

**IN THE COURT OF REVENUE DIVISIONAL COMMISSIONER,
SOUTHERN DIVISION, ODISHA, BERHAMPUR**

OGLS No. 1/17

(Order by Sri T. Ao, I.A.S,

Revenue Divisional commissioner, (SD), Berhampur)

Decided on 02.09.2020

Suresh Chandra Patra
S/o- Late Ananta Patra
At-Jarau, Po/PS- Badagada,
Dist: Ganjam

.....Petitioner

-Versus-

1. Ashok Kumar Mohanty,
S/o- late Niladrinath Mohanty,
At- Paikasahi, Po/PS- Badagada,
Dist- Ganjam.

2. The Tahasildar, Surada, Ganjam.
The Collector, Ganjam.

..... Opposite Party

For the petitioners -

..... P.K.Padhy, Advocate

For the OP

..... None

Prayer

This appeal is file U/s-7 (A) of OGLS Act, 1962 to set-aside the order dtd.2.6.2003 of Tahasildar, Surada passed in lease case No.73/2002.

Contention:-

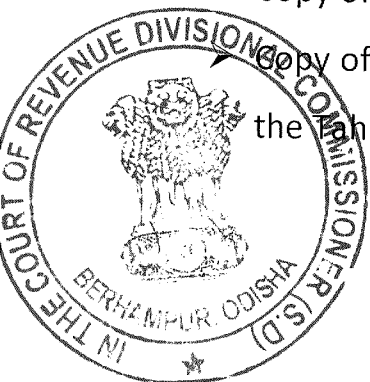
Ashok Kumar Mohanty (OP.1) is a rich person. But in lease case No.73/2002, the Tahasildar, Surada has wrongly settled plot No.3711, 5766 and 5767 of khata No.639 of Badagada mouza in favour of the OP No.1 showing him as a homestead less person. Hence the petition to set aside the order of Tahasildar, Surada passed in lease case No.73/2002.

Land Schedule

Sl No.	Mouza	Sabik Khata No.	Sabik plot No.	Hal Khata No.	Hal Plot No.	Area	Kissam
1	Badagada	-	-	639	3711 5766 5767	Ac.0.031 Ac.0.170 Ac.0.170	Gharabari

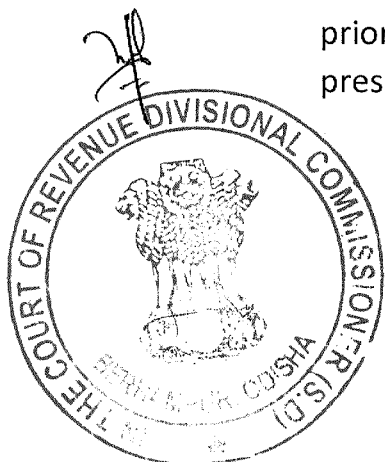
Documents enclosed:-

- Copy of case record No.73/2002 of Surada Tahasil.
- Copy of Yaddast No.1768 instituted for Hal khata No.3711.
- Copy of EC No.1872/1979.
- Copy of ROR No.638/18.
- Copy of OGLS appeal case No.2/2005.
- Copy of CS No.12/14 of the court of Civil Judge, Senior. Division, Aska filed by Bibhutibhusan Mohanty.
- Copy of allegation petition dtd.21.05.18 by one Rajendra KumarPanda against Tahasildar, Surada.
- Copy of ROR No. 34 published on 30.7.1996.
- Copy of ROR No.35 published on 30.7.1996.
- Copy of ROR No. 77 published on 31.10.1997.
- Copy of ROR No. 64 published on 30.7.1996.
- Copy of ROR No.543 published on 19.03.2001.
- Copy of ROR No.638/15.
- Copy of ROR No. 638/17.
- Copy of ROR No. 390 published on 19.03.2001.
- Copy of RSD No. 755/2012
- Copy of ROR No.639 published on 19.03.2001.
- Copy of 80 C.P.C notice issued by Advocate for Bibhutibhusan Mohanty to the Tahasildar, Surada.



