

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.36311 of 2022

(Through Hybrid mode)

Jyoti Prakash Mohanty

....

Petitioner

-versus-

State of Odisha and others

....

Opposite Parties

Advocates appeared in this case:

For Petitioner

:

Mr. Banshidhar Satapathy, Advocate

Mr. S. Satapathy, Advocate

For Opposite Parties

:

Mr. A. K. Sharma, AGA

CORAM:

JUSTICE ARINDAM SINHA

JUSTICE SANJAY KUMAR MISHRA

Date of hearing and judgment: 31.01.2023

W.P.(C) No.36311 of 2022

and

I.A. No.17898 of 2022

ARINDAM SINHA, J.

1. Mr. Satapathy, learned advocate, appears on behalf of petitioner. He submits, impugned is order dated 9th September, 2022 made in Lease Revision Case no.755 of 1987. He submits, earlier there was order made

by the authority confirming order dated 21st September, 1987. That order was made without giving opportunity to his client, of hearing. His client had approached this Court earlier by WP(C) no.7147 of 2007. Said writ petition was disposed of by order dated 3rd July, 2008 setting aside the order in revision, directing the authority to re-hear the revision on merit and further direction for his client to appear before the authority, for hearing.

2. He points out from impugned order that one of the observations made therein is, his client is not required to be heard. Observation no.2 from impugned order is reproduced below.

“2. The present petitioner Sri Jyoti Prakash Mohanty is a subsequent purchaser of the lease land. Neither Sri Mohanty impleaded as a party in the revision nor any information has been received with regard to transfer of the lease land. So, there was no chance left for ADM, Bhubaneswar to hear the matter from the subsequent purchaser Sri Mohanty.”

He submits, impugned order in revision be set aside and quashed as it is in direct conflict with said order dated 30th July, 2008, made by the Division Bench, against which no appeal was preferred.

3. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and submits, no interference is warranted. Fraud was committed in causing transfers of valuable land in Bhubaneswar town. As such, on detection of fraud, the authority took prompt action. Petitioner has challenged one such action, being a subsequent purchaser of illegal original allotment. He relies on **order dated 6th April, 2022** made by the First Division Bench of this Court, in, inter alia, **WP(C) no.33349 of 2011 (Asha Hans Vs. State of Odisha and others)**. Relied upon paragraph 13 in the order is reproduced below.

“13. Regard being had to the above facts and the circumstances under which the lands were settled with the lessees in clear violation of the provisions of the OGLS Act with the fraud being played upon the authority concerned, who again failed to follow the procedures and as a result, the illegality was committed, the Court is of the considered view that since the fraud was detected in the year 1998 and thereafter, OP No.2 promptly took action and proceeded to cancel the leases, such action cannot be held as unfair and unjustified. In other words, under the facts and circumstances of the present case, in view of serious material irregularities and fraud having been detected by OP No.2 with respect to the alleged leases, rightly the impugned order under

Annexure-3 was passed which therefore requires no interference.”

4. Mr. Sharma points out from impugned order that there is record of petitioner having been heard. Reproduced below is the relied upon paragraph.

“In the meantime Tahasildar, Bhubaneswar has submitted Certified copy of LCR bearing no. W.L. 1813/1973. The learned Advocate on behalf of the Jyoti Prakash Mohanty was heard and he filed written note of arguments with regard to his claim.”

Without prejudice, he wants there be direction upon his client to file counter.

5. We are not inclined to require filing counter. This is because there was clear direction by co-ordinate Bench on said order dated 3rd July, 2008, upon the authority, to re-hear on giving opportunity to petitioner. Though in impugned order the authority said that learned advocate on behalf of petitioner was heard and he had filed written note of argument with regard to his claim, there is nothing in said order dealing with what was submitted on behalf of petitioner nor contents of the written note. Instead, the authority made observation no.2, reproduced above. This, in teeth of direction made by co-ordinate Bench on aforesaid order dated

30th July, 2008. State not having preferred appeal therefrom could not have acted in violation of the direction. It is sufficient ground for us to interfere, without calling for filing of counter.

6. **Asha Hans** (supra) is of no aid to State. It may well be that in this case too there was fraud practiced. However, such is not the controversy herein. It is that the authority did not hear petitioner in spite of its earlier order having been set aside on that ground.

7. Impugned order is set aside and quashed. The Additional District Magistrate is expected to act in terms of directions made by said order dated 30th July, 2008, in hearing petitioner and dealing with contentions made, in the order to be passed on the revision case.

8. Status-quo be maintained in respect of the land in question till two weeks after order to be made in the revision case is informed to petitioner.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge

(S. K. Mishra)
Judge