A STATE OF ODISHA & ORS.

v.

BICHITRANANDA DAS

(Civil Appeal No. 9521 of 2019)

B DECEMBER 18, 2019

[DR. DHANANJAYA Y CHANDRACHUD AND HRISHIKESH ROY, JJ.]

Lease:

C *Lease-hold property – Conversion to free-hold property under a policy – Conversion charges – Computation of – Relevant date – Whether would be the date when the applicant applied for conversion or the date when the final decision was taken – Held: Submission of an application does not confer a vested right of* D *permission – The application for conversion must necessarily be consistent with and compliant to the governing provisions of the conversion policy – Without affecting the compliance, applicant did not have right to claim conversion of the land to free-hold – High Court was wrong in directing that rate for computation of conversion charges would be that which was prevalent on the date* E *when application was made.*

Allowing the appeal, the Court

HELD: 1. The submission of an application does not confer vested right for permission. The applicant must comply with the terms of the policy. One of the terms in the policy in question F **was that the applicant should not have encroached on government land. An applicant who seeks the benefit of the policy must comply with its terms. In the present case, the policy which was formulated by the State Government specifically contained a stipulation to the effect that a lessee, who had encroached upon or** G **unauthorisedly occupied Government land anywhere within Bhubaneswar Municipal Corporation limits would not be eligible to be covered by the scheme unless the unauthorised occupation is vacated. [Para 17][220-F-G]**

Chennai Metropolitan Development Authority v. H *Prestige Estates Project Ltd.* **(2019) SCC OnLine SC**

931; *State of Tamil Nadu v. Hind Stone* **(1981) 2 SCC 205 : [1981] 2 SCR 742;** *Howrah Municipal Corporation v. Ganges Rope Co Ltd.* **(2004) 1 SCC 663 : [2003] 6 Suppl. SCR 1212 – relied on.**

2. There was no justification for the High Court to direct that the rate for the computation of conversion charges should be that which was applicable on the submission of an application. The application for conversion from leasehold to freehold must necessarily be consistent with and compliant to the governing provisions of the policy which has been framed by the State Government. Unless compliance is effected, there is no right to claim conversion of the land to freehold. The respondent would necessarily have to pay the conversion charges on the date when a final decision was taken after due verification that there was no encroachment and after scrutinizing the declaration which was filed by the respondent. [Para 19][221-F-H; 222-A]

3. A period of nearly twelve years has elapsed in the meantime. The respondent moved the writ proceedings before the High court only in 2015. If the grievance of the respondent was that the State had not taken any action on his representations, he ought to have moved the writ proceedings at an earlier point of time seeking a decision on his application. Having himself waited until 2015 to seek a declaration from the High Court, the respondent cannot claim that the conversion charges should be fixed as on the date of the application. [Para 20][222-B]

Case Law Reference

(2019) SCC OnLine SC 931	**relied on**	**Para 15**
[1981] 2 SCR 742	**relied on**	**Para 17**
[2003] 6 Suppl. SCR 1212	**relied on**	**Para 17**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9521 of 2019.

From the Judgment and Order dated 12.01.2018 of the High Court of Orissa, Cuttack in W.P. (C) No. 8159 of 2015.

V. Giri, Sr. Adv., Suvendu Suvasis Dash, Ms. Swati Vaibhav, Nabab Singh, Advs. for the Appellants.

Santosh Raut, Vishwa Pal Singh, Rajendra Prasad, Ms. Pallavi, Advs. for the Respondent.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Delay condoned.

2. Leave granted.

3. This appeal arises from a judgment of a Division Bench of the High Court of Orissa dated 12 January 2018.

4. On 30 September 1981, a lease of a plot bearing No F/37 admeasuring 75 feet by 100 feet described as Drawing No BS-136 (R) Mouza-Nayapalli, Bhubaneswar, was granted to the respondent by the State Government in the General Administration Department[1] for a period of ninety years under the Government Grants Act 1895. On 18 July 2003, the State government formulated a scheme to allow conversion of residential leasehold plots under the GA Department within the area of Bhubaneswar Municipal Corporation into freehold land. The policy, *inter alia*, contained the following condition:

> "Lessees who have encroached or unauthorisedly occupied government land anywhere within Bhubaneswar municipal corporation limits would not be eligible to be covered under the scheme unless they vacate the unauthorised occupation.

5. On 15 September 2003, the respondent applied for conversion of the leasehold plot to freehold. In response to the application, the Revenue Inspector in the GA Department recorded on 22 November 2003 that:

> "Order on the above file I have visited to the site of Drawing Plot No. N/4-37/F (75x100). Drawing No.BS-136 (R), Nayapalli, corresponding to the 1991-92 Final Settlement Revenue Plot No. 100/3090 Area ACO. 172 under Khata no.1020 n Unit XVI, MZ – Jayadev Vihar and Board, two storied building has been constructed as per approval building plan. <u>But lessee has encroached Govt. land (which was kept as open space) in front of the plot, 60 x 63, by way of illegible fence and Garden. Lessee may be asked to vacate the encroachment.</u>"

(Emphasis supplied)

[1] "GA Department"