Date wise briefing

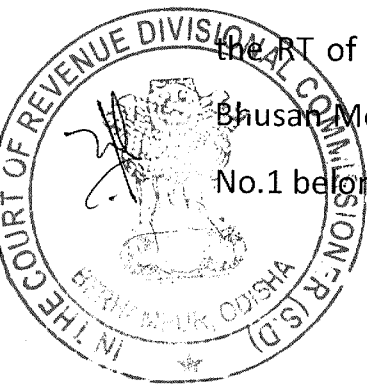
- On 02.08.2018, the Advocate for the petitioner was present. In spite of prior issue of notices, the OPs were absent on call. The Advocate for the petitioner intimated the court that Sri Ashok Mohanty (OP No.1) is a rich person but he had wrongly applied for settlement of GKPB land posing himself as a homestead less person. Earlier some plots have been allotted in the name of his wife Smt. Bijyalaxmi Mohanty on the same ground. In order dtd. 23.06.2017, the then RDC (SD) ordered to enquire into the pending cases of similar nature in Surada Tahasil. But the order of RDC has not been complied yet. The Tahasildar, Surada was asked to submit necessary compliance in this regard by 08.08.2018 and to be present in the court along with custodian of records of the Tahasil in the next date.
- On 13.08.2018, the Advocate for the petitioner was present. In spite of prior issue of notices, the OP No.1 was absent on call. The Tahasildar, Surada was also present. The Advocate for the petitioner submitted that GKLC Case No. 73/2002 was initiated on 10.10.2002 on application of OP No.1 for settlement of Plot No. 3711, 5766, 5776 of Khata No. 639 of village Badagada in favour of Sri Ashok Mohanty, but no document was produced by the OP No.1 before the Tahasildar Suruda. But basing on a wrong report of R.I., Badagada, the above lands were settled in favour of Sri Ashok Mohanty. Further the Advocate for the petitioner submitted some documents to prove that Sri Mohanty was not a homestead less person at the time of applying for settlement of the above lands. Further compliance of orders of RDC dtd. 23.06.2007 regarding review of related GKPB cases has not been received from the Tahasildar, Surada. The Tahasildar, Surada is directed to enquire into the aforesaid allegation of the Advocate for the petitioner and submit compliance on the orders of RDC dtd. 23.06.2007 to this office within a fortnight.
- On 08.11.2018, the Advocate for the petitioner was present. In spite of prior issue of notices, OP was absent on call. The Tahasildar, Surada was present .



The Advocate for the petitioner submitted that OP No.1 was not homestead less at the time of submission of his application for settlement of GKPB Plot No. 3711, 5766 and 5776 of Khata No. 639 of Badagada Mouza in his favour and OP No.1 has not submitted any document before the Tahasildar, Surada during hearing of Case No GKLC No. 73/02 and basing on wrong report of R.I., Badagada, the land was recorded in the name of OP No.1. The Tahasildar, Surada is directed to enquire into the matter and submit a detailed report by 12.11.2018 to this office. He is also directed to find out the number of GKLC Case records available in Tahasil Office that were returned from District office without approval of Collector, Ganjam and how many such records are still pending in District Office.

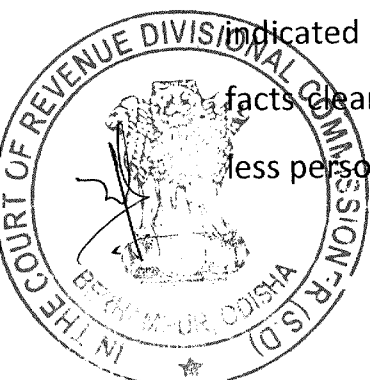
Order

This case was heard for the final time on 01.12.2018. The Advocate for the petitioner was present in the court and reiterated his stand taken on the appeal petition. In this case the petitioner has prayed to set aside orders of Tahasildar, Surada passed in lease Case (GK) 73/2002 as in the order some portion of GKPB land has been settled in the name of Ashok Kumar Mohanty with status of homestead less person though he belongs to a well to do family. In this context the petitioner has submitted a number of documents to strengthen his claim. On verification of the series of RORs submitted by the Advocate for the petitioner it is seen that ROR No. 34, 35, 77 published in the year, 1996-97 have been recorded in the name of late Niladrinath Mohanty (father of OP No.1), ROR No. 64, 543 published in 1996 and 2001 respectively stood recorded in the name of Shashikala Mohanty (mother of OP No.1) and the ROR of ROR No. 638/15, 638/17, 390 published in the year, 2001 is Bibhuti Bhusan Mohanty (brother of OP No.1). Thus, the claim of the petitioner that OP No.1 belongs to a well-to-do family is clearly established.



