

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) Nos.33349, 33350, 33351,
33352, 33353, 33368, 33369 & 33370 of 2011**

Asha Hans

....

Petitioner

Mr. S.C. Mohanty, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr.S.N. Das, ASC

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

ORDER

06.04.2022

Order No.

R.K. Pattanaik, J.

03. 1. Instant writ petitions under Article(s) 226 and 227 of the Constitution of India, 1950 have been filed by the Petitioner assailing the legality and judicial propriety of the impugned order dated 9th May, 2011 (Annexure-3) passed in Lease Revision Case Nos.538, 553, 554, 563, 564, 565, 566 and 567 of 1998 by the learned Additional District Magistrate, Bhubaneswar (OP No.2), who cancelled the leases granted in favour of the original lessees vis-à-vis the lands subsequently transferred in her favour on the grounds *inter alia* that it is bad in law and therefore, liable to be set aside.
2. Since the parties are same and common question of law is involved, all the writ petitions have been clubbed together for disposal by the following common order.

3. In above the cases, the leases were granted under the provisions of the Orissa Government Land Settlement Act, 1962 (here-in-after referred to as 'the OGLS Act') vide W.L. Case Nos.562, 577, 578, 587, 588, 589, 590 and 591 of 1975. The Petitioner appears to have purchased the leasehold lands either from the lessees or from their vendees and claimed to be in possession of the same ever since the respective purchases made and also mutated her name in the revenue records. In the meantime, suo motu revision proceedings were initiated under Section 7-A(3) of the OGLS Act and the leases in question were cancelled by order dated 30th June 1998. As revealed from the record, the Petitioner, thereafter, challenged the orders of cancellation by approaching this Court in W.P.(C) Nos.2895, 3291, 3293, 3297, 2893, 3292, 3296 and 3295 of 2003 which were disposed of orders under Annexure-2. In the aforesaid cases, this Court set aside the cancellation of leases and directed OP No.2 to provide hearing to the Petitioner in compliance of 1st proviso to Section 7-A(3) of the OGLS Act. Accordingly, the revision proceedings were restored to file and the Petitioner was provided an opportunity by OP No.2. Finally, by a common order under Annexure-3, OP No.2 cancelled the leases granted in favour of the lessees on the ground of fraud and material irregularities in the procedure followed by the concerned authority. Being aggrieved, the Petitioner approached this Court by contending that the leases could not have been cancelled in view of 2nd proviso to Section 7-A(3) of the OGLS Act.

4. Heard Mr. S.C. Mohanty, learned counsel for the Petitioner and Mr. S.N. Das, learned ASC for the State.

5. Admittedly, the leases were granted in the year 1975 and thereafter, OP No.2 exercising revisional jurisdiction under Section 7-A (3) of the OGLS Act, cancelled it under Annexure-3. While cancelling the leases, OP No.2 examined the lower court case records and detected material irregularities being committed by the then Tahasildar, Bhubaneswar, inasmuch as, the records did not reveal proper enquiries to have been conducted before settling the Government lands. It was noticed by OP No.2 that no public notices were issued inviting objections as by a common *Istahar* all six applications were dealt with and subsequently, settled with the lessees and that again, without considering the eligibility criteria which was directly in violation of Rule-3 of the OGLS Rules, 1974. That apart, OP No.2, after perusal of field enquiry reports submitted by OP No.3, noticed that income criteria/conditions vis-à-vis the lessees had not been fulfilled. Furthermore, OP No.2 doubted as to if the lessees really belong to a particular community and in that respect, material facts to have been suppressed purposefully in order to avail benefits under the OGLS Act. Besides the above, OP No.2 observed serious violations of the provisions of the Orissa Communal, Forest & Private Lands (Prohibition of Alienation) Act, 1948, while settling the lands in favour of the lessees and ultimately, with a conclusion that fraud has been perpetrated and as due procedures were not followed, rather, brazenly breached, cancelled the leases under Annexure-3.