6. On 13 May 2004, the respondent was directed by the Land Officer in the GA Department to vacate the area of unauthorised occupation, recording thus:

> "In inviting a reference to the subject cited above, I am directed to say that during the field enquiry it has come to the notice that you have unauthorizedly occupied Govt. Land measuring 60' x 63' by covering barbed wire fencing and using the same for garden purpose.
>
> You are therefore, requested to vacate the above land immediately and report compliance within 15 days for consideration of your conversion application." (Emphasis supplied)

7. Four years later, On 6 August 2008, the respondent addressed a communication to the Land Officer with reference to the letter dated 13 May 2004, stating that he had already sent a reply on 19 April 2006, a copy of which was enclosed stating that there existed no barbed wire fencing and "no encroachment now exists". The letter dated 19 April 2006, however, contained a statement that:

> "But I am told that in a communication (not received by me) I have been asked to vacate a portion of Government land reportedly occupied by me unauthorisedly with barbet wire fencing."
>
> (Emphasis supplied)

Hence, though in his letter dated 6 August 2008, the respondent stated that he had already furnished a reply on 19 April 2006 to the letter dated 13 May 2004, meaning thereby, that the letter dated 13 May 2004 was in possession of the respondent when he submitted the reply, the purported letter dated 19 April 2006 suggested that the communication had not been received. Be that as it may, on 21 December 2009, the respondent wrote a letter to the Directorate of Estates stating that no barbed wire fencing or encroachment existed at present around his plot. On 28 December 2009, proceedings were initiated against the respondent by issuing a notice under Section 4(1) of the Orissa Public Premises (Eviction of Unauthorized Occupants) Act 1972[2]. By the notice, the respondent was called upon to show cause as to why an order of eviction should not be made.

[2] "Act"

A 8. Subsequently, on 30 June 2010, in response to a representation dated 21 December 2009, the GA Department was directed to re-enquire. On 30 June 2010, the following position was indicated upon verification:

> "Verified the land bearing training Plot No. N-4/F-37 of MT Jayadevihar Unit No. 16 and on field verification the encroachment
B reported earlier has not been vacated now." (Emphasis supplied)

9. On 11 November 2010, the respondent once again sought a decision on his application for conversion, stating that:

> "I have responded to the above objection clearly indicating that the reported encroached area is completely outside my pucca
C compound wall. This area is not covered with any barbed wire fencing as alleged. There is no construction whatsoever. The area is covered with some green plantation. Moreover the vacant area is always available to G.A. Department" (Emphasis supplied)

10. On 23 February 2011, the Land Officer in the GA Department
D visited the site and submitted a report that there was no barbed wire fencing on the encroached site, but that the respondent had put up a temporary fencing and a small iron grill gate for access to the encroached area. On 2 August 2013, the respondent once again sought conversion to freehold. On 2 September 2013, the respondent was directed to file a declaration, in a communication of the Deputy Secretary to the
E Government, GA Department which read as follows:

> "In inviting a reference to your application dated 02.08.2013, I am directed to inform you that, you are required to file a registered declaration to the effect that, you have not fenced the Govt. land in front of your lease plot. You should indicate the declaration
F that, you would not claim long possession on the said land even after conversion is allowed. The sketch map of the said land is enclosed herewith for preparing the declaration. Your request for conversion will be considered only after submission of the said declaration."

G (Emphasis supplied)

11. On 22 March 2014, the competent officer in the GA Department submitted a report indicating the following position at the site:

> Lessee Sri B.N. Das has made compound wall over his allotted land and one, single storied RCC building exist over the said land.
H Lessee with his family is residing there in residential purposes.

Earlier reported regarding encroachment reveals that there is no barbed fence now. Only open plantation exists over Government land available in between road and allottee's plot. The said plantation may not be treated as encroachment. Copy of photograph is enclosed herewith for reference."

(Emphasis supplied)

Consequently, the conversion fee was recomputed.

12. Eventually, on 9 April 2014, the Director of Estates called upon the respondent to submit an affidavit that he had not encroached on government land nor would he claim possession in future. The respondent submitted an affidavit on 21 April 2014. Consequently, permission was granted on 5 May 2014 for conversion of the land from leasehold to freehold, conditional on a deposit of an amount of Rs 13,25,758.

13. The respondent moved a writ petition[3] before the High Court of Orissa challenging the communications dated 5 May 2014 and 9 December 2014 (the latter having rejected the plea of the respondent for recomputing the conversion fees on the basis of the rate prevalent in 2003). A counter affidavit was filed by the State. The High Court, by its impugned judgment and order, allowed the writ petition and directed the State to recompute the conversion fees as on the date of the making of the application on 15 September 2003.

