

A.F.R.

ORISSA HIGH COURT: CUTTACK

W.P.(C).No. 16483 of 2007

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

Chandra Sekhar Prasad Sharma ... Petitioner.

-Versus-

The Revenue Divisional Commissioner
& Another ... Opp. Parties.

For Petitioner : M/s. S.P. Mishra, S. Mishra,
S. Dash, B.S. Panigrahi, S. Nanda &
S.S. Satapathy.

For Opp. Parties : Standing Counsel

P R E S E N T:

**THE HONOURABLE MR. JUSTICE A.S. NAIDU
AND
THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA**

Date of hearing : 19.03.2010 : Date of Judgment: 27.04.2010

B.N.MAHAPATRA, J. Challenge in this writ petition is made to the order dated 07.11.2006 passed by The Tahasildar, Barbil (O.P. No.3) in Encroachment Case No.819/88-89 (Annexure-2) and order dated 24.11.2000 passed by the Sub-Collector, Champua (O.P. No.2) under Annexure-3. Opposite party No.3 in his order passed under Annexure-2 held that settlement of land in question in favour of the petitioner alone under Section 8-A of the Orissa Prevention of Land Encroachment Act, 1972 (for short, 'the Act 1972') would be illegal as the brother of the petitioner, namely, Ramanath Sharma is the encroacher of the said land. Opposite party No. 2 in his order passed under Annexure-3 directed opposite party No. 3 to ascertain the whereabouts of Ram Nath Sharma first, and if the petitioner was still showing his readiness

to pay the market value of the case land, then his statement should be recorded to that effect. The further prayer of the petitioner is for a direction to opposite party No. 3 to fix the rent in respect of the land in question and to correct the ROR thereof in favour of the petitioner in terms of Section 8-A of the Act, 1972 on payment of statutory deposit within a stipulated period.

2. This case has a chequered history. According to the petitioner, he is poor and landless person and is in possession of a piece of Government land measuring an area of Ac 0.015 decimals pertaining to Hal Plot No. 1240, Khata No. 488 of village Barbil-7, Mouza : Barbil in Keonjhar District. The land in question has been in continuous possession of the petitioner since 50 years after his forefathers. In the year 1965, an encroachment proceeding was initiated against the paternal uncle of the petitioner, which was eventually dropped vide order dated 31.07.1975. After the death of his father, till date the land in question is in occupation of the petitioner which is well known to all concerned including opposite parties. The petitioner had started a hotel in a portion of the land in question and is utilizing the other portion for residential purpose. The petitioner had no other source of income except the hotel and his annual income is less than Rs.10,000/-. The petitioner made a grievance petition to the Collector, Keonjhar in Misc. Case No. 3 of 1995 which was disposed of vide order dated 18.03.1996 with an observation that the petitioner was a deserving person for settlement of the land in question in favour of the petitioner under Section 8-A of the Act, 1972 and accordingly, opposite party No. 3 was directed to take follow up actions in terms of the said order within a period of 4 months from the date of receipt of the order in accordance with law. Since no action was taken by the concerned authorities for

settlement of the land in question, the petitioner approached this Court in O.J.C. No. 8258 of 1999 which was disposed of at the stage of admission with a direction to the Sub-Collector, Champua, opposite party No.2 to take necessary steps within 4 months from the date of receipt of the order. Pursuant to the aforesaid direction of this Court, the opposite party No. 2 called for a report from the Tahasildar, opposite party No. 3 who in turn submitted a report stating therein that the petitioner was not in possession over the land in question for more than 30 years and he was neither homeless person nor a poor man and was running a hotel in the land in question. On the basis of the report of the opposite party No. 3, the learned Sub-Collector, opposite party No. 2 held that it was not a fit case to deal with under Section 8-A of the Act, 1972 and Rule 15(5) of the Orissa Prevention of Land Encroachment Rules, 1985 (for short "the Rules, 1985"). Accordingly, the proceeding was dropped vide order dated 04.01.2000. Being dissatisfied with the order of the opposite party Nos. 2 and 3, the petitioner approached the Additional District Magistrate, Keonjhar in Revision Case No. 2 of 2000 and the A.D.M. vide order dated 22.04.2000 remanded the matter back to opposite party No. 3 with a direction to re-examine the financial condition of the petitioner, total length of the land held by him, length of possession over the land in question and to dispose of the proceeding as per law within two months from the date of receipt of the order. Pursuant to the aforesaid order of the Additional District Magistrate, Keonjhar, opposite party No. 3 conducted a fresh enquiry and furnished a report to the opposite party No.2 holding that the annual income of the petitioner is Rs.20,000/- approximately and he is in possession of the land in question measuring Ac 0.010 decimals since 1977.

The petitioner does not have any land in his name. However, the Additional District Magistrate instead of settling the land in favour of the petitioner as per the provisions of Section 8-A of the Act, 1972 directed opposite party No. 3 to settle the land in question in favour of the petitioner under Rule 8(1) of the Orissa Government Land Settlement Rules, 1983 vide order dated 17.02.2001.

