A.F.R.

**HIGH COURT OF ORISSA: CUTTACK**

**W.P.(C). No. 4476 of 2010**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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Pair Nayak @ Panu ... Petitioner.

-Versus-

State of Orissa & another ... Opp. Parties.

For Petitioner : M/s. Ashok Tripathy.

For Opp. Parties : Mr. J.P. Pattnaik
Addl. Government Advocate

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P R E S E N T:

**THE HONOURABLE SHRI JUSTICE B.P.DAS**
**AND**
**THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Date of hearing: 20.07.2010 : Date of judgment: 29.07.2010

***B.N.MAHAPATRA, J*** The petitioner calls in question the legality and validity of the order dated 06.07.1989 of the Additional District Magistrate, Bhubaneswar (here-in-after called "the Revisional Authority") passed under Section 7-A (3) of the Orissa Government Land Settlement Act, 1962 (for short "the OGLS Act") in Revision Case No.39 of 1989 by which the Revisional Authority set aside the order dated 23.06.1975 of opposite party No.2-Tahasildar, Bhubaneswar, who settled an area of Ac 1.000 of land in Plot No.743 under Khata No.745 in Mouza: Chandaka (here-in-after referred to

as “the suit land”) in W.L. Case No.909 of 1975 in favour of the petitioner and further directed to correct the record accordingly and take over possession of the suit land.

2. Bereft of unnecessary details, the facts and circumstances giving rise to the present writ petition are that on 05.06.1975 the petitioner applied to the Tahasildar-opposite party No.1 for grant of lease of the suit land in his favour, which was registered as W.L. Case No.909 of 1975. The Tahasildar vide his order dated 23.06.1975 granted settlement of the suit land in favour of the petitioner under the provisions of the OGLS Act. According to the petitioner, he was issued R.O.R. in respect of the aforesaid suit land and he is in continuous possession of the suit land from the date the lease was granted. The petitioner constructed a residential house on a portion of the suit land and out of its usufructs he maintained his family. The petitioner also paid rent to the Government which was accepted till the lease was cancelled by the Revisional Authority. In the revision proceeding initiated under Section 7-A(3) of the O.G.L.S. Act, the petitioner in pursuance of the show cause notice appeared before the Revisional Authority and filed his written statement. The Revisional Authority vide his order dated 06.07.1989 cancelled the lease of the suit land on the ground that there were material irregularities as well as legal infirmities in settling the suit land in favour of the petitioner. Hence, this writ petition.

3. Mr. Ashok Tripathy, learned counsel appearing on behalf of the petitioner submitted that the impugned order under Annexure-2 has been

passed by the Revisional Authority arbitrarily without application of judicial mind and contrary to the provisions of Section 7-A of the O.G.L.S. Act. After the lease was granted, the petitioner is in continuous possession over the suit land and has paid rent upto 1989. A suo motu revision was initiated after a lapse of more than 14 years. In view of the specific bar provided under Section 7-A(3) of the O.G.L.S. Act, the Revisional Authority was not empowered to do so and, therefore, the impugned order is without jurisdiction. The petitioner was also not given sufficient opportunity of hearing before the impugned order was passed. Placing reliance on the judgment of this Court in ***Chandan Ku. Sethi & Ors. V. State & Ors***.,2010 (1) CJD (HC) 194 and ***Madhuchhanda Das v. State of Orissa and Ors***., 1998 (II) OLR 36, it was argued that under Section 7-A(3) lease cannot be cancelled for non-compliance of non-existent Rules

4. Mr. J.P. Pattnaik, learned Additional Government Advocate appearing on behalf of the State, raised preliminary objection that the writ petition is liable to be dismissed on the ground of delay and latches. No satisfactory explanation has been given by the petitioner explaining the delay in approaching this Court in the year 2010 under Articles 226 and 227 of the Constitution challenging the order passed in the year 1989. He further submitted that the petitioner is also otherwise not entitled to get any relief on the grounds taken in the writ petition. Settlement of the Government land in favour of the petitioner have suffered from material irregularities and procedure as well as legal infirmities. The Revisional

Authority is fully justified in setting aside the order dated 23.06.1975 passed by the Tahasildar, Bhubaneswar-opposite party No.2 by which Government land was settled ignoring the statutory provisions. There is no illegality or infirmity in the order passed by the Revisional Authority.

5. On the above rival contentions, the questions that fall for determination by this Court are as follows:

(i) Whether in the facts and circumstances of the case the writ petition is liable to be dismissed on the ground of delay and laches ?

(ii) Whether the order passed by the Revisional Authority is barred by limitation ?

(iii) Whether reasonable opportunity was granted to the petitioner before the impugned order was passed ?

(iv) Whether the rules or regulations are binding on the State and its instrumentalities and any order passed without complying the same is illegal/invalid ?

