

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6534-6535 OF 2021

STATE OF ORISSA & ORS.

.....APPELLANT(S)

VERSUS

PREMALATA MOHAPATRA (DEAD) THROUGH
LRS.

.....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in the present appeals is to an order passed by the High Court of Orissa on 12.4.2016 directing the Collector and the Tehsildar, respondent Nos. 2 and 3 before the High Court (appellants herein) to demarcate the land of 5 acres in respect of the lease case initiated in the year 1967 and to handover the possession of the said land preferably within a period of four weeks.
2. The said order arises out of the fact that the husband of the respondent Shri Umesh Chandra Mohapatra was working with the Indian Army. The claim of his wife¹, now deceased, was that keeping in view service rendered by her husband to the nation, each person who returned from

1 Hereinafter referred to as the 'writ petitioner'

the forward area during the war time is entitled to 5 acres of land as per the Government Resolution dated 14.5.1963. The husband of the respondent is said to have made an application in the year 1967. It was on 7.7.1969, vide another resolution, the State Government modified the earlier resolution dated 14.5.1963. It was clarified therein that the concession facilities would be provided to only those personnel who had served in the forward areas during 26.10.1962 to 31.1.1964 and on production of a certificate from the Unit Command confirming such service. Still later, another resolution was passed on 10.3.2014, whereby the policy of allocating land was modified and instead monetary grant as mentioned in Annexure 1 of the said Circular was contemplated. The relevant extract from the three policies read thus:

“No.11323/Poll
3S-29/63

Dated: Bhubaneswar the 14th May, 1963

In view of the present crisis due to external aggression the Government look forward to the Jawans of the State to proceed to forward areas to defend our country against the enemy's attack and to protect the life and property of the peace loving people of the country. It is very encouraging that a large number of people from all walks of life not only have been volunteering for service but also have been contributing considerably in cash and kind for the purpose.

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Concessions

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(d) Each person on return will get 5 acre of land free and made ready for cultivation of Government cost. In case a person is killed the widow and the dependants will receive the land.

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No. 20827/Poll

Dated: Bhubaneswar the 7th July, 1969

.....On a review of the progress of implementation of the above resolutions it has been found necessary to lay down specific principles for extending such facilities with a view to avoid mis-conception in this regard and to ensure that such facilities are provided to personnel for whom these are intended. On a careful consideration of all the relative aspects having a bearing on this matter, the State Govt. have, therefore, been pleased to decide as follows:

- (a) The concessions by way of assignment of land, medical facilities and educational facilities contemplated under the above resolutions will be available only to such personnel who have served in the forward areas during the period from 26.10.1962 to 31.01.1964. For this purpose, the personnel seeking such concessions will be required to produce a certificate from the Unit Command that he actually served during the above period in a forward area."

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No. 7390-Polls/2-04/2013-Poll.

The 19th February 2014

...As per the decisions communicated in Home Department Resolutions of 1963, 1964 and 1969, Government agricultural land up to 5 acres are being given under Government Grants Act, 1895 to Jawans who served in forward areas during China aggression from the 26th October, 1962 to the 31st January, 1964. Subsequently, on the request of Home Department agricultural land up to one standard acres in favour of landless ex-servicemen and landless Gallantry and Non-Gallantry awards winner Defence personnel up to Non-Commissioned Officer rank under the said Act vide G.O. No.19513, dated the 16th April 1998 and No.40743, dated the 11th August 1998. While making such provision for grant of land, Revenue & Excise Department in the aforesaid letters had requested Home Department for award of Monetary grant in lieu of land in favour of Gallantry award winner and Non-Gallantry award winner Defence personnel, if land is not available. The Home Department after taking into consideration the aforesaid views of Revenue Department issued a Resolution bearing No. 25219, dated the 30th May 2003 wherein provision of monetary grant in lieu of land was made in favour of Gallantry award winner Defence personnel. The provision of monetary grant in lieu of land was made

due to the reason that it was becoming difficult to allot agricultural land due to paucity of land.

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3. Therefore, in suppression of all previous Resolution/instructions issued by Home Department in this regard from time to time, Government, after careful consideration have been pleased to decide that monetary grant in lieu of agricultural land shall be given to the eligible Jawans who served in the forward areas during the period from the 26th October, 1962 to 31st January, 1964 and landless ex-servicemen. The amount of monetary grant in lieu of agricultural land in each case shall be as indicated in column 3 of Annexure-I."