Being dissatisfied, the petitioner again approached this Court in O.J.C. No. 4282 of 2001 which was disposed of on 11.12.2001 at the stage of admission with a direction to opposite party No. 2 to pass necessary orders in accordance with law and to initiate a proceeding under the correct statute for settlement of the land in favour of the petitioner within two months from the date of communication of the said order. Thereafter the opposite party No. 3 submitted a report along with records of Encroachment Case No. 819 of 1988-89 before opposite party No. 2 reporting that the petitioner was undisputedly in possession over the land in question for more than the statutory period and he being a homeless person, the land should be settled in his favour on payment of the statutory amount in accordance with law. Opposite party No. 2 vide order dated 26.08.2006 (Annexure-1) returned the case record to opposite party No. 3 with a direction for assessment and correction of rent as admissible and prescribed under the Act, 1972 and Rules, 1985 and to issue ROR in favour of the petitioner after all formalities. The opposite party No. 3 instead of taking necessary steps for assessment of the rent, passed order dated 07.11.2006 (Annexure-2) holding that the settlement of land in question in favour of the petitioner alone under Section 8-A of the Act, 1972 would be illegal as the brother of the petitioner, Ram Nath Sharma

was also an encroacher of the same land and the land should be settled in the name of both the brothers. With these observations, opposite party No.3 resubmitted the case records before opposite party No. 2 for appropriate direction. The opposite party No. 2 vide his order dated 24.11.2006 (Annexure-3) held that opposite party No. 3 was correct to report that the land in question should not be settled in favour of the petitioner alone and at first the whereabouts of the brother of the petitioner Ram Nath Sharma should be ascertained. It is further observed that the order of settlement was issued in obedience to the direction of this Court in O.J.C. No. 4282 of 2001 that if the petitioner is still ready to pay the market price of the land, his statement should be recorded in writing and it should be verified as to whether the order is appealable even after passing of the order by this Court and rent should be fixed after compliance of the aforesaid direction. Being dissatisfied with the orders under Annexures-2 and 3, the petitioner has filed the present writ petition.

3. Mr. S.P. Mishra, learned counsel appearing on behalf of the petitioner vehemently argued that the actions of the opposite parties are evidently mala fide and colourable exercise of statutory powers available under the provisions of the Act, 1972 in gross violation of the orders passed by this Court from time to time in different writ petitions. The petitioner is deprived of his constitutional right over the land in question for no justifiable reason. The Tahasildar has no jurisdiction to give any opinion that runs contrary to its earlier opinion after settlement of the land in favour of the petitioner. Opposite party No. 3 is required to carry out the direction of opposite party No. 2. Opposite party No. 2 is also equally wrong to accept the view of the opposite party No. 3. The brother of the petitioner has never

come forward for settlement of the land in question in his favour nor has he claimed possession thereon at any point of time. The encroachment proceeding has been initiated against the petitioner and the petitioner alone has been prosecuting the same for settlement of the land in question in his favour. At no point of time, opposite party No. 3 has opined that the brother of the petitioner is also in possession or entitled to settlement of the land in question along with the petitioner. The petitioner therefore, had submitted a representation before opposite party No.1 on 08.04.2007 (Annexure-4) praying for a direction for early correction of ROR in his favour and fixation of rent in respect of the land in question.

4. Mr. Mishra, learned Addl. Government Advocate appearing on behalf of opposite parties submitted that the Encroachment Case No. 819 of 1988-89 was instituted against Ram Nath Sharma and Chandra Sekhar Prasad Sharma, sons of Gorekh Maharaj of Barbil for unauthorized encroachment of Government land pertaining to Khata No. 488, Plot No. 1240 of an area Ac 0.010 decimals in Mouza-Barbil-7. The said land is covered under Barbil Municipal Area for which the land is not leaseable in nature as it is kept under 'D' category. In the approved master plan, it is meant for public auction. The petitioner is not a homeless person and not in continuous and uninterrupted possession of the land in question. As the encroachment case was originally initiated against Ram Nath Sharma and Chandra Sekhar Prasad Sharma, the Sub-Collector remanded the case to the Tahasildar, Barbil on 24.11.2006 to ascertain the whereabouts of Ram Nath Sharma and for assessment of rent and resubmission of the same. At this stage, since the petitioner has filed this writ petition, no further action has been taken in Encroachment Case No. 819 of 1988-89. Earlier, the

petitioner filed a Misc. Case No. 3 of 1995 before the Additional District Magistrate, Keonjhar against the order of eviction. Learned Additional District Magistrate remanded the case with an instruction to examine the case for settlement as per Rule 15, Sub-Rule (5) of the Rules, 1985. Pursuant to the order of the Additional District Magistrate, field enquiry was conducted afresh through local Revenue Inspector and it was found that the petitioner was not in continuous and uninterrupted possession over the land in question. It was further found that the petitioner was neither homeless nor a poor man but was running a hotel. The names of both the encroachers (petitioner and his brother) have been reflected in various documents. Subsequently, however, the name of Ram Nath Sharma has been omitted in most of the orders passed by the various Courts. Therefore, the settlement of the case land only in favour of Chandra Sekhar Prasad Sharma ignoring the name of other encroacher Sri Ram Nath Sharma may be unlawful and violation of statutory provisions and principles of natural justice. This view of opposite party No.3 has been accepted by opposite party No.2. Moreover since the petitioner concealed the fact regarding other encroacher namely Ram Nath Sharma, on this ground alone the writ petition is liable to be rejected for suppression of material facts.

5. In paragraph-23 of the writ petition, the petitioner averred that the encroachment proceeding has been initiated against the petitioner. On the contrary, opposite party No.3 referring to as many as six documents held in Annexure-2 that Ram Nath Sharma and the petitioner Chandra Sekhar Prasad Sharma, sons of Gorekh Maharaj are the encroachers of the land. At this juncture, the relevant portion of Annexure-2 is quoted hereunder:

“However, following the order of Hon’ble High Court if the case land is to be settled U/s. 8(A) of the O.P.L.E. Act and Rules 16 of O.P.L.E. Rules then it should be entitled with the person (s) encroaching the case land peacefully and undisputedly for more than 30 years. If this provisions are to be followed, then in this case the encroached land should not be settled only in favour of Sri C.P. Sharma but also infavour of Sri Ram Nath Sharma, who happens to be the elder brother of C.P. Sharma as it reveals from the following listed documents (attached to the C/R) that both Ram Nath Sharma and Chandrasekhar Prasad Sharma S/O Gorekh Maharaj have been the encroachers of the case land.

1. G-Form submitted by R.I., Barbil on 07.05.1988.
2. Notice in Form “A” to show cause as to why action should not be taken against the encroacher.
3. Remarks column of the R.O.R. against the plot of the case land.
4. Show Cause filed by the encroacher on 29.07.1988.
5. A number of notices issued by Tahasildar, Barbil in the Encroachment Case No. 819/88-89.
6. “J” Forms issued to R.I., Barbil from this office.

The above list of documents, attached to the case record, clearly proves that both Ram Nath Sharma & Chandrasekhar Prasad Sharma S/O Gorekh Maharaj are encroachers of the case land. Therefore, it will be unlawful and violation of natural justice, if the case land is settled only with C.P. Sharma U/S 8 (A) of the O.P.L.E. Act thereby ignoring Ram Nath Sharma.”

The opposite party No. 2 in paragraph-3 of his order under Annexure-3, inter alia observed as follows:

“As per the 1st observation of Tahasildar, Barbil it is clear that Ram Nath Sharma is the encroacher alongwith C.P. Sharma, which has been ignored by various Courts. Relevant documents as referred by Tahasildar, Barbil also clarifies this fact. Hence, the whereabouts of Ram Nath Sharma should be ascertained first.”

In paragraph-8 of the counter affidavit, the opposite parties stated that the Encroachment Case No. 819 of 1988-89 was started against Ram Nath Sharma and Chandrasekhar Prasad Sharma.

No rejoinder has been filed repudiating the above statements of the opposite parties.

6. A conjoint reading of Section 8-A of the Act, 1972 and Rule 16 of the Rules, 1985 makes it amply clear that the settlement of land under those provisions shall be made only in favour of the encroacher who is in actual continuous and undisputed occupation of the land for more than 30 years by the date of institution of a proceeding against him. Since, the land in question has been encroached by both Ram Nath Sharma and the petitioner, the settlement of the said land in the name of the petitioner alone will definitely be contrary to those provisions. Law is well settled that any order passed de hors the provisions of law has no legal sanctity.

In ***M.C.Mehta V. Union of India & Ors., AIR 2006 SC 1352***, the apex Court observed that rule of law is essence of democracy. It has to be preserved. Laws have to be enforced.

The apex Court in ***State of Punjab vs. Nestle India Ltd. & Ors, (2004) 6 SCC 465*** held that the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute.

Moreover, in none of its orders, this Court directed to settle the land in favour of the petitioner after noticing the fact that the land in question was encroached by both the petitioner and his brother Ram Nath Sharma.

7. In view of the above, we don't find any illegality or infirmity in the impugned orders passed by opposite party Nos. 3 and 2 vide orders dated 07.11.2006 (Annexure-2) and 24.11.2006 (Annexure-3) respectively in Encroachment Case No. 819 of 1988-89.

8. Before parting with, we feel it necessary to observe that a plain reading of the writ petition, order passed under Annexures-2 and 3 and the counter affidavit filed by the opposite parties reveal that the petitioner has not approached this Court with clean hands disclosing all the relevant facts. No where in the present writ petition the petitioner has disclosed that he and his brother were encroachers of the land in question and the Encroachment Case No.819/88-89 was initiated against the petitioner and his brother Ramanath Sharma.

The apex Court in ***Prestige Lights Ltd. V. S.B.I., (2007) 8 SCC 449*** held as follows:-

“It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

In ***K.D.Sharma V. Steel Authority of India Ltd., (2008) 12 SCC 481***, the apex Court also held as follows:-

“The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary,

equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.”

9. In the result, the writ petition is dismissed.

No order as to costs.

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B.N.Mahapatra, J.

A.S. Naidu, J. I agree.

J.

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A.S. Naidu,

Court, Cuttack
Dated , April, [i2010/pcp/skj/sss