ORISSA HIGH COURT : CUTTACK

AFR

O.J.C. No.2689 of 2002
CNR No.ODHC01-023210-2002

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

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Mirza Jamir Beig
Aged about 32 years
Son of Mirza Rambaj Beig
At: Barigaon, P.O.: Salepur
District: Kataka. ... Petitioner

-VERSUS-

1. State of Odisha
Represented through
The Special Secretary
General Administration Department
At: Lok Seva Bhawan (Secretariat Building)
Bhubaneswar, District: Khordha.

2. Joint Secretary to Government of Odisha and
Ex-Officio Director of Estates
General Administration Department
At: Lok Seva Bhawan (Secretariat Building)
Bhubaneswar
District: Khordha. ... Opposite parties.

Counsel appeared for the parties:

For the Petitioner : Mr. Samir Kumar Mishra
Senior Advocate
M/s. Sarfaraz Ahmed,

Sarthak Pradhan,
Rutuparna Dash,
Ananta Narayan Pattnaik,
Suman Modi and Shalaka Das
Advocates

For the Opposite parties : Mr. Sanjay Rath,
Additional Government Advocate.

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 06.11.2026 :: Date of Judgment : 06.11.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

The petitioner craves for indulgence of this Court to exercise power under Articles 226 and 227 of the Constitution of India to grant following relief(s):

"It is, therefore, humbly prayed that Your Lordships be graciously pleased to admit the writ application, issue a rule nisi calling upon the opposite parties to show cause as to why the letter issued on 29.08.2001 rejecting the petitioner's application for allotment of a residential plot bearing No.339 measuring 60' X 90' under Mouza: Chandrasekharpur shall not be quashed;

If the opposite parties fail to show cause or give insufficient cause, make the rule absolute by quashing Annexure-4 and issue a writ of mandamus directing the

authorities to allot the plot bearing No.339 measuring 60' X 96' drawing No.B/132 in Mouza: Chandrasekharpur under "ALLOTMENT OF GOVERNMENT LAND IN THE NEW CAPITAL, BHUBANESWAR FOR RESIDENTIAL PURPOSES, 1987 SCHEME" by accepting the premium amount and executing lease deed in his favour within a stipulated period of two months from the date of passing of the order;

And for which act of kindness, the petitioner as in duty bound shall ever pray."

Case of the petitioner:

2. The petitioner, an employee under the Defence Department belonging to a minority community, being persuaded by *"ALLOTMENT OF GOVERNMENT LAND IN THE NEW CAPITAL, BHUBANESWAR FOR RESIDENTIAL PURPOSES, 1987 SCHEME"* (for short, "Scheme") applied for allotment of land after purchasing the brochure. A lottery was conducted where the petitioner was selected for allotment of Government land.

2.1. Being selected for allotment of residential plot within the Bhubaneswar Town, which was published in the daily newspaper, the petitioner was awaiting for communication of allotment letter, as it was the duty of the General Administration Department to issue an allotment order in his favour. On enquiry, it could come to light that such allotment order was issued by Registered Post from the office. However, it is asserted by

the petitioner that such communication has never been received by him.

2.2. Having approached the authorities time and again, no plausible explanation is rendered by them to show that such communication was ever made to him. From the sources at the Government Office it could be gathered that till the date of filing of the writ petition in the year 2002, the plot bearing No.339, measuring 60' X 90', Drawing No.B/132 in Mouza: Chandrasekharpur has not been allotted to anybody and was lying vacant.

2.3. The petitioner made an application dated 02.07.2001 before the competent authority, which came to be rejected by the Government of Odisha in General Administration Department, *vide* Letter in Memo No.13629/CSP-440/90/GA, dated 29.08.2001, the text of which is reproduced hereunder:

"I am directed to invite a reference to the subject cited above and to say that Mirza Zameer Beig, Village: Barigol, P.O.: Salepur, District: Cuttack, was allotted with a residential plot bearing No.339 measuring 60' X 90', Drawing No.B/ 132 in Mouza: Chandrasekharpur vide this Department Order No.6093, dated 09.04.1990. He has neither deposited the premium within the stipulated time nor executed lease deed. As he has not taken any step during the last 11 years, his petitions have been rejected. This is for favour of your kind information."

2.4. Aggrieved thereby, this writ petition has been filed.

Submissions:

3. Sri Samir Kumar Mishra, learned Senior Advocate submitted that it has been consistently denied by the petitioner that he has received no communication with regard to allotment of plot in question. As the petitioner was serving in the Defence Department it was not possible to pursue the matter before the authorities being physically present. It is asserted that the reason ascribed by the opposite parties in the Letter dated 29.08.2001 rejecting the application for allotment of land (Annexure-4) is blatant lie inasmuch as the petitioner had been pursuing the matter quite often and the authorities did not pay any heed to hand him over the original allotment letter.

3.1. It is further submitted that the petitioner was awaiting communication of allotment letter for the purpose of making requisite deposits. Though specific stance is taken in this regard, the opposite parties by filing counter affidavit dated 18.12.2002 merely stated that since registered letter did not come back to the sender, it could be presumed that such allotment letter was served on him and the opposite parties bluntly denied that the petitioner had ever made any enquiry. Sri Samir Kumar Mishra, learned Senior Advocate vociferously submitted that since no iota of evidence regarding communication of allotment letter being furnished by the opposite

parties in the counter affidavit, and the petitioner has specifically denied of receipt of such communication, there could be no presumption of service.

4. *Per contra*, Sri Sanjay Rath, learned Additional Government Advocate vehemently objected and contended that the fact of selection of the petitioner for allotment of land was published in the newspaper in the year 1990, but the petitioner raised the issue of non-receipt of allotment letter in the year 1998 by way of grievance petition dated 25.11.1998. The unreasonable delay in approaching the authorities cannot protect him. Having slept over the matter for a considerable length of time for around nine years, the authorities are justified in rejecting his prayer *vide* Letter dated 29.08.2001.

4.1. It is submitted by the learned Additional Government Advocate that even if the plot is lying vacant, the conduct of the petitioner in not raising objection as to non-receipt of allotment letter within reasonable time, he cannot claim equity inasmuch as the market value of the plot in Chandrasekharpur Mouza has been enhanced manifold.

Hearing:

5. This Court on 18.03.2002 passed the following order in the instant case:

"Issue notice on the question of admission to the opposite parties.

Requisites will be filed by day after tomorrow failing which the writ application shall stand dismissed without reference to Bench.

Misc. Case No.2616 of 2002:

There shall be interim stay of allotment of residential plot bearing No.339 measuring 60' X 90' and drawing No.B/132 in mouza Chandrasekharpur to any person."

5.1. On 18.10.2019 following further order was passed:

"Heard.

On 02.08.2019 following order was passed in this Case:

'Vakalatama taking consent of earlier set of counsel filed in court today along with Memo of appearance of Sri Sourya Sundar Das, Senior Advocate along with associates filed in Court are taken on record.

Heard.

Learned counsel for the State will take instruction and will come out with market price of the land in question

If the plot in question is vacant and if the petitioner shows his readiness, he may be permitted to take the land on current market price.

Put up this matter on 16th August, 2019.

Learned counsel for the petitioner may also take instruction regarding willingness of the petitioner to purchase land in question on the current market price.'

It will be open for the petitioner to approach the competent authority with this order. If such an approach is made by the petitioner, the authority concerned will consider the case of the petitioner in accordance with law.

The matter to come up on 08.11.2019."

5.2. Since there was non-compliance of said order, on 08.11.2019 this Court directed as follows:

"Heard learned counsel for the parties.

Pursuant to the earlier order, if the petitioner is prepared to pay the bench mark price, the authority concerned will consider his case. On payment of the bench mark price by the petitioner, possession of the land in question will be handed over to him.

The matter to come up on 22.11.2019."

5.3. State of Odisha assailing the interim orders, as stated above, approached the Hon'ble Supreme Court of India in SLP(C) Diary No.46640 of 2019, wherein on 07.02.2020, the following order was passed:

"Delay condoned.

Issue notice.

Until further orders, there shall be stay of operation of the impugned order(s) passed by the High Court."

5.4. Ultimately, the said case(s) being Civil Appeal No.10015-10017 of 2024 (Arising out of SLP(C) No.4220-4222 of 2020) came to be disposed of *vide* Order dated 30.08.2024 with the following observation:

"1. Leave granted.

2. The State of Odisha has assailed three orders passed by the High Court which are interim in nature dated 02.08.2019, 18.10.2019 and 08.11.2019.

3. The net result of these three interim orders, apparently, is to the effect that the respondent herein, the original writ petitioner, would be entitled to possession of the plot under the scheme provided he pays the bench-mark as may be communicated by the authorities.

4. The submission is that the interim order is in the nature of final relief which is claimed by the writ petitioner before the High Court, as such the appellant-State had to approach this Court assailing the correctness of the said orders.

5. We are of the view that the High Court should decide the writ petition on merits rather than grant the relief of allotment and possession by way of an interim order.

6. Accordingly, we set aside the impugned orders and request the High Court to decide the pending writ petition on its own merits, after hearing learned counsel for the parties strictly in accordance to law.

7. Since the matter is pending for substantially long period, i.e. 2002 before the High Court, we request the High Court to make an endeavour to decide the same expeditiously.

8. It goes without saying that both sides shall extend full cooperation for early disposal of the writ petition.

9. The appeals stand disposed of as above."

5.5. Accordingly the matter was heard on 24.04.2026. At the time of dictating the order, it was felt necessary for the counsel for the parties to clarify certain doubts and ambiguity in fact. Hence, the matter was directed to be placed on board today for further hearing. Being listed and upon hearing the counsel for the respective parties, the instant order is passed.

5.6. Heard Sri Samir Kumar Mishra, learned Senior Advocate assisted by Sri Sarfaraz Ahmed, learned Advocate for the petitioner and Sri Sanjay Rath, learned Additional Government Advocate for the opposite parties.

Consideration of arguments advanced by the counsel for respective parties:

6. Sri Samir Kumar Mishra, learned Senior Advocate submitted that there is no denial of the fact by the opponents that the petitioner was allotted with the Plot bearing No.339 under Drawing No.B/132 comprising area of 60' X 90' in Mouza: Chandrasekharpur, Bhubaneswar. It is the case of the petitioner that though he is directed to deposit a premium of Rs.24,794/- on the basis of Rs.2,00,000/- per acre and 20% more in the event the plot is a corner plot and ground rent was fixed @ Rs.150/- per acre per annum, the said communication allotting the plot was never reached at

him; as a result of which he could not make the requisite payment. It is disputed that the petitioner has been approaching the authorities for supply of copy of such allotment order in order to facilitate him to deposit the requisite amount(s) so that he can possess the same for the purpose of residence.

6.1. Sri Samir Kumar Mishra, learned Senior Advocate made valiant attempt to persuade that the stand of the opposite parties that the communication of allotment letter and the direction to deposit the amount as aforesaid was sent by registered post is a myth inasmuch as he was not disclosed the details of receipt showing the document being sent by registered post so that the veracity could be verified from the postal department.

7. *Quoad ultra,* Sri Sanjay Rath, learned Additional Government Advocate would submit with reference to the counter affidavit dated 18.12.2002 that it is clear and unambiguous affirmation of the opposite parties that the petitioner was selected through a lottery held during 03.03.1989 to 10.03.1989 and allotted afore-mentioned residential plot.

7.1. The allotment order No.6093, dated 09.04.1990 in respect of the suit plot No.339, Drawing No.B/132 of Mouza: Chandrasekharpur was communicated to the petitioner by registered post in the address furnished by

him in his original application dated 21.01.1987 for allotment of the residential plot of land. It is asserted that since the said registered letter was not returned, the petitioner has taken advantage of the said fact and filed this writ petition.

7.2. It is forcefully submitted by the learned Additional Government Advocate that the selection of the petitioner along with others in the lottery for allotment of land was widely publicised in the newspapers. The plea taken by the petitioner that the communication was not duly served on him is an after-thought inasmuch as he approached the authorities by way of filing the grievance petition on 25.11.1998 and an application for allotment of said land on 02.07.2001. Said application, as it is apparent from the letter *vide* Memo dated 29.08.2001, has been rejected by refusing to grant any relief due to delay and non-deposit of requisite amount within the period stipulated.

8. Arguments advanced by the counsel for the respective parties boils down to the factum of service of allotment letter order No.6093, dated 09.04.1990 on the petitioner. Only reason cited by the petitioner for non-deposit of requisite amount for taking step for execution of lease deed in terms of allotment letter was that (Rejoinder affidavit filed on 21.01.2003):

> *"3. That in the counter affidavit it has been candidly admitted by the opposite party No.2 that the petitioner has been allotted a residential plot measuring 60' X 90' in Chandrasekharpur bearing Plot No.339, Drawing No.B/132 and it is alleged that the allotment order has been communicated on 09.04.1990 by Registered Post in the address furnished in O.A. dated 21.01.1987 for allotment of a residential plot of land. The petitioner denies such communication from the authorities and he has not received the same and has not been communicated to him. Excepting the issue number and date no concrete proof has been produced before this Honourable Court to indicate that the letter has been despatched by registered post and the same has been duly acknowledged by the present petitioner."*

8.1. From the above averment of the petitioner it is quite clear that it has not disputed that the address given by him in original application is correct. As it is the case of the opposite parties that the allotment letter at relevant point of time (say, 1990) was sent to the said address by registered post, bare denial by the petitioner to have received such communication is not acceptable. Setting up such dispute after around eight years by way of approaching the authority by filing a grievance petition dated 25.11.1998 and an application dated 02.07.2001 demonstrates that in order to cover up delay and laches on the part of the petitioner, such steps have been taken.

8.2. It is to be pointed out that such controversial factual aspect, being disputed question of fact, need not be gone into in a writ jurisdiction by this Court. In the case of *A.P. Electrical Equipment Corporation Vrs. The Tahsildar, (2025) 2 SCR 1625*, the Hon'ble Supreme Court of India held as follows:

> *"48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.*
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> *49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of*

Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

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52. *In one of the recent pronouncements of this Court in State of U.P. & Anr. Vrs. Ehsan & Anr. reported in 2023 INSC 906, this Court observed that:*

> *'28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/ evidence(s) available on record are insufficient/ inconclusive to enable the Court to come to a definite conclusion.*
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> *29. Bearing the aforesaid legal principles in mind, we would have to consider whether, in the facts of the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation,*

refrained from taking up the said issue even though it had arisen between the parties.

30. *No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of Uttar Pradesh Vrs. Hari Ram, (2013) 2 SCR 301 = (2013) 4 SCC 280]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder [See State of Assam Vrs. Bhaskar Jyoti Sarma, (2014) 14 SCR 1451 = (2015) 5 SCC 321]. In such an event, the factum of actual possession would have to be determined on the basis of materials/ evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. And if the writ court finds it difficult to determine such question, either for insufficient/inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable.'*

53. Thus, it would all depend on the nature of the question of fact. In other words, what is exactly, that the writ court needs to determine so as to arrive at the right decision. If the only issue, that revolves around the entire debate is one relating to actual taking over of the physical possession of the excess land under the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively, then in such circumstances, the writ court has no other option but to go into the factual aspects and take an appropriate decision in that regard. The issue of possession, by itself, will not become a disputed question of fact. If all that has been said by the State is to be accepted as a gospel truth and nothing shown by the landowner is to be looked into on the ground that a writ court cannot go into disputed questions of fact, then the same may lead to a serious miscarriage of justice."

8.3. From the pleadings and arguments advanced, it is to be ascertained that whether the petitioner has approached the authorities with a delay on the plea of non-receipt of registered letter containing allotment of plot and direction to pay the requisite amount for said purpose.

8.4. Strong exception has been taken in the counter affidavit by the opposite parties that as the petitioner was aware of being selected for allotment of land in the lottery, the result of which was widely publicised in the newspaper (namely *"The Sambad"*, dated 21.05.1989), within a reasonable time thereafter having not made any enquiry with respect to allotment, he cannot take advantage of

"his own laxity and negligence". Scrutiny of papers available in record does not reveal iota of evidence to establish the truthfulness of the fact asserted by the petitioner to the effect that:

"The contention raised that he has not taken any step for last 11 years is thoroughly misconceived inasmuch as and when he was on annual leave he was approaching the authorities by filing the representation as well as by meeting the authorities in their grievance cell and all the times, assurance was given that correspondence will be made to him on the basis of the allotted plot."

8.5. No scrap of paper has been placed on record by the petitioner in the writ petition to justify his claim that he had been approaching the authorities right since 1990. Nonetheless, from the communication *vide* Letter bearing Memo No.13629-CSP-440/1990/GA, dated 29.08.2001 it is manifest that the Government of Odisha in General Administration Department has rejected his application dated 02.07.2001 for allotment of land in Mouza: Chandrasekharpur. This Court on the basis of factual assertion made by the opposite parties finds that the petitioner maintained absolute silence till he made grievance petition dated 25.11.1998 and consequent application being made on 02.07.2001. The petitioner having not provided material particulars with respect to approaches made to the authorities for complying with the terms of allotment letter *vide* order No.6093, dated 09.04.1990 earlier to 1998, this Court cannot perceive

that the petitioner had been diligently pursuing before the authorities since 1990.

8.6. It has been consistent stand of the opposite parties that the allotment letter containing order No.6093, dated 09.04.1990 was "communicated to the petitioner by registered post in the address furnished by him in his original application dated 21.01.1987 for allotment of a residential plot of land". It is explained by the learned Additional Government Advocate that the petitioner has made his grievance petition only on 25.11.1998 despite his knowledge about winning in the lottery for allotment of land. Having found force in such submission, on account of such inordinate delay, it is to be held, *onus* to prove that the communication was not made lies heavy on the petitioner, but not on the opposite parties. The provisions of Section 27 of the General Clauses Act, 1897 read with Section 29 of the Odisha General Clauses Act, 1937, would clinch the issue.

