

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 25773 of 2017

Sk. Abdul Halim

.....

Petitioner

Mr. G.M. Rath, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

09.09.2022

Order No.
03.

This matter is taken up through hybrid mode.

2. Heard Mr. G.M. Rath, learned Counsel for the Petitioner and Mr. A.K. Mishra, learned Additional Government Advocate for the State.
3. The Petitioner has filed this writ petition seeking to quash the notice dated 07.12.2017 under Annexure-11 issued by the opposite party no.2 in Encroachment Case No. 311 of 2011 and to direct the opposite parties to settle the land measuring Ac. 0.050 dec. out of Ac. 0.540 dec in Plot No. 904, Khata No. 460 in Mouza-Pattamundai in favour of the petitioner being a landless person.
4. Mr. G.M. Rath, learned Counsel for the Petitioner contended that the petitioner being a landless person and the only source of residing is over a land measuring Ac. 0.050 dec. out of Ac. 0.540 dec in Plot No. 904, Khata No. 460 in Mouza-Pattamundai. It is further contended that in the year 1970 the grandfather of the petitioner received a notice under the provisions of OPLE Act about initiation of encroachment proceeding bearing no. 42/69/70,

wherein the petitioner was called upon to pay penalty for such illegal encroachment. In compliance of the same, he deposited all the dues. On 03.01.2001, opposite party no.2 called upon the petitioner to deposit the arrear penalty as determined in encroachment case No. 42/69/70. Similar notice for the year 2002-03 had also received. In compliance of the same, the petitioner deposited the entire amount. Therefore, as the petitioner is a landless person and BPL card holder, this being a small patch of land, the same should be settled in his favour. Again when notice was issued, he approached this Court by filing W.P.(C) No. 18974 of 2012, which was disposed of vide order dated 07.03.2017 without going into the merits of the case and by observing that if the petitioner files a fresh application for settlement of the aforesaid land before the Tahasildar, Pattamundai within a period of four weeks from that date, the Tahasildar, Pattamundai shall consider the said application for settlement in accordance with law in the very same Encroachment Case initiated against the petitioner. In compliance of the said order, the petitioner files a fresh application for settlement of the land on 27.03.2017 and opposite party no.2 thereafter initiated the proceeding for settlement vide De-reservation case No. 02 of 2017. The land being a 'gochara' land unless the same is de-reserved cannot be settled in favour of the petitioner. Therefore, de-reservation case was also initiated, but the same was rejected on the ground that the same cannot be de-reserved. As a consequence thereof, the claim of the petitioner for settlement of land was rejected. Therefore, he approached this Court by filing the present writ petition.

5. Mr. A.K. Mishra, learned Additional Government Advocate

for the State contended that since the land in question being a 'gochara' land unless the same is de-reserved cannot be settled in favour of the petitioner and more so, the claim of the petitioner that he is a landless person that cannot sustain. His father has got homestead lands and thereby the claim of the petitioner to be a landless person cannot sustain as the petitioner occupies a house. More so, he is not staying in the land in which encroachment case is continuing and where the petitioner is claiming for settlement of the land in his favour. Therefore, the authority is well justified by rejecting the claim of the petitioner for settlement of the land in favour of the petitioner.

6. Having heard learned counsel for the parties and after going through the record, it appears that as per the provisions contained in Section 3 (a-1) Landless person has been defined, which reads as follows:-

“Landless person means a person, the total extent of whose land excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and whose total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify in that behalf.”

In view of the definition given to the landless person, if the total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify in that behalf, can be considered as landless person. Therefore, keeping in view the definition mentioned above, as it appears that on the basis of the

verification of Record of Rights, it is seen that Plot.No.925 (Gharabari) under Khata No.52 measuring an area Ac.0.13 dec. of mouza Pattamundai recorded in the name in Sk. Abdul Kudus, S/o. Sk. Missar Alli (father of the petitioner). There is another Stitiban Plot bearing No.883 (Gharabari) under hal Khata No.136 with an area of Ac.0.140 dec. recorded in the name of Jamuna Nisa Biwi, W/o. Sk. Abdul Kudus (the mother of the petitioner). Similarly, there is another Stitiban Plot No.881 (Gharabari) under Hal Khata No.24 with an area of Ac.0.07 dec. kissam Gharabari recorded in the name of Sk. Abdul Kudus (petitioner's father), Mourijan Biwi, Fato Biwi, son and daughter of Sk. Missar Alli, Amzat Biwi W/o. Sk. Missar Alli, Caste-Musalman of Village-Pattamundai. The petitioner's family has been residing on the above plots as share holders/legal heirs of deceased recorded tenants in Pattamundai Municipality area. The petitioner has established business like variety store in Pattamundai market area and his annual income is above Rs.40,000.00/- (Rupees Forty thousand) from his such business and thereby maintaining his family. The petitioner is living in homestead land which belongs to his parents and not over the suit land. He has got sufficient homestead land recorded in the name of his father, mother and other family members. In compliance to the order dated 07.03.2017 passed by this Court in W.P.(C) No.18974/2012, steps were taken to settle the land in favour of the petitioner by initiating a De-Reservation Case vide No.2/17 to change the kissam of the suit land from Gochar to Basti Yogya and then the said case has been sent to the Sub-Collector, Kendrapara for obtaining required approval as per Govt. Rule. But, the said proceeding has been returned by the Sub-Collector, Kendrapara without approval with a view that the petitioner does not come

under the purview of Govt. Rules for settlement of Govt. Land in favour of the petitioner for which it is not possible to settle the Govt. land in favour of the petitioner. Then the Encroachment Case No.311/11 and De-Reservation Case No.2/17 has been rejected by the Tahasildar.

7. In view of such position, the claim made by the petitioner to settle the so called land, which alleged to have in his occupation cannot sustain in the eye of law as the petitioner is not a landless person as mentioned above and not coming under the definition of Section 3 (a-1) of the OPLE Act. Therefore claim made by the petitioner in the writ petitioner merits no consideration and the same stands dismissed accordingly.

Arun

(DR. B.R. SARANGI)
JUDGE

