) on aforesaid ground. The cause showed in the letter dated 1.7.91 is not at all satisfactory.”

4. Mr. Mohanty accordingly points out that the resumption of the lease became final on 29th August 1991 during the lifetime of Mr. Ram Chandra Kar with him not challenging the resumption. Accordingly, the *locus standi* of the present Petitioner to maintain the present challenge is questioned.

5. Learned counsel for the Petitioner seeks to urge that no proper show cause notice was in fact issued to Mr. Ram Chandra Kar prior to resumption of lease. Unfortunately, Mr. Kar himself raised no such grievance. He appears to have filed a reply on 1st July 1991 to the notice issued to him on 24th June, 1991. Therefore, it is factually incorrect on the part of the present Petitioner to assert that no notice was issued to Mr. Kar during his lifetime.

6. As on the date the Will was executed i.e. 14th November 1995 by Mr. Kar bequeathing the lease in respect of the plot in question in favour of the present Petitioner, had no valid right, title or interest vis-à-vis the plot in question to be bequeathed in favour of the present Petitioner. It is another matter that the bequest has itself been questioned by the contesting Respondents in FAO No.251 of 2004 who claim to be the real legal heirs of Mr. Kar.

7. Therefore, notwithstanding the outcome of FAO No.251 of 2004, the present Petitioner has no *locus standi* to question the resumption of the lease on the basis of the Will dated 14th November 1995 since on that date the lease already stood resumed by the State. With there being no challenge to the resumption by Mr. Kar during his lifetime, it is not possible to entertain the challenge on behalf of the present Petitioner only because in the Will dated 14th November 1995 she shown as a beneficiary vis-à-vis the said plot. That was not a valid bequest and is therefore unsustainable in the eye of law.

8. For the aforementioned reasons, the Court finds no merit in the present petition and it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin