

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 28916 of 2020

Subas Chandra Jena

....

Petitioner

Mr. Bhagaban Behera, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

12.05.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 15th July, 2013 (Annexure-1) passed by the Assistant Settlement Officer, Rental Colony, Bhubaneswar in Suo Motu Rent Case No. 7098 of 2013.
3. It is submitted by Mr. Behera, learned counsel that originally the land pertaining to Sabik Plot No.784/1383 to an extent of Ac.2.650 decimals under Sabik Khata No.233/73 of mouza Sampur under Bhubaneswar Tahasil in the district of Khurda was settled in favour of one A. Ladukeswar Pradhan under the provisions of the Orissa Government Land Settlement Act, 1962 (for short 'the O.G.L.S. Act') in W.L. Case No. 167 of 1966-67. Subsequently, in obedience to orders passed by this Court in OJC No.9449 of 1993, a *suo motu* revision case was initiated under Section 7-A(3) of the O.G.L.S. Act against said A. Ladukeswar Pradhan in Lease Revision Case No.313 of 2000, However, said revision case was dropped, as the sanction of lease was found lawful. A. Ladukeswar Pradhan in order to meet his legal necessity, transferred the total Ac.2.650 decimal land in favour of one Sudhakar Parida (OP No.7) vide RSD No.1358 dated 14th February, 1979 (as rectified vide Regd. Deed

No.2061 dated 9th March, 1980). And thereafter, Opposite Party No.7 sold an area Ac.0.125 decimal out of said Ac.2.650 decimal in Sabik Plot No.784/1383 under Sabik Khata No.233/73 to Opposite Party No.8-R.Tirupati Rao, who thereafter mutated the said Ac.0.125 decimal in his name vide Mutation Plot No.784/1383/2441 under Mutation Khata No.233/507 kisam Baje Fasal-III (for short, 'the case land') in Mutation Case No.5137 of 1991 and ultimately, the Petitioner purchased said Ac.0.125 decimal vide RSD No.8874 dated 12th October, 2007. Thereafter, the Petitioner filed OLR Case No.5602 of 2007 under Section 8-A of the OLR Act to convert the case land to 'Gharabari' and obtained Gharabari 'K' form pertaining to Holding No.233/1349, Plot No.233/1383/2441. Since then, the Petitioner is in peaceful possession over the case land by paying rent and holding tax to Government as a lawful tenant. During settlement operation, draft R.O.R. in Hal Plot No.3158 under Hal Khata No.3420 area Hc.0.0506 was published under Section 12 of the Odisha Survey and Settlement Act, 1958 (for short 'the Act') in the name of the Vender of the Petitioner. Subsequently, the Assistant Settlement Officer (ASO), Rental Colony, Bhubaneswar for the reason best known to him initiated a *suo motu* proceeding in *Suo Motu Rent Case No.7098 of 2013* and the impugned order has been passed directing to record the case land in the name of Government, without serving any notice on the Petitioner and without giving him an opportunity of hearing.

4. It is submitted by Mr. Behera, learned counsel for the Petitioner that the Assistant Settlement Officer (ASO) has no jurisdiction to initiate a *suo motu* rent objection case after the land has been published under Section 12 of the Act. Further, in view of the ratio decided in the case of *Lily Nanda -v- State of Odisha*, reported in 2018(I) OLR-559, the ASO lacks jurisdiction to sit over the settlement made under the O.G.L.S. Act. But, without

considering the same, the Assistant Settlement Officer, Rental Colony, Bhubaneswar passed the impugned order under Annexure-1, which is not sustainable in the eyes of law. Mr. Behera further submits that this Court in a writ petition involving similar question of fact and law in W.P.(C) No.26211 of 2019, which was disposed of vide order dated 29th January, 2021, directed the ASO, Rental Colony, Bhubaneswar now functioning as Settlement Officer in the office of Major Settlement Office, Jobra, Cuttack to decide the matter afresh in accordance with law giving opportunity of hearing to the parties concerned. He, accordingly, prays for the aforesaid relief.

5. Mr. Mishra, learned ASC for the State while not disputing the case law cited by Mr. Behera, learned counsel for the Petitioner and the order passed by this Court in W.P.(C) No.26211 of 2019 submits that the Petitioner has a remedy of appeal to assail the order, as final ROR in respect of Sampur mouza has not yet been published under Section 12-B of the Act. As such, the writ petition is not maintainable. The writ petition also suffers from delay and laches. He, therefore, prays for dismissal of the writ petition being not maintainable.

6. Having heard learned counsel for the parties and on perusal of the record, it is apparent that the land was settled in favour of one A. Ladukeswar Pradhan, who was an ex-army personnel under the lease principles in W.L. Case No.167 of 1966-67. Although a *suo motu* revision was initiated under Section 7-A(3) of the O.G.L.S. Act, in Lease Revision Case No.313 of 2000, but the same was subsequently dropped. In that view of the matter, lease granted in favour of A. Ladukeswar Pradhan was held to be valid. Due to his legal necessity, said A. Ladukeswar Pradhan sold the entire lease hold area. Ultimately, the Petitioner purchased the case land. In that view of the matter, the sale in favour of the Petitioner *prima facie* appears to be valid and

genuine. The draft R.O.R. under Section 12 of the Settlement Act was also published in the name of the Petitioner. It is, however, submitted by Mr. Mishra, learned ASC that final R.O.R. in respect of Sampur mouza has not been published.

7. All these factors were not taken into consideration by the ASO, Rental Colony, Bhubaneswar, while adjudicating the proceedings under the Settlement Act.

8. This Court in the case of *Lily Nanda (supra)* and in several other decisions has already held that the Settlement Authorities have no jurisdiction to sit over the settlement made under the lease principles. They have to respect such settlement made under the lease principles. The settlement operation is made only for a fiscal measure and the authorities under the Act have no jurisdiction to give any opinion on the correctness of the lease in favour of the lessee.

9. In that view of the matter, the impugned order being not in accordance with law is not sustainable. Accordingly, the impugned order dated 15th July, 2013 (Annexure-1) passed by the ASO, Rental Colony, Bhubaneswar in *Suo Motu* Rent Case No. 7098 of 2013 is set aside and the matter is remitted back to the Assistant Settlement Office, Rental Colony, Bhubaneswar (now functioning as Settlement Officer in the office of Major Settlement Office, Jobra, Cuttack)-Opposite Party No.3 to adjudicate the matter afresh in accordance with law giving opportunity of hearing to the parties concerned. The Assistant Settlement Officer shall act upon production of certified copy of this order, which is undertaken to be produced before him by the Petitioner within a period of two weeks hence.

Urgent certified copy of this order be granted on proper application.