8.7. Section 27 of the General Clauses Act, 1897 reads as follows:

"Meaning of service by post.—

Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention

appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

8.8. Section 29 of the Odisha General Clauses Act, 1937, stands thus:

"Meaning of service by post.—

Where any Orissa Act authorizes or requires any document to be served by post whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting by registered Post a letter containing the documents and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

8.9. The petitioner in his rejoinder affidavit dated 19.01.2003 merely stated thus:

"Excepting the issue number and date no concrete proof has been produced before this Honourable Court to indicate that the letter has been despatched by registerd post and the same has been duly acknowledged by the present petitioner. Therefore, doubt arose in the mind that there was no communication made by the authorities to the present petitioner far from issuing the same by registered post."

8.10. Mere raising suspicion would not suffice to take adverse inference against the action of the authorities. The petitioner has not denied nor has he laid any evidence to demonstrate that the address to which the authorities have stated to have communicated the allotment letter was incorrect or not to the address given in the application for allotment of land. It is requirement under the afore-quoted provisions of the General Clauses Act(s) is that the letter must be sent by registered post and it must be properly addressed and pre-paid. Further the letter must contain the document. The presumption [1] arises if it is proved that the letter was properly addressed and put into post office. However, such presumption can be rebutted by laying evidence that the petitioner did not receive the allotment letter. The petitioner having asserted the fact, it is his obligation to

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1 In *Shri Partap Singh Vrs. Shiv Ram, (2020) 1 SCR 694* it has been held that:

"21. In a judgment reported as Sodhi Transport Co. and Others Vrs. State of U.P. and Others, (1986) 2 SCC 486, this Court was considering Section 28-B of the Uttar Pradesh Sales Tax Act, 1948 which raises a presumption of sale of goods in a manner prescribed therein. This Court considered Section 4 of the Evidence Act and also the previous judgments and held as under:

*'14. A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances.' ***"*

lay evidence. The factual aspect as claimed by the petitioner could have been demonstrated by placing on record information from the postal department in this regard. Nonetheless, the petitioner has placed burden of proof on the opposite parties.

8.11. It may be apt to have regard to the following observation made by the Hon'ble Supreme Court of India in the case of *Parimal Vrs. Veena @ Bharti, (2011) 2 SCR 648*:

"PRESUMPTION OF SERVICE BY REGISTERED POST AND BURDEN OF PROOF:

13. This Court after considering large number of its earlier judgments in Greater Mohali Area Development Authority Vrs. Manju Jain, AIR 2010 SC 3817, held that in view of the provisions of Section 114 Illustration (f) of the Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897 there is a presumption that the addressee has received the letter sent by registered post. However, the presumption is rebuttable on a consideration of evidence of impeccable character. A similar view has been reiterated by this Court in Dr. Sunil Kumar Sambhudayal Gupta Vrs. State of Maharashtra, JT 2010 (12) SC 287 = (2010) 13 SCC 657 = (2010) 15 SCR 452.

14. In Gujarat Electricity Board Vrs. Atmaram Sungomal Poshani, AIR 1989 SC 1433, this Court held as under:

'There is presumption of service of a letter sent under registered cover, if the same is returned back

with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service.'

15. *The provisions of Section 101 of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an allegation before he is entitled to a judgment in his favour. Section 103 provides that burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The provision of Section 103 amplifies the general rule of Section 101 that the burden of proof lies on the person who asserts the affirmative of the facts in issue."*

8.12. The following enunciation of legal position in *C.C. Alavi Haji Vrs. Palapetty Muhammed, (2007) 7 SCR 326* may be significant for reference:

"13. According to Section 114 of the Act, read with illustration (f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may

*draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. ****

14. *Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This*

Court has already held that when a notice is sent by registered post and is returned with a postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', due service has to be presumed. [Vide Jagdish Singh Vrs. Natthu Singh, AIR 1992 SC 1604; State of M.P. Vrs. Hiralal, (1996) 7 SCC 523; and V Raja Kumari Vrs. P. Subbarama Naidu, (2004) 8 SCC 774. It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act (Negotiable Instruments Act) that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved."

8.13. In this respect the following observations made in the case of *Principal Commissioner of Income Tax, Mumbai Vrs. I-Ven Interactive Limited, Mumbai, (2019) 13 SCR 509* may be relevant:

"7. Now so far as the observations made by the High Court while concurring with the view of the learned Tribunal that merely by filing of return of income with the new address, it shall be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned, we are of the opinion that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In absence of any specific intimation to the Assessing Officer with respect to change in address

and/or change in the name of the assessee, the Assessing Officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when the return has been filed under E-Module scheme. It is required to be noted that notices under Section 143(2) of the 1961 Act are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format (Form 18) and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which in the present case the assessee has failed to do so.

