

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21037 of 2022

Bipin Bihari Bishi

....

Petitioner(s)

Mr. K.A. Guru,
Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr. S.P. Panda,
Addl. Govt. Adv.

CORAM:

JUSTICE BISWANATH RATH

ORDER

11.10.2022

Order No.

03.

1. Undisputedly the right of the Petitioner involving the disputed land granted by way of lease was cancelled by the order vide Annexure-5 to the Writ Petition vide W.P.(C) No.9124 of 2006. In disposal of the Writ Petition vide W.P.(C) No.9124 of 2006 the Division Bench of this Court while declaring the cancellation of the lease vide Annexure-5 as bad, has given a clear direction in restoration of the lease right of the Petitioner. It appears, pursuant to above direction of the Division Bench the Petitioner applied for necessary correction in the record of rights involving the disputed land.
2. For the order of the Division Bench not being worked out this Writ Petition has been brought on board seeking a direction to the Tahasildar for working out the request of the Petitioner based on the judgment of this Court in W.P.(C) No.9124 of 2006 decided on 18.05.2018. There is no denial to the fact that this judgment has never been challenged any further. For the opinion of this Court there is no other option on the part of the Tahasildar than to simply go by the

direction of the Division Bench in W.P.(C) No.9124 of 2006. Pursuant to issuance of notice the Opposite Party Nos.2 & 3 filed counter affidavit stating in paragraph no.7 therein as follows:-

“7. That in reply to the averments made in Para-4 of the writ petition, it is humbly submitted that the petitioner has wrongly spelled the Case no. along with the nature of the case. The order under Annexure-1 of the writ petition, it appears that the Sub-Collector has confirmed the recommendation made by the Tahasildar, Sadar, Sambalpur for allotment of Govt. land of an area Ac. 3.840 Dec. in the Mouza- A. Katapali.”

3. In protecting the stand of the State-Authorities Mr. Panda, learned State Counsel advancing his submission keeping in view the objection made in paragraph no.7 of the counter affidavit contended that there has been certain findings against the Petitioner becoming an impediment in working-out the judgment in W.P.(C) No.9124 of 2006.

4. Considering the rival contentions of the parties this Court finds, involving cancellation of the lease involving the very same land vide Annexure-5 to W.P.(C) No.9124 of 2006, the above Writ Petition is brought to the High Court challenging such action of the competent authority. The Writ Petition filed in the year 2006 got disposed of in the year 2018 by the judgment dated 18.05.2018.

In paragraph nos.24 & 25 of the judgment in W.P.(C) No.9124 of 2006 the Division Bench has made the following observation:-

“24. The impugned order does not show that the petitioner was given personal hearing to cancel the lease except allowing to file show cause. Also there is no enquiry held by the learned Sub-Collector while cancelling the lease. In terms of the above discussion, we are of the view that the lease granted in favour of the petitioner is not liable to be cancelled and the impugned order rather is liable to be quashed. The point is answered accordingly.

CONCLUSION

25. In the writ petition, it has been prayed to quash the order passed under Annexure-5. As discussed above, we have already observed that the cancellation of the lease granted in favour of the petitioner is liable to be quashed and the Court do

so. Accordingly, the lease granted in favour of the petitioner is restored. In view of the fact that lease is restored with petitioner, the petitioner-intervenor lacks brevity in his intervention and accordingly the intervention petition is rejected.

The writ petition is disposed of accordingly.”

5. Reading the aforesaid direction in allowing the Writ Petition indicated hereinabove, this Court finds, there should not be any doubt that the lease right taken away by the competent authority by the order vide Annexure-5 therein has not only been quashed but there has also been restoration of the lease right in favour of the Petitioner. This Court here records the statement of the learned State Counsel that there has been no further challenge to the judgment of the Division Bench as of now. For the clear direction of the Division Bench and as there is no challenge to such judgment, this Court finds, the only option left with the Revenue authority is to go by the direction of the Division Bench. Since Petitioner filed the mutation proceeding based on such judgment, the Tahasildar is to simply work-out the order by completing the mutation proceeding in the light of the direction given by the Division Bench in W.P.(C) No.9124 of 2006.

6. In the circumstance, this Court while finding no strength in the submission of the learned State Counsel and rejecting the counter affidavit filed today, directs the Tahasildar, Sadar, Sambalpur to conclude the mutation proceeding pending before him at least within a period of seven days from the date of communication of a certified copy of this order, by bringing out necessary correction in the mutation record in terms of the decision of the Division Bench in W.P.(C) No.9124 of 2006 disposed of on 18.05.2018.

7. Now coming to the response of the Opposite Party Nos.2 & 3 in paragraph no.7 of the counter affidavit, this Court finds, there is an attempt made by the Collector as well as by the Tahasildar to sit over

the direction of a Division Bench of this Court passed in 2018 somehow or other. This Court finds, there is deliberate violation of the order of the Court by the Tahasildar as well as by the Collector. This Court finds, undisputedly there has been no challenge to such order any further. It is a fit case to direct for initiating a suo motu contempt proceeding against the Collector, Sambalpur and the Tahasildar, Sadar, Sambalpur. This Court here takes into account a memo filed by the Counsel for Petitioner indicating the name of the Collector of the District and the concerned Tahasildar. In the process this Court directs the Registry to initiate a suo motu contempt proceeding against both Ms. Ananya Das, the Collector, Sambalpur and Mr. Laxman Amat, the Tahasildar, Sadar, Sambalpur by keeping a set of document involving the disposed of Writ Petition therein. For the time being notice be issued only against the Tahasildar Sadar, Sambalpur-Mr. Laxman Amat sworn the counter affidavit asking him to appear before this Court in person on 28th October, 2022 to explain the reason of sitting over the order of the Division Bench in W.P.(C) No.9124 of 2006. It is made clear that on the date of appearance there shall be filing of show cause by the contemnor No.2. The order in W.P.(C) No.9124 of 2006 shall form part of the suo motu contempt petition. This Court also directs the Tahasildar, Sadar, Sambalpur to make his appearance before this Court on his own expenditure and there should not be utilization of the Government vehicle.

8. The Writ Petition stands disposed of with the above order and direction.

(Biswanath Rath)
Judge