6. Preliminary objection raised by Mr. Pattnaik, learned Additional Government Advocate for the opposite parties on the ground of delay and laches which relates to question No.(i) should be gone into at the outset. In the instance case, the Revisional order was passed on 6$^{th}$ day of July, 1989 and the writ petition challenging the said order was filed on 08.03.2010. Thus, there is delay of more than 20 years in approaching this Court under Articles 226 & 227 of the Constitution.

7. The question of delay in filing the writ petition has been considered by the apex Court in ***Smt. Sudama Devi Vs. Commissioner and others, (1983)2 SCC 1***, wherein it has been observed as under:-

> "There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is in fact doubtful whether any such period of limitation can be prescribed by law. In any event one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner."

In ***State of Madhya Pradesh & Ors. Vs. Nandlal Jaiswal, AIR 1987 SC 251***, the Hon'ble Supreme Court held as follows:

> ".....High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of High Court is invoked, unexplained

> delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction."

In ***Kuldip Chand v. Union of India & Ors., AIR 1996 SC 706***, the Hon'ble Supreme Court held that inordinate delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of like others that he is not interested in claiming that relief. Others are then justified in acting on that belief.

Similarly, in ***State of U.P. Vs. Raj Bahadur Singh, (1998) 8 SCC 685***; the Hon'ble Apex Court held that there is no time limit for filing writ petition. All that the Court has to see is whether the laches on the part of the petitioner are such as to disentitle him to the relief claimed by him.

This Court in ***Management of Regional Plant Resources Centre, Nayapali, Bhubaneswar-v-Workmen of Regional Plant resources Centre, represented by the Regional Plant Resources Centre Workers Union & Anr., 2007 (II) OLR-127***, held that remedy of the writ Court is only available to a litigant who approaches the Court with sufficient promptitude. Stale claims are not to be entertained by a writ Court.

This Court in ***Akshaya Baral & Others vs. State of Orissa & Others, 107 (2009) CLT 227***, dismissed five writ petitions on the ground of delay of eight and half years in presenting the writ petition.

8. Needless to say that inordinate delay or laches is by itself a ground to refuse relief to the petitioner irrespective of merit of his claim. Delay or laches is one of the factors, which should be borne in mind while exercising discretionary powers under Article 226 of the Constitution of India.

9. Keeping in view of the aforesaid legal proposition of law, we have to examine the case of the petitioner. Admittedly, in the present case, the impugned order has been passed on 06.07.1989 and the petitioner filed the writ petition challenging the said order on 08.03.2010. Thus, there is a delay of more than 20 years. In paragraph-9 of the writ petition, the petitioner has explained the delay as follows:

> "That, the petitioner was ignorant about the order dt. 06.07.1989, in revision Case No.39/1989, but when the Opp.Party No.2 (Tahasildar), gave out in the locality to evict him from the same case land in the last part of 2008, the petitioner applied for certified copy of the said order, dtd. 30.03.2009 and obtained the same on 02.06.2009 and thereafter, consulting with his advocate, for filing of case and finally, the matter was decided to move before this Hon'ble Court, challenging the order, passed by the A.D.M., the writ petition has been filed on 08.03.2010. The Tahasildar has not proceeded to carry out the order, dt. 06.07.1989 to take over the possession of the case land from this petitioner. So the delay in filing this writ application in this Hon'ble Court is not willful nor intentional, but due to the reasons, stated above."

10. As per the above explanation, the petitioner for the first time came to know about the impugned order in the last part of 2008, when the Tahasildar took steps to evict the petitioner from the suit land pursuant to

the impugned revisional order. This explanation of the petitioner appears to be false in view of his own averment made in paragraph-6 of the writ petition, wherein the petitioner averred that he paid rent to the Government for the suit land and the rent was accepted till the lease was cancelled by the Revisional Authority. From this averment, it clearly reveals that the rent from the petitioner was not accepted after the lease was cancelled by the Revisional Authority in the year 1989. Thus, after cancellation of the lease when the rent was not accepted from the petitioner, he must have been aware of the fact of cancellation of lease. Apart from that, impugned order reveals that the petitioner was asked to show cause as to why the lease granted in his favour should not be cancelled, in response to which, he submitted his written statement stating therein that the lease in his favour should not be cancelled as he was a poor landless person and maintaining his family by growing crops over the suit land. The order sheet dated 20.06.1989 reveals that the petitioner was present before the Revisional Authority and filed his written statement. He was heard and the case was adjourned to 06.07.1989 for orders. The petitioner put his signature against the said order sheet entry dated 20.06.1989. On 06.07.1989, the Revisional Authority pronounced the order in open court canceling the lease granted in favour of the petitioner. In view of the above, it cannot be said that the petitioner had no knowledge regarding passing of the impugned order on 06.07.1989. The laches on the part of the petitioner in not taking timely steps against the impugned order is further proved from