8. *Now so far as the submission on behalf of the assessee that with respect to the Assessment Years 2004-05 and 2005-06, communications and the assessment orders were sent at the new address and therefore the Assessing Officer was in the knowledge of the new address is concerned, the same has been sufficiently explained by the Revenue.*

9. *In view of our findings, recorded hereinabove, the impugned judgment and order passed by the High Court as well as the orders passed by the learned C.I.T (Appeals) and the I.T.A.T holding the*

assessment order bad in law on the aforesaid ground cannot be sustained and the same deserve to be quashed and set aside. As the learned C.I.T (Appeals) has not considered the other grounds on merits and has not considered the appeal on merits, the matter is required to be remanded to the learned C.I.T (Appeals) to consider the appeal on merits, in accordance with law."

8.14. It would be apt to have regard to the following observations made in *Ajeet Seeds Limited Vrs. K. Gopala Krishnaiah, (2014) 12 SCC 685 = (2014) 8 SCR 880*, where the Hon'ble Supreme Court of India has reiterated that once notice is sent by registered post to the correct address, a presumption of service arises and the burden shifts upon the addressee to prove that it was not served. It was held thus:

"10. It is thus clear that Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

8.15. The application for allotment of Government land containing the address for service and such address shall be deemed to be the proper address for effecting service of all processes. Once notice is sent to such disclosed or known address, the party cannot subsequently avoid service by remaining absent or unavailable. It is not in dispute that the address given in the application for allotment of Government land is incorrect. When the opposite parties have affirmed that the communication was made by registered post, in such eventuality, no adverse inference can be drawn against the opposite parties. As the petitioner has failed to provide material particulars demonstrating that he approached the authority within a reasonable period since the publication of result of lottery in the newspaper in the year 1990, his allegation regarding the non-issuance of the registered letter stands unsubstantiated and is an afterthought.

9. Another aspect which deserves to be addressed to is this, that (paragraph 3 of rejoinder affidavit filed by the petitioner):

*"*** It is further respectfully stated that whenever the petitioner caused an enquiry he has not been given any appropriate answer either by the Dealing Clerk or any official of the opposite parties. Therefore, he is being harassed from the date of inception of allotment of plot in his favour. The enquiry which has been made even orally,*

the same having not been attended to, written applications have also been submitted, but the same have not been entertained by the concerned Dealing Clerk with an ulterior motive that he wants to grab the property in other means. On perusal of Annexure-3, paper publication, with regard to allotment of plot, the result of lottery done by the General Administration Department for the residential plot. It is for the general information for the public at large, but that has no nexus with the acceptance of the premium amount unless the same is being communicated to individual allottee for deposit of the requisite amount within the time frame. The same having not been done in case of the petitioner, the allegation made that the petitioner is negligent has no bearing at all. Therefore, the same is hereby denied."

9.1. This Court is afraid to consider such a plea without impleading proper and necessary party against whom the petitioner has made scurrilous attack.

9.2. There is no cavil for the proposition that when a party alleges *mala fide* against a statutory authority, burden falls heavy on him who alleges it. It is a settled law where a *mala fide* is alleged, the authority, who has passed the order, which is said to be the result of the *mala fide* exercise of power, has to be impleaded *eo nominee*. In the absence of such impleadment, the Court neither can look into the plea of *mala fide* nor can consider the issue raising *mala fide*. In the case at hand, none of the persons/authorities, against whom unsubstantiated, uncalled for and unwarranted

allegations have been made, has been impleaded. [See, *Tara Chand Khatri Vrs. Municipal Corporation of Delhi, AIR 1977 SC 567; J.N. Banavalikar Vrs. Municipal Corporation of Delhi, AIR 1996 SC 326 = 1995 Supp.4 SCR 1; First Land Acquisition Collector Vrs. Nirodhi Prakash Gangoli, (2002) 4 SCC 160; Jasvinder Singh Vs. State of J&K, (2003) 2 SCC 132; Union of India Vrs. Ashok Kumar, (2005) 8 SCC 760*].

9.3. It has been settled legal proposition that in case allegations of *mala fide* are made against any person he is to be impleaded by name, otherwise the allegations cannot be considered. [*Vide, State of Bihar Vrs. P.P. Sharma, IAS of Delhi and another, AIR 1996 SC 326; All India State Bank Officers Federation and others Vrs. Union of India and others, (1997) 9 SCC 151; and I.K. Mishra Vrs. Union of India and others, (1997) 6 SCC 228*].

9.4. In the case of *A.C. Ananthaswamy Vrs. Boraiah, (2004) Supp.3 SCR 649* it has been held that:

"We do not find any merit in this appeal. Firstly, in the present case, Patel Chikkahanumaiah had moved an application under Order 9, Rule 13, CPC for setting aside the ex-parte decree on the ground of non-service of summons in which fraud was not alleged. As stated above, Patel Chikkahanumaiah had moved R.A. No.54 of 1977 in which there was no such allegation. Secondly, the present suit has been instituted to set aside the ex parte decree on the ground that the decree was obtained by fraud and misrepresentation. Fraud is to be pleaded

and proved. To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely higher. An ambiguous statement cannot per se make the representor guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation. [See: Pollock & Mulla on Indian Contract & Specific Relief Acts (2001) 12th Edition page 489].

In the present case, there is no evidence of fraud. The present case is a matter of non-service of summons. In the present case, there is a bare allegation of fraud. In the case of Choksi Bhidarbhai Mathurbhai Vrs. Purshottamdas Bhogilal Shah reported in AIR 1962 Gujarat 10, it has been held that where the only fraud alleged is a bare non service of summons then such a suit to set aside the decree on alleged ground of fraud was not maintainable. Lastly, no substantial question of law arises in this appeal.

For the aforesaid reasons, we do not find any merit in this civil appeal and the same is accordingly dismissed, with no order as to costs."

9.5. In the present case, the petitioner has not placed on record any material to show that right since 1990 when the result of lottery was published in the newspaper he has been taking steps. It is admitted in the counter affidavit by the opposite parties that the petitioner for the first time raised objection by way of grievance petition on 25.11.1998. Thereafter, in consideration of

his representation/petition dated 02.07.2001 for allotment of land got rejected *vide* Letter in Memo No.13629, dated 29.08.2001 on the ground that "he has neither deposited the premium within the stipulated time nor executed lease deed. As he has not taken any step during the last 11 years, his petitions have been rejected".

9.6. Taking into consideration the facts and circumstances of the case in its entirety, this Court finds that the petitioner was thoroughly intelligent in enquiring about the status of the allotment of the case land. A prudent man, like the petitioner, is expected to make an enquiry within a reasonable time with regard to status of allotment of the Government land after making an application.

9.7. This Court, thus, does not find substance in the submission made by the learned Senior Counsel for the petitioner by making a last ditch effort to get an order in his favour by alleging malice or *mala fide* against the officials of the Department.

10. Referring to an affidavit dated 13.08.2019 filed by the petitioner, Sri Samir Kumar Mishra, learned Senior Advocate then submitted emphatically that "the residential plot No.339 is vacant till date and no construction over the said plot has been built by any other parties". Hence, he submitted that the opposite

parties can take lenient view of the matter and accept the premium so that the vacant land can be allotted to the petitioner.

10.1. Objecting arduously, Sri Sanjay Rath, learned Additional Government Advocate referred to a decision of the Hon'ble Supreme Court of India rendered in the case of *State of Odisha and another Vrs. Malati Biswal and others, Civil Appeal Nos.9895-9896 of 2017, disposed of on 27th July, 2017,* wherein it has been observed as follows:

"***

Facts in short, indicates that the applications were invited by the State of Orissa for allotment of the land way back in the year 1987. Husband of Malati Biswal had filed application on 20.01.1987. Girija Sankar Mohapatra filed application on 01.04.1987. Pradip Kumar Mohanty filed it on 20.04.1987. Birachi Kumkar Dwivedy filed the application on 05.04,1989. Provisional orders of allotment were issued to all of them. With a clear stipulation that they would deposit the premium amount within 60 days failing which grace period of 15 days was granted. Thereafter, provisional allotment stood cancelled automatically on failure to deposit the premium.

The provisional allotment orders were issued to them on 06.04.1990, 24.07.1989, 20.03.1992 and 20.07.1989 respectively. However, it is an admitted fact that none of the respondents had deposited any premium as per the condition of provisional allotment and had filed the writ petitions after 18-23 years. The High Court has allowed

the writ applications by the impugned orders. Hence the appeals.

***

In view of the aforesaid stipulation, it is clear that there was no necessity of passing any formal cancellation order and the provisional allotment order stood cancelled automatically due to admitted non-compliance of the requisites to be performed, as stipulated in the order of allotment. No reason has been shown good bad or otherwise why there was so much of delay in approaching the Court. Once the government framed benevolent scheme such people, it was incumbent upon them to take advantage of the same as stipulated in the scheme and the allotment orders within reasonable time, it would not be a sufficient ground in the facts of the case that since some of them have served the country, they can approach the court at any time after 20 years. Time cannot be relaxed after lapse of decades delay. The delay was inexcusable and due to latches on the part of the respondent they were not entitled for any relief.

Thus, the impugned order is hereby set aside. The appeals are, accordingly, allowed. No order as to costs."