3. Shri Umesh Chandra Mohapatra died on 20.3.1973. It was in 2007 that a writ petition was filed by the writ petitioner bearing Writ Petition No. 6133 of 2007. The High Court noted in its order dated 18.3.2010 that the parties were not presenting correct facts and were suppressing vital details. The Superintendent of Police, Cuttack by way of an interim order was directed to conduct an inquiry as to whether, in fact, 5 acres of land was leased in favour of the writ petitioner and as to whether the patta issued was genuine. On the basis of an inquiry, the High Court noticed that the writ petitioner had actually filed the application in the year 1967 but no order had been passed by the Tehsildar, Cuttack since then. Therefore, the direction was issued to Tehsildar to dispose of the lease case filed by the writ petitioner within a period of six months. The Superintendent of Police was directed to continue with the investigation and if it satisfied that the writ petitioner or any other person had committed or manipulated the documents, necessary FIR was to be lodged against the erring person before the appropriate Court. An application was filed for modification of the order dated 18.3.2010 in Writ Petition (C) No. 6133 of 2007 whereby Tehsildar, Dompura was directed to

comply with the order on 17.2.2012.

4. The writ petitioner filed an application for settlement of land on 17.6.2011 on the ground of participation of her husband in Indo-China War. It is thereafter, an order was passed by Tehsildar, Barang to allot the land measuring 5 acres. Another order was passed by Tehsildar on 3.9.2012 that the writ petitioner had not submitted the eligibility certificate issued from Home Department or State Sainik Board and that she had only enclosed an inquiry report submitted by Superintendent of Police, Vigilance in the Writ Petition No. 6133 of 2007. It was further mentioned that only the Government was competent to consider the settlement of land in favour of personnel of the Armed Forces. The file was thus submitted to the Sub-Collector for onward transmission to the Collector.
5. The State Government on 24.7.2013 rejected the lease application of the writ petitioner with the stipulation that the lease case would be reopened for consideration after the report of the Superintendent of Police, Vigilance, Cuttack.
6. The inquiry as ordered by the High Court was completed by the Deputy Superintendent of Police wherein action was recommended against the Ex-Collector, Cuttack, Tehsildar Tangi Choudwar and Tehsildar Sadar Cuttack for not attending to the genuine grievance of the writ petitioner and the callous attitude of the authorities towards her applications and for filing false and incorrect affidavits in the High Court. The relevant extract of the report reads as thus:

“ENQUIRY REPORT

File No. & Date 10 dated 5.2.09 (Re-opened dt
25.5.10)

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On perusal of discharge certificate issued by the Record Office, ASC Records (MT) Bangalore, it appears that No.6581649, Late Sep Umesh Chandra Mohapatra was enrolled in Army on 20.11.1951 and discharged on 2.1.1967 from reserve service on completion of terms of engagement. Further, in Col. 6 of the said Discharge Certificate there is no mention about any field service rendered by the deceased Ex-Servicemen Service rendered in forward areas during the period from 26.10.1962 to 31.01.1964 by the Ex-Servicemen can be correctly ascertained from the Officer-in-Charge records, ASC (MT), Bangalore. Without forward area/war service particulars during the above period, the circumstances under which Smt. Premlata Mohapatra was issued with two pattas both dated 20.1.75 for allotment of Ac.4.90 dec for agriculture and Ac.0.10.dec for homestead purpose by the Tahasildar, Cuttack, particularly after the death her husband i.e. on 20.3.1973, was not known to the Rajya Sainik Board, Orissa. Allotment of such land and issue of Pattas to Smt. Mohapatra has also not been communicated to the Rajya Sainik Board, Orissa by the Tahasildar, Cuttack. Therefore, the authenticity of both the allotment of Pattas issued to Smt. Premlata Mohapatra can be verified and ascertained from the Tahasildar Sadar, Cuttack.

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On requisition to the Sena Seva Corporations Abhilekh (Dakshin), ASC Records (South) Bangalore-560007, reply vide letter No.6581649/SR/LCC-3/NER dt. 22.6.2009 from CGO, Asst, Record Officer (for OIC Records) has been received on the following points:

- (a) Date of enrolment - 07 Dec 1943
- (b) Date of discharge - 02 Jan 1967 (AN)
- (c) War service - 07 Dec 1943 to 15 Aug 1946
- (d) Field Service - 27 Feb 1955 to 17 Dec 1956
- (e) Character - Exemplary

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Under the above circumstances, orders may kindly be passed for such action against both the opposite parties i.e. Ex-Collector Cuttack, Tahasildar Tangi Choudwar and also Tahasildar Sadar, Cuttack for not attending to the genuine grievance of the petitioner and callous attitude towards her applications in spite of her repeated approach and filing false and incorrect affidavits in the Hon'ble High Court and orders may kindly be passed for closure of

the enquiry.”