As per Sarakari Jami record Kariba Pranali issued by Govt. in Revenue and D.M. Department, Ganjam District was regulated earlier under Madras Estates Land Act, 1908. As per the said Act, "Parambok" means outside tracts or, excluded places. These lands were not being considered as Rayati land. But these lands were coming under category of Communal lands suitable for habitation. In Ganjam District, in lands recorded as Gramakantha Parambok lands, the Person/persons in whose name the lands were leased out were allowed to reside over the land without fixation of any rent for the land. Thereafter, village wise survey of these lands was made and recorded in Parambok Khata in favour of tenants in Gharabari Kissam with fixation of rent with a note in the remarks column that the land was not transferable. As per policy decision of Govt., amendment was made in OGLS Rules, 1983 in the year, 1993 "to settle the lands in rural areas leased out prior to 9.1.1991 and is in possession of the occupant for at least five years as on the appointed date with transferable rights on payment of Salami, ground rent and cess". In Urban areas the GKP land was to be settled on leasehold status where as in rural areas, the land is to be settled on rayati status. But apart from the above no other eligibility criteria has been prescribed in the said amendment.

Question arises as to whether the OP No.1 has tried to grab GKP land posturing himself as a homestead less person. The application dtd. NIL submitted by the OP No.1 Ashok Kumar Mohanty for settlement of the above Gram Kantha Parambok land shows that he has stated in the affidavit enclosed with the application and executed before the Executive Magistrate, Surada that he has no homestead land or house/Agricultural land in his name or, in the name of his family members in the state of Odisha. Further report of R.I., Badagada indicated that the OP No.1 is a homestead less person. Analysis of the above facts clearly indicates that the OP No.1 had tried to take benefit of homestead less person for settlement of GKP land.



In this context, the report of the Tahasildar, Surada submitted in Letter No. 5192 dtd. 12.11.2018 is referred wherein it has been stated that the GKPB land has been settled in the instant case as per instruction contained in notification No. 53511 dtd. 06.12.1993 of Revenue & D.M. Deptt where in no income criteria is prescribed. Prescribed guidelines for settlement of GKPB lands mentioned in the Notification No. 53511 dtd. 06.12.1993 of Revenue & DM Deptt. is as under:

- (i) GKPB land can be settled with the person in occupation of such land for a period of not less than five years as on 09.01.1991.
- (ii) Such land should be settled on Rayati basis in rural area irrespective of the use of land and the rent there of shall be assessed in accordance with that of similar land in the vicinity.

Report of R.I., Badagada submitted in GKLS Case Record No.73/2002 shows that:

- The OP No.1 Ashok Kumar Mohanty is in possession of the case land for more than 50 years as stated by the villagers at the time of enquiry.
- The OP No.1 is a homestead less person.

But the enquiry report of R.I., Badagada clearly reveals that name of villagers has not been mentioned therein basing on whose statement the possession of the OP No.1 was established and the statements of any of the villagers has not been recorded therein. Further copies of ROR No.34, 35, 64 published in the year, 1996, ROR No.77 published in the year,1977 and ROR No.543, 390 published in the year,2001 shows that so many plots stood recorded in the names of family members of the OP No.1 prior to the year,2002. Hence the statement of R.I., Badagada that the Petitioner is homestead less is incorrect.



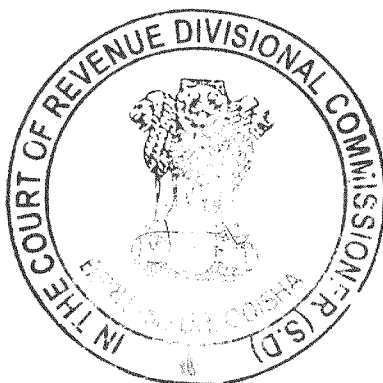
As per principles of reservation and settlement of Govt. land enunciated in Section 3(2) of OGLS Act, 1962, in settlement of Govt. lands, seventy per centum thereof be settled with the persons belonging to the Scheduled Tribes and the Scheduled castes in proportion to their respective populations in the village in which the lands are situated and the remaining lands shall be settled with the other persons not belonging to the aforesaid categories.

As per principle of settlement of land for homestead purposes in rural areas enunciated in Rule 7(2) of OGLS Rules, 1983, the extent of land to be settled in favour of each person having no homestead land shall be such as may be determined by Govt. from time to time.

Taking the above facts into consideration, this court arrives at the conclusion that proper enquiry has not been conducted in this case to find out eligibility of the OP No.1 for settlement of the suit plots and the findings of the enquiry report is not based on any documentary proof or written statement of any witness. In this case the land has been settled in the name of OP No.1 who is not fulfilling criteria of being a homestead less person whereas the suit land has been allotted in favour of the OP No.1 citing him as a homestead less person. Thus, due procedure has not been followed in settlement of the suit plots and the suit land is recorded in favour of an ineligible person violating the basic principles of OGLS Act.

As such this court allows this appeal petition and the orders passed in GKLS case No.73/2002 of Surada Tahasil is set aside.

This appeal petition is disposed off accordingly.




Revenue Divisional Commissioner,
Sothern Division, Berhampur