6. Mr. Mohanty, learned counsel for the Petitioner would contend that the leases were cancelled by OP No.2 in flagrant violation of 2nd proviso to Section 7-A(3) of the OGLS Act which stipulates that no proceeding to be initiated by the revisional authority after expiry of 14 years from the date of the order and therefore, it cannot be sustained in law. In support of such contention, the following decisions of this Court, such as, in *Laxmidhar Tarai v. Collector, Puri and another 2018 (II) OLR 1012*; *Smt. Elley Pattnaik v. State of Orissa 2012 (Supp.-II) OLR 506* and *Mr. Purna Ch. Pradhan v. State of Orissa and others 2006 (I) OLR 184* have been cited. It is contended by Mr. Mohanty that the materials on record or the impugned order did not reveal or speak of any fraud and therefore, cancellation of the leases by OP No.2 is bad in law and thus, liable to be interfered with.

7. On the other hand, Mr. Das, learned ASC contended that fraud was played upon by the lessees and that apart, OP No.2 noticed material irregularities being committed, while settling the lands under the OGLS Act and therefore, impugned order under Annexure-3 was passed and hence, it should not be disturbed. It is contended that any order which has been obtained by perpetrating fraud is a nullity and cannot stand scrutiny of law at any point of time and for that, the provision of limitation would not apply. While contending so, Mr. Das placed reliance on the decisions in *Laxmipriya Tripathy v. State of Orissa and others* in W.P.(C) No.3749 of 2013 decided on 7th August, 2013; and *State of Orissa and others v. Brundaban Sharma and another 1995 Supp.(3) SCC 249*. In the case of *Laxmipriya Tripathy*

(supra), as contended of Mr. Das, this Court declined to interfere in cancellation of lease which was obtained by suppressing material facts and on account of fraud and in absence of any error apparent on the face of record and in *Brudaban Sharma case*, it was held that validity of a nonest order can be questioned in a proceeding at any stage, referring to which, submission is made that the leases have been rightly cancelled and therefore, the impugned order under Annexure-3 should not be tinkered with.

8. Mr. Mohanty contends that irrespective of the irregularities as has been pointed out by OP No.2 in the impugned order under Annexure-3, the leases could not have been cancelled in view of the 2nd proviso to Section 7-A(3) of the OGLS Act which is to the effect that no such proceeding can be initiated after expiry of 14 years from the date of order. Admittedly, the leases are of the year 1975 and subsequently, cancelled in 1998 under Annexure-1 and thereafter, once again confirmed vide Annexure-3 holding that the then Tahasildar, Bhubaneswar failed to conduct enquiries following the procedure under the OGLS Act, while settling the lands in favour of the lessees, besides the fraud which was elicited on examination of the lower court records. Now, the question is, whether with such delay of 23 years, OP No.2 ought to have exercised the jurisdiction under Section 7-A(3) of the OGLS Act, while cancelling the leases?

9. In *Smt. Elley Pattnaik* (supra), this Court held that cancellation of lease on any of the grounds indicated in Section 7-A(3) of the OGLS Act can only be directed by the revisional authority as per the terms of the provision but within the period

of limitation and therein the lease was cancelled after about 25 years which was held not to be justified and accordingly, the order of cancellation was set aside. In *Laxmidhar Tarai* case, this Court after taking note of its decision in *Smt. Elley Pattnaik* was inclined to set aside cancellation of lease notwithstanding the fact that there was a finding on fraud and procedural irregularities committed by the authority concerned. In so far as the other case in *Mr. Purna Ch. Pradhan* is concerned, it was not a case of fraud and considering said fact, the Court was inclined to set aside the order of the revisional authority with a conclusion that question of extending period of limitation from the date of detection of fraud does not arise. In fact, the Court in the aforesaid case observed that in case of fraud committed on the authority for obtaining a lease, the date of detection of such fraud would be the relevant date or in other words the starting point for calculation of period of limitation as prescribed in the OGLS Act. Referring to the above decisions, Mr. Mohanty, learned counsel for the Petitioner strongly urged that after expiry of 14 years, any such exercise of power by OP No.2 is prohibited.

