

**L.MOHAPATRA, J & B.K.MISRA, J.**

W.P.(C) NO. 17514 OF 2006 (Dt. 29.09.2011)

**BHASKAR SUBUDHI & ANR.**

.....Petitioners.

.Vrs.

**STATE OF ORISSA & ORS.**

.....Opp.Parties.

**ORISSA LAND REFORMS ACT, 1960 (ACT NO. 16 OF 1960) – S.6-A.**

For Petitioners - M/s. Sanjay Kumar Samantaray,  
S.K.Sahoo, S.K.Jena & R.K.Sahoo.  
For Opp.Parties - Addl. Govt. Advocate.

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**L. MOHAPATRA, J.** Both the petitioners represented through their power of attorney holder Shri Ashok Kumar Sahoo have filed this writ petition challenging the legality of the order passed by the Additional District Magistrate, Bhubaneswar in Lease Revision Case No.734 of 1987 cancelling the lease granted in favour of the first lessee Madhab Naik on a suo motu proceeding initiated under Section 7-A (3) of the O.G.L.S. Act, 1962 hereinafter called 'the Act'.

2. As it appears from the impugned order in W.L. Lease Case No.1831 of 1973, Ac.1.000 of land was leased out in favour of one Madhab Naik pertaining to Plot No.583 under Khata No.420 in Mouza Pathargadia by the then Tahasildar, Bhubaneswar on 25.1.1974. The suo motu proceeding was initiated in the year 1987 and notice was served on the said Madhab Naik. The said Madhab Naik appeared before the A.D.M. and filed written submission questioning the maintainability of the suo motu revision. The A.D.M. found certain irregularities in the matter of grant of lease and accordingly by the impugned order dated 21.9.1987, cancelled the lease granted in favour of the said Madhab Naik.

3. The petitioner No.1, Bhaskar Subudhi by registered sale deed dated 30.8.1983 had purchased the said land from Madhab Naik, the original lessee. His case in the writ petition is that by the time the proceeding was initiated in the year 1987, the original lessee Madhab Naik had already sold the land to him by registered sale deed dated 30.8.1983. It was, therefore, incumbent on the part of the A.D.M. to issue notice to him before cancelling the lease. The further case of the petitioners is that they having not been given an opportunity of hearing and no notice in the revision case having been served on them, the impugned order is unsustainable in law and should be set aside.

A counter affidavit has been filed by the Additional District Magistrate, Bhubaneswar. Referring to the counter, it was submitted by the learned Additional Government Advocate that the original lessee had been noticed but he never informed the court that the land had been sold by him to the petitioner No.1 in the year 1983 by registered sale deed. Therefore, there was no occasion on the part of the A.D.M. to know that the original lessee had sold the property to the petitioner No.1. It is also

stated in the counter affidavit that the lease had been granted by the then Tahasildar in favour of the said Madhab Naik in contravention of Rule 3 (5) of the O.G.L.S. Rules, 1974 and accordingly the lease was cancelled in the impugned order.

4. Though the impugned order was passed in the year 1987, this writ petition has been filed after a long delay in the year 2006. The delay in filing of the writ petition has been explained by the petitioner No.1 stating that he had no knowledge about the said proceeding, he having not been served with a notice and therefore, only after coming to know about such order, he has filed this writ petition. Admittedly from the impugned order, it appears that no notice was served on the petitioner No.1 even though he had purchased the land in the year 1983 from the original lessee Madhab Naik. It was the duty of the original lessee to bring it to the notice of the A.D.M. that he had sold the land in favour of the petitioner No.1. We are, therefore, inclined to ignore the delay in filing the writ petition.

5. The learned Additional Government Advocate submitted that the original lessee Madhab Naik had no authority to sale the land before completion of ten years from the date of settlement as per Section 6-A of the Orissa Land Reforms Act, 1960 and therefore, such sale prior to expiry of ten years from the date of lease is void. Shri Samantaray, the learned counsel appearing for the petitioners submitted that at the time of granting Records of Right in favour of the original lessee Madhab Naik, a condition had been imposed that he shall not sale the property within five years from the date of grant of lease. Before selling the land in favour of petitioner No.1, after completion of five years, permission had been obtained from the competent authority on 24.12.1983 in Misc. Case No.408 of 1983.

6. Even if we accept the contention of the learned counsel appearing for the petitioners that Madhab Naik, the original lessee could sale the property after completion of five years from the date of settlement, it appears from the sale deed itself that permission was granted by the competent authority for sale of the land in Misc. Case No.408 of 1983 on 24.12.1983. Therefore, no sale deed could be executed in favour of the petitioner No.1 on 30.8.1983, i.e., before obtaining permission from the competent authority and as such, such sale is a void transaction. So far as the submission of the learned counsel for the State is concerned, we find substantial force in it. Section 6-A of the Orissa Land Reforms Act, 1960 specifically provides that notwithstanding anything contained in Sub-section (1) of Section 6, but subject to the provisions of Sub-section (3) thereof any transfer by a raiyat of any land which has been settled with him for agricultural purpose under a permanent lease from Government shall, if such transfer is made within a period of ten years from the date of such settlement without obtaining the previous permission in writing of the Revenue Officer, shall be void. Undisputedly in this case Ac.1.000 of land had been settled in favour of Madhab Naik for the purpose of agriculture. Admittedly also in this case the land was sold in favour of petitioner No.1 by Madhab Naik before expiry of ten years from the date of settlement. Undisputedly also the said Madhab Naik had not obtained any permission for such sale under Section 6-A of the Orissa Land Reforms Act, 1960. The question that arises for consideration is as to whether the endorsement made in the Records of Right that the lessee shall not sale the land within five years from the date of settlement will govern the field or the provision contained in Section 6-A of the Orissa Land Reforms Act shall govern the field. Nothing has been placed before us by the

learned counsel for the petitioners as to under which provision an endorsement has been made in the Records of Right prohibiting sale of the land by the lessee for a period of five years. Even if the contention of the learned counsel is accepted to the above extent, by the time the land in question was sold by Madhab Naik in favour of petitioner No.1, Section 6-A of the OLR Act had already come into force and therefore, the statutory provisions contained in the Orissa Land Reforms Act shall prevail. Therefore, it was obligatory on the part of the lessee Madhab Naik to obtain permission under Section 6-A of the Orissa Land Reforms Act before effecting transfer in favour of petitioner No.1 by a registered sale deed. We are, therefore, of the view that the sale made by Madhab Naik in favour of the petitioner No.1 under the registered sale deed dated 30.8.1983 annexed to the writ petition as Annexure-2 is a void transaction and accordingly the petitioner No.1 derives no right over the property in question. Therefore, the writ petition is also not maintainable at the instance of the petitioners. The writ petition is accordingly dismissed.

Writ petition dismissed.