

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OA) No.2220 of 2013

Badri Narayan Tripathy

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

O R D E R

28.3.2022

Order No

3.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. M. Pati, learned counsel for the Petitioner and Mr. Praharaj, learned counsel for the State-Opposite Parties.

3. This matter was reserved for delivery of orders but for certain clarification, the matter is listed today under the heading "To be Mentioned".

4. This Writ Petition has been filed by the Petitioner challenging the demand raised by Opposite Party No.1 in directing recovery of house licence fee of Rs.99,290/- vide communication dated 17.7.2013 under Annexure-16.

5. It is submitted by Mr. Pati, learned counsel for the Petitioner that the quarter in question was allotted in favour of the Petitioner during December, 2004, while the Petitioner was working in the Office of Superintending Engineer, Southern M.I. Circle, Berhampur-Opposite Party No.4.

6. It is further submitted that the Petitioner while continuing in the said circle was transferred to M.I. Division, Dhenkanal vide order dated 09.10.2006.

7. It is further submitted that in spite of his transfer to M.I. Division, Dhenkanal vide order dated 09.10.2006, the Petitioner was allowed to retain the quarter up to 31.05.2007 under normal condition vide order issued on 13.07.2007 under Annexure-4.

8. It is submitted by Mr. Pati, learned counsel for the Petitioner that because of some family problem, the Petitioner could not vacate the quarter and made applications seeking permission to retain the said quarter and the said prayer of the Petitioner was also duly recommended by the Superintending Engineer, Southern Minor Irrigation Circle, Berhampur vide communication issued on 17.08.2008 under Annexure-7.

9. It is also further argued by the learned counsel for the Petitioner that vide letter dated 24.09.2008, the Chief Engineer Minor Irrigation, Orissa requested Superintending Engineer, Southern Minor Irrigation Circle, Berhampur to take appropriate action at his level by permitting the Petitioner to retain the quarter till 31.05.2009.

10. Mr. Pati, learned counsel for the Petitioner submitted that the Petitioner in the meantime vacated the quarter on 22.04.2009 and in support of the same, he brought to the notice of this Court, the vacation report dated 24.04.2009 under Annexure-9.

11. It is submitted by Mr. Pati, learned counsel for the Petitioner that subsequently though the case of the Petitioner was favourably recommended by the Chief

Engineer Minor Irrigation, Orissa vide letter dated 16.04.2011 under Annexure-12 and in consideration of that Superintending Engineer, Southern Minor Irrigation Circle, Berhampur vide letter dated 31.01.2012 moved the Chief Engineer, Minor Irrigation, Odisha with a request to communicate necessary approval to waive out the penal rent and recover outstanding rent @ Rs.820/- per month, but instead of considering the same, the impugned communication has been issued by Opposite Party No.1 directing recovery of Rs.99,290/- vide Annexure-16.

12. Accordingly, Mr. Pati, learned counsel for the Petitioner prays for interference of this Court with regard to illegal demand raised by the Opposite Party No.1 under Annexure-16.

13. Mr. Praharaj, learned counsel for the State-Opposite Party, while supporting the demand raised under Annexure-16, prayed for dismissal of the Writ Petition on the ground that since the Petitioner has overstayed in the quarter in question, he is liable to pay penal rent as communicated under Annexure-16.

14. Having heard learned counsel for the Parties, I found that the Petitioner even though was put under transfer vide order dated 9.10.2006, but he was allowed to retain the quarter and vide letter dated 31.01.2012 under Annexure-15, the Superintending Engineer sought for necessary approval from the Chief Engineer, Minor Irrigation to waive out the penal rent and to recover the outstanding rent @Rs.820/- per month. But without taking into

consideration the said communication issued by the Superintending Engineer and the earlier communication made by the Chief Engineer, the Opposite Party No.1 issued the impugned communication with a direction to recover house licence fee of Rs.99,290/- from the Petitioner.

15. Since in my view, the Opposite Party No.1 while issuing the impugned communication has not taken into consideration the communication issued by the Superintending Engineer on 31.1.2012 under Annexure-15 and the earlier communication issued in that regard, I am inclined to interfere with the impugned communication dated 17.07.2013 and quash the same with a direction on the Opposite Party No.1 to take a fresh decision on the matter taking into account the communication dated 31.01.2012 issued under Annexure-15 and other communications issued by the Superintending Engineer as well as by the Chief Engineer on the subject. I direct the opposite party No.1 to take a fresh decision within a period of three months from the date of production of the certified copy of this order.

16. With the aforesaid observation and direction the Writ Petition(OA) is disposed of.

17. Issue urgent certified copy of the order as per rules.

(Biraja Prasanna Satapathy)
Judge

Subrat