14. Aggrieved by the direction of the High Court, the State is in appeal before us.

15. Mr V Giri, learned senior counsel appearing on behalf of the appellants, submitted that the rates chargeable for the conversion from leasehold to freehold would be those which govern on the date when the application has been decided. Learned counsel relied on the decision of this Court in **Chennai Metropolitan Developoment Authority** v **Prestige Estates Project Ltd**[4]. Mr Giri submitted that as the record would indicate in the present case, an encroachment had been made by the respondent adjacent to his leasehold plot and, in terms of the applicable policy, the respondent was required to remove the encroachment. It was urged, relying on the correspondence which has been referred to above, that the respondent responded to the communication dated

[3] W P (C) No 8159 of 2015
[4] 2019 SCC OnLine SC 931

13 May 2004 only on 6 August 2008 and that the purported communication dated 19 April 2006 appears to be an ante-dated document. Be that as it may, it was urged that as a matter of principle it was not open to the respondent to claim that the conversion charges be computed on the basis of the rate prevalent on the date of the application. The application for conversion could be considered only in terms of the policy framed by the government and one of its conditions was that the applicant should not be in unauthorized occupation of government land.

16. On the other hand, it has been urged by Mr Santosh Raut, learned counsel appearing on behalf of the respondent that, as a matter of fact, the case of the respondent was that there was no encroachment whatsoever on the land, which was clarified in the letters dated 19 April 2006 and 6 August 2008. Learned counsel submitted that, at the highest, only a plantation had been made outside the leasehold plot and this could not have been treated as an encroachment. Hence, it was urged on behalf of the respondent that where the State had taken an inordinately long time to consider the application, there was no justification or reason to saddle the respondent with the increased rates which were payable as on the date on which the decision was ultimately taken. Hence, it was further urged that the High Court was correct in coming to the conclusion that the rate as on the date of the application must be the governing rate for computing the conversion charges.

17. In the recent decision of this Court in **Chennai Metropolitan Developoment Authority** (supra), this Court relied upon a line of precedents emanating from the Court, including the decisions in **State of Tamil Nadu** v **Hind Stone**[5] and **Howrah Municipal Corporation** v **Ganges Rope Co Ltd**[6]. The submission of an application does not confer a vested right for permission. The applicant must comply with the terms of the policy. One of the terms in the policy in question is that the applicant should not have encroached on government land. An applicant who seeks the benefit of the policy must comply with its terms. In the present case, the policy which was formulated by the State government specifically contained a stipulation to the effect that a lessee, who had encroached upon or unauthorisedly occupied government land anywhere within Bhubaneswar Municipal Corporation limits would not be eligible to be covered by the scheme unless the unauthorised occupation is vacated.

[5] (1981) 2 SCC 205

[6] (2004) 1 SCC 663

18. The record shows that on 13 May 2004, the Land Officer informed the respondent that he was unauthorisedly in occupation of land admeasuring 60' x 63' which had been covered by barbed wire fencing, which was being used for the purpose of a garden. The respondent addressed a communication on 6 August 2008, stating that he had already replied to the letter dated 13 May 2004 on 19 April 2006. The letter dated 19 April 2006 is carefully worded and states that "no barbed wire fencing and "no encroachment now exists". Interestingly, a copy of the earlier letter dated 19 April 2006 was annexed to the communication dated 6 August 2008. However, the purported letter dated 19 April 2006 contains a statement that the respondent had been told that in a communication, which had not been received by him, he had been asked to vacate a portion of the government land, which had been occupied unauthorisedly with a barbed wire fencing. The contents of the letter dated 6 August 2008 do not square up with the purported communication dated 19 April 2006. Be that as it may, it is evident from the communications that it was his case that no encroachment existed "at present". Eventually, a notice to show cause had to be issued to the respondent under the Act on 28 December 2009. The State has placed on record a copy of the inspection report of 30 June 2010 which indicates that the encroachment had not been vacated. It was in this view of the matter that the State called upon the respondent to furnish a declaration that the encroachment had been removed and that he would not claim possession of the adjacent land even after conversion was allowed. Eventually, on 22 March 2014, it was stated that while an open plantation existed over the land, the plantation may not be treated as an encroachment.

19. In this background, we are of the view that there was no justification for the High Court to direct that the rate for the computation of conversion charges should be that which was applicable on the submission of an application on 15 September 2003. The application for conversion from leasehold to freehold must necessarily be consistent with and compliant to the governing provisions of the policy which has been framed by the State government. Unless compliance is effected, there is no right to claim conversion of the land to freehold. Consequently, we are of the view that the High Court was in error in directing the State to recompute the conversion charges as on 15 September 2003. The respondent would necessarily have to pay the conversion charges on the date when a final decision was taken after due verification that there

A was no encroachment and after scrutinizing the declaration which was filed by the respondent.

20. A period of nearly twelve years has elapsed in the meantime. It is significant that the respondent moved the writ proceedings before the High court only in 2015. If the grievance of the respondent was that
B the State had not taken any action on his representations, he ought to have moved the writ proceedings at an earlier point of time seeking a decision on his application. Having himself waited until 2015 to seek a declaration from the High Court, the respondent cannot claim that the conversion charges should be fixed as on the date of the application, namely, 15 September 2003.
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20. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, we direct that in the event that the respondent complies with the directions contained in the communication of the State government by which the conversion charges
D were computed and makes the necessary payment, the application shall be processed expeditiously so as to facilitate the grant of conversion of the land from leasehold to freehold. There shall be no order as to costs.

Kalpana K. Tripathy Appeal allowed.