10. The citations so relied upon by Mr. Das are, in fact, on distinguishable facts and law. In *Laxmipriya Tripathy* case, the lease was cancelled for having been granted without following due procedure under the OGLS Act. In other words, on fraud and material irregularities being detected while allowing the lease, the Court in the aforesaid case was of the view that the cancellation order should not be set aside. In that case, the lease was cancelled after about 10 years which was within the period

of limitation as prescribed in Section 7-A(3) of the OGLS Act. So it can be said that in the facts and circumstances peculiar to the case, this Court in *Laxmipriya Tripathy* declined to set aside the order of cancellation of lease which was again an exercise carried within the period of limitation. The decision in *Brudaban Sharma* (supra), wherein, the Supreme Court held that validity of a nonest order may be questioned or invalidity be set up in any proceeding or at any stage was in relation to the revisional jurisdiction exercisable under Section 38-B of the Orissa Estates Abolition Act, 1951 (in short 'the OEA Act') where no period of limitation has been prescribed. In the above case, the Supreme Court held that even though the impugned order was passed after 27 years since the time the *patta* was granted by the Tahasildar, the revisional power could still be exercised to invalidate an otherwise nonest order which was passed without obtaining prior confirmation of the Board of Revenue. The above decision as relied upon by Mr. Das is under the OEA Act and as such, no period of limitation is prescribed in Section 38-B of the said Act. But, in the instant case, a period is stipulated in Section 7-A(3) of the OGLS Act which is 14 years from the date of passing of the order on lease by the authority concerned. So, the Court is to examine, whether, despite such a provision carrying limitation, OP No.2 was justified to cancel the leases after 23 years.

11. Of course in *Smt. Elley Pattnaik*, this Court had concluded that the revisional power under Section 7-A(3) of the OGLS Act may be exercised but within 14 years as per 2nd proviso thereof. In *Laxmidhar Tarai*, the Court referred to the above case but

was inclined to set aside the cancellation of lease rather on the ground that by such belated action, the poor lessees would suffer. Such a decision was against the backdrop of a finding by the authority concerned regarding violation of provisions OGLS Act and fraud, while settling the leases. In fact, the decision in *Laxmidhar Tarai* is not an authority on exercise of revisional jurisdiction vis-à-vis 2nd proviso to Section 7-A(3) of the OGLS Act. Rather, the Court, in that case, was conscious of the fact that the leases had been cancelled after 14 years but was inclined to set aside the orders of cancellation on a different ground. In the case of *Mr. Purna Ch. Pradhan*, this Court even after taking cognizance of Section 7-A(3) 2nd proviso of OGLS Act had to observe that in case of fraud committed for obtaining a lease, the starting point for computation of period of limitation as prescribed would be from the date of its detection.

12. In the case at hand, the suo motu revisional proceedings were initiated in 1998 when the alleged illegalities and fraud were detected by OP No.2. The impugned order under Annexure-3 elaborately details the material irregularities in procedure committed by the then Tahasildar, Bhubaneswar and also the fraud, while granting or obtaining the leases, as the case may be. No proper enquiries stated to have been conducted before grant of the leases. It was not explicit from the records regarding the economical condition of the lessees, who claimed themselves as landless persons. Even, the tribal status vis-à-vis the lessees were in serious doubt as it carries with it a preferential treatment at the time of grant of leases. According to the Court, the leasehold

lands could have been settled with landless persons under the OGLS Act instead of being in the hands of the Petitioner, had it been properly dealt with and in accordance with law.

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.

14. Accordingly, it is ordered.

15. In the result, the writ petitions stand dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice