

IN THE COURT OF THE ADDL. DISTRICT JUDGE: BHUBANESWAR.

PRESENT:-

Sri I.K. Das LLB,
Addl. District Judge, Bhubaneswar.

RFA No. 20/83 of 2010-08

(Arising out of judgment and decree in TS No. 454/88 of 2004-98 passed by learned 2nd Addl. Civil Judge (Sr. Divn.), Bhubaneswar)

1. Sitanath Pattnaik, aged about 76 years (dead)
S/o: Late Bhagaban Pattnaik, resident of B-5, BJB Nagar
PS: Badagada, Dist: Khurda, expired on 26.8.08
- 1-A: Ashamani Pattnaik, aged about 70 years
W/o: Late Sitanath Pattnaik
- 1-B: Amiya Kumar Pattnaik, aged about 47 years
S/o: Late Sitanath Pattnaik
- 1-C: Anup Pattnaik, aged about 44 years
S/o: Late Sitanath Pattnaik
- 1-D: Arup Pattnaik, aged about 43 years
S/o: Late Sitanath Pattnaik
- 1-E: Sumita Pattnaik, aged about 42 years
W/o: Dillip Kumar Pattnaik. D/o: Late Sitanath Pattnaik
resident of Godabarish Nagar, PS: Kamapalli
Dist: Ganjam
- 1-F: Sunita Pattnaik, aged about 41 years
W/o: Prasanta Kumar Mohanty. D/o: Late Sitanath Pattnaik
resident of Sabarsahi Lane, BJB Nagar
PS: Badagada, Dist: Khurda
- 1-G: Ajay Pattnaik, aged about 39 years
S/o: Late Sitanath Pattnaik
- 1-H: Asit Pattnaik, aged about 38 years
S/o: Late Sitanath Pattnaik
- 1-I: Ajit Pattnaik, aged about 45 years
S/o: Late Sitanath Pattnaik

Sl. Nos. 1-A to 1-I are residing at Plot No. B-5, BJB Nagar
PS: Badagada, Dist: Khurda and are represented through their
Power of Attorney Holder Ajit Pattnaik, the plaintiff No.1

... Appellants

Vrs.

1. State of Odisha, represented through the Secretary to Govt.
Revenue Department, Secretariat Building, Odisha, Dist: Khurda
2. Collector, Khurda, At/Po: Khurda
3. General Administration Department, represented through
the Special Secretary to Govt. of Odisha, Secretariat building
Bhubaneswar, Dist: Khurda
4. Ashok Kumar Pattnaik, aged about 54 years
S/o: Late K.C. Pattnaik, At: Qr. No. VA-83
Unit-VI, PS: Capital, Dist: Khurda

... Respondents.

Advocate for the appellants:-	Sri Md. Allam & Associates
Advocate for the Respondent Nos. 1,2 & 3-	Sri R.P. Nanda, Govt. Pleader
Advocate for the Respondent No.4	Sri Ajit Das & Associates

Date of argument- Dt.15.11.13

Date of judgment- Dt.29.11.13

JUDGMENT

This appeal is directed at the motion of the appellants who were plaintiffs before the learned lower Court i.e. the Court of 2nd Addl. Civil judge (Sr. Divn.), Bhubaneswar against the judgment and decree passed in TS No. 88/98 renumbered as TS No. 454/88 of 2000/98. The present appellants being the plaintiffs filed the suit in respect of the suit schedule land for declaration of their right, title, interest and confirmation of possession alongwith correction of record of rights with permanent injunction against the defendants/respondents. The suit schedule land is situated at Mouza Gobindaprasad under Bhubaneswar Tahsil presently known as Saheed Nagar.

2, One Fakir Charan Das, being the owner was possessing the suit land under Stitiban status. On dtd. 7.6.1961, said Fakir disposed of Ac.0.200 dec. of land under Khata No. 147 Plot No. 1/537/569 in favour of Sitanath Pattnaik (dead), father of the appellants by executing Registered Sale Deed. The above mentioned land corresponds to Hal settlement Khata No. 1033 plot No. 1695/1985. On the same day, one Kunja Bihari Pattnaik purchased Ac.0.300 dec. of land out of the aforesaid land from the vendor of the appellants. Later, Sitanath again purchased

the said Ac.0.300 dec of land from Kunja Bihari Pattnaik and amalgamated both the pieces of land for his residential use. The plaintiff also raised boundary wall and constructed his residential house thereon. In the year 1962, a notification was made u/s 4 (1) under Land Acquisition Act for acquiring land at Bhubaneswar by the Government of Orissa for development of new Capital and the suit land was also a part of such notification. Again in the same year, 1962 another notification was made purported to be under Sec. 17 of Land Acquisition Act at Sahid Nagar area for development of new Capital. It is the case of the plaintiff/appellants that although notification was made regarding acquisition of land it was not within his knowledge and at no point of time he was dispossessed from the suit land, rather his possession over the land was uninterrupted and peaceful to the knowledge of all. In the year 1983, a proceeding was initiated against the plaintiff under Orissa Public Premises (Unauthorized Occupants Eviction) Act, 1972. But, it is the case of the plaintiff that initiation of such proceeding against him in respect of the suit land is not sustainable in the eye of law as at no point of time government acquired the suit land by dispossessing him from it. However, he lost the proceeding and he filed an appeal against the order of the Estate Officer which was also dismissed. The plaintiff again approached Hon'ble High Court of Orissa vide OJC No. 6292/93 praying for the self same relief which was also rejected and the writ petition was dismissed. Thus, the plaintiff being unsuccessful approached the Civil Court praying to declare his right, title, interest and possession over the suit land and to pass order of permanent injunction restraining the defendants from interfering with his rights and peaceful possession over the suit land.

3. Defendant Nos. 1,2 and 3 being the government agencies filed their written statement and defendant No.4 who is one of the allottee over the suit land also filed his separate written statement. The government in its written statement stated that the suit initiated by the plaintiff is hit under principle of res-judicata as the matter has already been settled by the Hon'ble Court in OJC No. 3011/98. The claim of the plaintiff that he purchased both the pieces of land and possessed the same has been admitted by the State, but it is consistent case of the defendant that

the suit land has been acquired and in possession by the government of Odisha by paying compensation to the plaintiff in Land Acquisition case No. 9 of 1963-63. Therefore, the claim of the plaintiff that his right over the suit land along with his possession is a misnomer. Hon'ble Court have clearly held that the plaintiff has lost his right, title and interest over the suit land and has accepted the compensation amount by virtue of acquisition of land. That apart, the plaintiff has been dispossessed from the suit land by the Estate Officer in a proceeding under Orissa Public Premises (Unauthorized Occupants Eviction) Act.

4. Defendant No.4 through his written statement averred that in the year 1983, government allotted and leased out plot no. A/334 at Sahid Nagar measuring an area of 45'x60' as per GA Department Drawing No. 768. This defendant also constructed his building after entering into agreement with the government through the Leased Deed. Thus, it is averred that the plaintiff having no right, title, interest and possession over the suit land is only creating disturbance in peaceful possession of defendant No.4 without any basis.

5. Learned trial Court after perusal of pleading from all the parties framed as many as 10 issues for just decision of the suit. During the hearing of the suit plaintiffs examined two witnesses and defendants examined two other witnesses and both the parties relied on number of documents marked as Exhibits. After hearing from both the sides and on perusal of pleading, I find the only dispute between the parties is to decide as to whether the suit land has been acquired by government of Odisha in the year 1962 after paying compensation to the deceased father of the appellants and the government has taken over possession of the suit land since then.

6. While dealing with such question, learned lower Court has also rightly answered to this question. It was argued before the learned lower Court that even if the suit land was acquired by the government after paying compensation to the plaintiff, possession was not taken over and therefore, the suit land has not been vested with the State. But, the Court held that the plaintiff was in unauthorized possession over the suit land after its acquisition and therefore, taking recourse under Orissa Public Premises (Unauthorized Occupants Eviction) Act, a

proceeding was initiated against the plaintiff and he was dispossessed from the suit land. Prior to it, after payment of compensation to the plaintiff the Collector delivered possession of the suit land in favour of the requisitioning officer and thereafter, the suit land having been fragmented to different pieces has been allotted in favour of number of persons including defendant No.4. The trial Court also took note of the finding of Hon'ble Court in OJC No. 3011/98 and the said order has been exhibited as Ext.10. In addition to order of Hon'ble Court, many other documents are also available in the record which sufficiently established that the land in question has been dispossessed from the appellants from the time of their father and has been acquired by the State. Therefore, the right, title and interest alongwith possession over the suit land has been entrusted with the State from the time of acquisition of the land. Hon'ble Court in their order at paragraph-5 have consistently held that

“it is difficult for us to accept the stand of the petitioner that the petitioner had never been dispossessed from the land in the acquisition proceeding. On the other hand, we are of the considered opinion that the land was taken possession of after payment of compensation to the petitioner since June, 1963”.

It is further observed by the Hon'ble Court that

“once it is held that possession was taken by the Land Acquisition Officer in the land acquisition proceeding, the subsequent possession of the petitioner cannot, but, be held to be unauthorized and therefore, the provisions of Odisha Public Premises (Unauthorized Occupants Eviction) Act would squarely apply for evicting such unauthorized occupant”.

In view of such decision of Hon'ble Court, there is no scope on the part of any other Court to give a divergent view that the land has not been dispossessed

from the possession of the father of the appellants and still he continues with its possession. After examining the evidence of witnesses available in the LCR and the documents there is no scope to believe that appellants are having right, title, interest over the suit land alongwith its possession. Thus, the disputed having been decided in the year 1992 by the Hon'ble High Court of Orissa in OJC No. 3011/98, any further litigation in this respect will be barred under the principle of res-judicata, Consequently, I am to hold that the appellants have no right, title, interest and possession over the suit land nor they are entitled for any decree for correction of record of rights and permanent injunction against the respondents from interfering with their right over the suit land. The learned lower Court has not committed any error in concluding the suit by its dismissal with such finding.

O R D E R

The appeal is dismissed on contest but in the circumstance, without cost.

Pronounced in the open Court today this the 29th day of November, 2013.

Dictated and Corrected by me.

Addl. District Judge, Bhubaneswar

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