the later part of his explanations. According to him, he came to know about cancellation of the impugned order dated 06.07.1989 in the last part of 2008 and applied for certified copy of the said order on 30.03.2009, which he obtained on 02.06.2009. The petitioner has not explained the delay in applying for certified copy of the impugned order in between last part of 2008 till the application was made for certified copy on 30.03.2009. The petitioner has also not explained the delay for the period from 02.06.2009 to 08.03.2010 i.e. the period between the date the certified copy was obtained and writ petition filed. Thus, no satisfactory explanation has been offered by the petitioner about the inordinate delay of more than 20 years in presenting the writ application, which amounts to sheer laches on the part of the petitioner.

11. In view of the above, we are of the considered view that the instant writ application is liable to be dismissed on the ground of delay and laches alone.

12. The writ petition also does not succeed on the grounds taken by the petitioner in the petition. Basically, the petitioner challenges the impugned order on two grounds i.e. on the grounds of limitation and violation of principle of natural justice.

13. So far as point of limitation is concerned, the same relates to question No. (ii).

Sub-section (3) of Section 7-A of the O.G.L.S. Act says as follows:

> "7-A(3) The Collector may, of his own motion or otherwise, call for and examine the records of any proceeding in which any authority, subordinate to it has passed an order under this Act for the purpose of satisfying himself that any such order was not passed under a mistake of fact or owing to a fraud or misrepresentation or on account of any material irregularity of procedure and may pass such order thereon as he thinks fit.
>
> Provided that no order shall be passed under this sub-section unless the person affected by the proposed order has been given a reasonable opportunity of being heard in the matter.
>
> Provided further that no proceeding under this sub-section shall be initiated after expiry of fourteen years from the date of the order"
>
> *(underlined for emphasis)*

14. In the instant case, the lease of the suit land was granted by the Tahasildar in favour of the petitioner on 23.06.1975 and the Revisional Authority by exercising powers under Section 7-A of the O.G.L.S. Act initiated proceeding on 10.05.1989 as reveals from order sheet entries dated 10.05.1989. Thus, the proceedings under Section 7-A(3) of the O.G.L.S. Act were initiated within the period of limitation.

15. In view of the above, the order passed by the Revisional Authority is not barred by limitation.

16. So far as the second ground of challenge i.e. violation of the principle of natural justice is concerned, it relates to question No. (iii). The grievance of the petitioner is that no reasonable opportunity of hearing was afforded to him before passing the impugned revisional order. But the

revisional order itself shows that before passing the said order, notice was issued to the petitioner to show cause as to why the lease granted in his favour shall not be cancelled and, in reply to the said notice, the petitioner submitted his written statement. Moreover, order sheet entry dated 20.06.1989 shows that the petitioner was present before the Revisional Authority and filed the written statement and he was heard on that day. The petitioner also put his signature against the said order sheet entry dated 20.06.1989 whereby the case was adjourned to 06.07.1989 for orders. The petitioner had not asked for any further opportunity of hearing on 20.06.1989.

17. Therefore, it cannot be said that reasonable opportunity of hearing was not afforded to the petitioner before the impugned order was passed.

18. The question No.(iv) is whether the Revisional Authority is justified in setting aside the lease of the suit land granted by the Tahasildar in favour of the petitioner on the ground of non-compliance of statutory provisions. In the impugned order the Revisional Authority after examining the LCR and considering the submission of the petitioner set aside the order of the Tahasildar dated 23.06.1975 granting lease of the suit land in favour of the petitioner on the following grounds:

> "1. According to the provisions of rule 3(3) of the Orissa Government Land Settlement Rules, 1974 enquiry on the application is required to be caused within a period not exceeding 15 days. This has not been done in this case as the

> application has been received on 05.06.1975 and the enquiry report has been furnished on 22.06.1975.
>
> 2. As per provisions of rule 3(4) of the Rules, the publication of proclamation is to succeed the enquiry. But in this case this provision has been violated since the proclamation has been published on 07.06.1975 whereas the enquiry report has been furnished on 22.06.1975.
>
> 3. The lease case record does not show that the proclamation has been published by beat of drums or a copy thereof has been supplied to the Gram Panchayat in which the land is situated as laid down in rule 3(5) of the Rules.
>
> 4. The settlement of land is made without observing the provisions of Section 3(2) of the Orissa Government Land Settlement Act, 1962 which provides that at least 70% of the Government land in a village shall be settled in favour of the Schedule Tribe and Schedule Caste persons of the village.
>
> 5. The order of priority in settlement of the land as envisaged in Section 3(3) of the Act has not been followed."

19. In the writ petition, the petitioner has not challenged the above grounds.

20. A plain reading of sub-rule (4) of Rule 3 of Orissa Government Land Settlement Rules, 1974 (in short "Rule 1974") makes it amply clear that only after necessary enquiry as provided in Sub-rule (3) if the Tahasildar or the authorized officer is of the opinion that settlement of land could be granted, he shall publish a proclamation containing particulars of lease applied for and invite objections, fixing a date for hearing of objections, if any. This is the mandatory requirement under sub-rule (4) of

Rule 3 of the Rules 1974. This statutory requirement undisputedly has been grossly violated as the enquiry report was received on 22.06.1975 and before receiving enquiry report and forming the opinion as required under sub-rule (4), the Tahasildar on 06.06.1975 passed order to issue 'Istahar' inviting public objection and the same was published on 07.06.1975.

Sub-rule (5) of Rule-3 further requires that the proclamation shall be published by beat of drum and by affixing a copy of the same at a conspicuous place in the village at which the land is situated in the presence of not less than two persons of the locality. A copy of the proclamation shall also be sent to the Grama Panchayat in which the land is situated. Undisputedly, this statutory requirement has been violated.

21. Procedures prescribed in the Rules are to be followed before settling Government land in favour of any person as those are not empty formalities.

It is the settled law that when the action of the State or its instrumentalities is not on par with the rules or regulations and not supported by the statute, Court must exercise its jurisdiction to declare such an act to be illegal and invalid.

In ***Sirsi Municipality by its President, Sirsi –v- Cecelia Kom Francis Tellis, AIR 1973 SC 855***, the Supreme Court observed that the ratio is that the rules or regulations are binding on the authorities.

Whenever any action of the authority is in violation of the provisions of the statute or the action is constitutionally illegal, it cannot

claim any sanctity in law; and there is no obligation on the part of the Court to sanctify such an illegal act. Wherever the statutory provision is ignored, Court cannot become a silent spectator to such an illegality and it becomes the solemn duty of the Court to deal with the persons violating the law with heavy hands. (See ***R.N. Nanjundappa v. T. Thimmaiah & Anr., AIR 1972 SC 1767, Sultan Sadik v. Sanjay Raj Subba & Ors., AIR 2004 SC 1377).***

Thus, the legal position remains, every statutory provision requires strict adherence for the reason the statute creates rights in favour of the citizens, and if, any order is passed de hors the same, it cannot be held to be a valid order and cannot be enforced. [See ***Swastik Agency & 2 Ors. v- State Bank of India, Main Branch, Bhubaneswar & 3 Ors., 107 (2009) CLT 250].***

The apex Court in ***Badrinath v. State of Tamil Nadu & Ors., AIR 2000 SC 3243,*** observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically.

Non-compliance of mandatory requirements vitiates the proceedings.

Law is also well settled that when the statute provides for a particular procedure, the authority has to follow the same and is not permitted to act in contravention of the prescribed provisions. Other methods or modes of performance are impliedly and necessarily forbidden.

The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusion alteris",* meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. (See ***Taylor v. Taylor, (1876) 1 Ch.D. 426, Nazir Ahmed v. King Emperor, AIR 1936 PC 253, Ram Phal Kundu v. Kamal Sharma; and Indian Banks Association v. Devkala Consultancy Service, AIR 2004 SC 2615)***

22. Needless to say that rules and regulations are binding on the State and its instrumentalities and any order passed without complying the same is invalid.

23. The judgment of this Court in Chandan Ku. Sethi (supra) and Madhuchhanda Das (supra) are of no help to the petitioner. In Chandan Kumar Sethi's case lease was granted on 18.9.1974, but subsequently the same was cancelled for non-compliance of provisions of sub-rules (3) and (5) of Rule 3 of the OGLS Rules, 1974. In that circumstances, this Court held that since the OGLS Rules, 1974 were brought into force with effect from 11.12.1974 the lease granted on 18.9.1974 could not have been cancelled for non-compliance of provisions to sub-rules (3) and (5) of Rule 3 of the said Rules. Similarly, in Madhuchhanda's case (supra) this Court held that lease could not have been declared invalid for non-compliance of non-existent Rules. Whereas, in the present case, lease was granted on

23.6.1975 and the same was cancelled for non-compliance of provisions of the Rules under the OGLS Rules, 1974, which were very much in existence.

24. In view of the above, we don't find any illegality and infirmity in the order passed by the Revisional Authority under Annexure-2 warranting any interference by this Court.

25. In the result the writ petition is dismissed.

No order as to cost.

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B.N.Mahapatra, J.

***B.P.Das, J.*** I agree.

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B.P.Das, J.

*Orissa High Court, Cuttack*
*Dated 29th July,2010/sss/skj/ pcp*