

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 35587 OF 2021

Chaka Bariha and others ***Petitioners***

Mr. Niranjana Panda, Advocate

-versus-

State of Odisha and others ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER
20.04.2022

Order No.

6.
 1. This matter is taken up through hybrid mode.
 2. The grievance of the Petitioners in this writ petition is with regard to non-acceptance of rent by the Tahasildar, Rampur, although the land in question has been settled in their name under Annexure-1 series pursuant to the orders passed in Lease Case No.1 of 1987.
 3. It is submitted by Mr. Panda, learned counsel that the Petitioners are landless persons in O.L.R. Ceiling Case No.1211 of 1975. The land under Annexure-1 series was found to be surplus holding of land holders (not made parties to the writ petition). Till 2019, rent was being accepted from the Petitioners by the Tahasildar, Rampur, but surprisingly, no rent was accepted from them in respect of the land in question. Hence, this writ petition has been filed to direct the Tahasildar, Rampur to accept the rent from the Petitioners in respect of the land recorded in their favour under Annexure-1 series.
 4. Counter affidavit has been filed by the State detailing the circumstances under which the rent is not being accepted.

5. Mr. Mishra, learned Additional Standing Counsel vehemently objected to the submission made by Mr. Panda, learned counsel for the Petitioners. It is the contention of Mr. Mishra, learned Additional Standing Counsel that the writ petition suffers from suppression of material fact and non-joinder of necessary party. The Petitioners by filing the writ petition have also made an attempt to mislead this Court. Elaborating his submission, Mr. Mishra, learned Additional Standing Counsel submits that O.L.R. Ceiling Case No.1211 of 1975 was initiated in the name of Bhanumati Padhan and Mukta Padhan. The land settled in favour of the Petitioners under Annexure-1 series was found to be ceiling surplus as the Petitioners were landless persons. Subsequently, the legal heirs of the land holders, namely, Bhanumati Padhan and Mukta Padhan, filed OJC No.4774 of 1992 assailing the order passed by the Revenue Officer-cum-Tahasildar, Rampur of Bolangir district in O.L.R. Ceiling Case No.1211 of 1975. Although notices were issued to the beneficiaries in respect of whom the land was settled, but none had entered appearance. However, the writ petition was disposed of vide order dated 14th March, 2001 with the following order:

“Be that as it may, if the original order passed by the O.L.R. authorities declaring the land to be ceiling surplus becomes illegal, all the consequential orders flowing therefrom becomes null and void. I, therefore, set aside the order dated 2.2.1988 passed in O.L.R. Ceiling Case No.1211 of 1975 (Annexure-1) and direct the authorities to start de novo enquiry after giving notice to the petitioners. It is made clear that in spite of service of notice, if the petitioners fail to appear and file their show cause and/or do not take part in the proceeding, then the authorities will be free to proceed with the case in

accordance with law. The Ceiling Surplus case being an old one, having been initiated in the year 1975, steps should be taken to dispose of the same expeditiously.

The writ application is allowed. No costs.”

6. Mr. Mishra, learned Additional Standing Counsel emphasized on the observation made in the aforesaid paragraph to the effect that when the Authorities declared the land to be ceiling surplus it becomes illegal and all the consequential orders flowing therefrom becomes null and void. Pursuant to the said direction, O.L.R. Ceiling Case No.1211 of 1975 was reopened. Notices were also issued to the Petitioners in the writ petition, namely, the legal heirs of the land holders as well as the present Petitioners. Since the matter was kept pending, W.P.(C) No.921 of 2021 was also filed by Petitioners in OJC No.4774 of 1992. The said writ petition was disposed of vide order dated 17th February, 2021 with the following direction:

“In that view of the matter, this Court disposes of this writ petition directing opposite party no.2 to dispose of O.L.R. Case No.1211 of 1975 as expeditiously as possible, preferably within a period of six weeks by giving opportunity of hearing to all the parties.

With the above observation and direction, the writ petition is disposed of.”

7. It is further submitted by Mr. Mishra, learned Additional Standing Counsel that the Petitioners were being noticed vide Annexure-E/3 series, appeared and filed a petition for adjournment to participate in the hearing of O.L.R. Ceiling Case No.1211 of 1975. Thus, the Petitioners are well aware of the entire developments in the case. Said fact was conveniently suppressed in the writ petition. Due to non-cooperation of the

Petitioners in the O.L.R. Ceiling Case No.1211 of 1975, said case could not be disposed to till date. But the Revenue Officer is taking steps for early disposal of O.L.R. Ceiling Case No.1211 of 1975 in accordance with law to avoid further complicity.

8. In view of the above, Mr. Mishra, learned Additional Standing Counsel submits that since the lease granted in favour of the Petitioners has already been declared as null and void vide order dated 14th March, 2021 passed in OJC No.4774 of 1992, no rent could be collected from them. Collection of rent from the Petitioners cannot create any right in their favour. Thus, if the Petitioners participate in early disposal of O.L.R. Ceiling Case No.1211 of 1975, they can also raise objection before the Revenue Officer. In that view of the matter, he prays for dismissal of the writ petition.

9. Taking into consideration the rival contentions of the parties, this Court finds that although the Petitioners or their predecessors were made parties in OJC No.4774 of 1992 and notices were issued to them, they did not appear to participate in the hearing of the said writ petition.

10. It is further not clear from the order passed in W.P.(C) No.921 of 2021 as to whether the Petitioners were made parties and were issued with notice in the said case. However, notices under Annexure-E/1 series disclose that each of the Petitioners has been noticed.

11. Mr. Mishra, learned Additional Standing Counsel relying upon the averments made in the counter affidavit submits that since the Petitioners have already entered appearance and sought for adjournment to participate in the hearing of O.L.R. Ceiling

Case No.1211 of 1975, it cannot be ruled out that the Petitioners were ignorant all throughout about the aforesaid developments.

12. Since there is insufficient material to come to the conclusion that the Petitioners have suppressed the material fact, this Court is not in a position to take action in that regard against the Petitioners. However, at present, the Petitioners are aware of pendency of O.L.R. Ceiling Case No.1211 of 1975 and they have also been served with notices under Annexure-E/1 series. Thus, they can appear before the Revenue Officer-cum-Tahasildar, Rampur and participate in the hearing of O.L.R. Ceiling Case No.1211 of 1975. They are also at liberty to raise objection in accordance with law including non-acceptance of rent in respect of the land recorded in their name under Annexure-1 series. This Court is, therefore, not inclined to grant the prayer made in this writ petition.

13 With the aforesaid observation, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge

bks/ms