10.2. It is transparent from a review of the facts in *Malati Biswal (supra)* that the instant case is also closely proximate in time. In the said case, the Hon'ble Supreme Court of India has categorically held that there was no necessity for an order of formal cancellation, as the provisional allotment order stood automatically cancelled due to admitted non-compliance of the requisite to be performed as stipulated therein. In the

instant case, it is categorical stand of the opposite parties that allotment letter was sent by registered post to make requisite deposit within stipulated period. Admittedly, the petitioner did not deposit the premium within the stipulated time as instructed in the order of allotment. Thus, rejection of petition dated 02.07.2001 *vide* Letter dated 29.08.2001 cannot be said to be tainted or arbitrary.

10.3. This Court appreciates the submission of the learned Additional Government Advocate that execution of the lease deed by accepting the premium does not arise at this distance of time as the market value of the property in Chandrasekharpur Mouza has been enhanced manifold. It is also appreciated that receipt of the premium at a much belated stage does not confer right on the petitioner for allotment of the case land. In this regard the learned Additional Government Advocate brought to the notice of this Court a decision rendered by the Hon'ble Supreme Court of India in the case of *State of Odisha Vrs. Shrimati Mohanty and Others, Civil Appeal Nos.6610-6611 of 2019, vide Order dated 23.08.2019,* which reads as follows:

> *"1. Leave granted.*
>
> *2. The allotment order was passed in the year 1990. The employee/Surendra Nath Mohanty retired in 1989. He died in the year 2010. Communications*

were went at his address, which returned back twice and effort was made to inform the factum of the allotment after two decades. In the year 2007 effort was made by the deceased employee to get the allotment implemented that was declined. The High Court has allowed the writ petition.

3. *In the facts and circumstances of the case, as the respondents have delayed the matter for 17 years, it was not appropriate to entertain the writ petition due to delay. Almost in the similar facts and circumstances, this Court has passed the order dated 27.07.2017 in C.A. Nos.9895-9896/2017 and batch.*

4. *The amount of Rs.24,794/- deposited in the year 2009 shall be refunded by the appellants to the respondents with interest @ 10% per annum, within a period of four weeks from today and compliance be reported to this Court.*

5. *With the aforesaid direction, the impugned order is set aside and the appeals are disposed of.*

6. *Pending application(s), if any, shall stand disposed of."*

10.4. In the instant case, no requisite amount has been paid till date. In such view of the matter this Court does not feel it apposite to grant any relief to the petitioner.

Conclusion:

11. It is an admitted position that the result of the allotment of Government land was published in the newspaper as far back as 1990. The petitioner has failed to place any

material particulars on record to demonstrate that he had approached the competent authorities within a reasonable period thereafter. Instead, the petitioner seeks to assail the process at this distance of time on the sole ground that he did not receive the individual communication sent by registered post. However, once the opposite party asserted fact on affidavit that the letter was sent to the correct address *via* registered post, a statutory presumption of service arises under Section 27 of the General Clauses Act, 1897, and Section 114 of the Indian Evidence Act, 1872. The opposite party is not required to lead further evidence to prove actual receipt. Rather, the burden shifts entirely onto the petitioner to adduce cogent evidence to rebut this presumption and demonstrate that the registered letter could not have reached him. In the absence of any such evidence, and given the unexplained delay since the 1990, the petitioner's self-serving allegation of non-receipt stands unsubstantiated and is devoid of merit.

11.1. The allegation that the person dealing with the file played mischief remained unsubstantiated inasmuch as he is not shown in the array of party to answer such wild allegation. This itself indicates the motive of the petitioner to put the burden on the opposite parties after a long distance of time.

11.2. In view of the decisions of the Hon'ble Supreme Court of India in *Malati Biswal (supra)* and *Srimati Mohanty (supra)*, it is not prudent to issue writ of *mandamus* to the authorities/opposite parties to allot the alleged vacant plot in favour of the petitioner.

12. In view of the facts discussed and the conspectus of decisions of the Hon'ble Supreme Court of India, this Court finds no justified reason to interfere with the decision of the Government of Odisha in General Administration Department rejecting the application of the petitioner to allot the land/plot *vide* letter dated 29.08.2001 issued by the Joint Secretary to Government and Ex-Officio Director of Estates (Annexure-4). Consequently, this Court desists to exercise its power under Article 226/227 of the Constitution of India. Being devoid of merit, the writ petition is dismissed. Pending interlocutory application(s), if any, stands disposed of, but in the circumstances, there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

Signature Not Verified
Digitally Signed
Signed by: ASWINI KUMAR SETHY
Designation: Personal Assistant (Secretary in-charge)
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 09-Nov-2026 15:18:50

High Court of Orissa, Cuttack
The 06th November, 2026//Aswini/Bichi/Laxmikant