7. The writ petitioner filed another Writ Petition (C) No. 19536 of 2013 to challenge the order dated 24.7.2013. The present impugned order has been passed in the said writ petition.
8. It may be noticed that the Government resolution dated 14.5.1963 was in respect of allotment of land to those personnel belonging to the State who had proceeded to forward areas to defend the country against enemy's attack. The said aspect was clarified in the subsequent Government resolution on 7.7.1969 wherein it was provided that personnel who have served in the forward areas during the period from 26.10.1962 to 31.1.1964 would be considered eligible, provided a certificate from the Unit Command that he actually served during the abovesaid period in a forward area is furnished.
9. However, none of the authorities examined the said fact as to whether the deceased had worked in the forward area, though in the inquiry report the statement of the writ petitioner has been recorded that the war service was from 7.12.1943 to 15.8.1956 and the field service was from 27.2.1955 to 17.12.1956. It was also noticed that there is no mention of any field service rendered by the deceased in the discharge certificate from 26.10.1962 to 31.01.1964. No certificate from the Unit Command was produced that the deceased had worked in the forward area during the relevant period. Before this Court, the legal heir of the writ petitioner filed information obtained under the Right to Information Act, 2005 on 7.8.2009, which is as under:

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(b) Service particulars of the deceased soldier is as under:-

- | | | | |
|--------|---------------------|---|----------------------|
| (i) | Date of Enrolment | - | 07 Dec 1943 |
| | in Pioneer Corps | | |
| (ii) | Date of discharge | - | 21 Jan 1948 |
| | | | (Released) |
| (iii) | Re-enrolled in ASC | - | 20 Nov 1951 |
| | Corps | | |
| (iv) | Transfer to Reserve | - | 11 Mar 1957 |
| (v) | Finally Discharged | - | 02 Jan 1967 |
| | from Reserve | | |
| (vi) | Cause of discharge | - | Discharged from |
| | | | reserve service on |
| | | | completion of terms |
| | | | of engagement under |
| | | | Army Rule 13(1)(i). |
| (vii) | War Service with | - | 07 Dec 1943 to 15 |
| | ASC | | Aug 1946 (Singapore) |
| (viii) | Field Service with | - | 27 Feb 55 to 17 Dec |
| | ASC | | 56 |
| (ix) | Character | - | Exemplary |
| (x) | Medal | - | War Medal 1939-45 |
| | | | Star Burma Star |
| | | | Independence Medal. |

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10. In subsequent information obtained under the Right to Information Act, 2005 received on 23.11.2009, it was *inter alia* stated as under:

“(c) **Deployment for the period from 20 Oct 1962 to 31 Jan 1964.** As per service record held in this office, the details of posting during the year 1962 to 1964 as under:

(i) No entry made in sheet roll regarding deployment from 20 Oct 1962 to 14 Nov 1962. He was transferred to reserve on 15 Nov 1962 and recalled with effect from 28 Feb 1963. In this connection, a photocopy of Central Water & Power Commission, Godavari Gauging Division letter No. GGD/CB-3/6928 dated 06 Nov 1966 and MT Wing & Records, Aurangabad letter No. 6581649/69/RES dt. 24 Nov 1965 are enclosed.

(ii) 28 Feb 1963 to 15 Apr 1963 at Adm Bn, ASO Centre (South) (taken on supernumerary strength).

(iii) 16 Apr 1963 to 08 Feb 1964 at 693 Amb Platoon ASC.

(iv) 09 Feb 1964 to 20 Oct 1964 at MT Depot Wing, Aurangabad.”

11. From the perusal of the information furnished to the writ petitioner under the Right to Information Act, 2005, the deceased has not worked in the forward area during the relevant period from 1962 to 1964. He discharged field service from 27.2.1955 to 17.12.1956. As per the subsequent information, he was transferred to reserve on 15.11.1962 and recalled w.e.f. 28.2.1963. Thus, he was not deputed in the forward area during the relevant specified period. Thus, the deceased husband of writ petitioner did not satisfy the basic requirement of having served the nation during the period of aggression from 1962 to 1964. The entire claim is based upon misleading assertions to which the officers of the State Government also provided a helping hand. Therefore, the contentions of the writ petitioner are not sustainable for the reason that the deceased had never worked in the forward area during the specified time period.
12. In view thereof, the order passed by the High Court is hereby set aside. Consequently, the appeals are allowed and the writ petition is dismissed.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

**NEW DELHI;
OCTOBER 29, 2021.**

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6534-6535/2021

STATE OF ORISSA & ORS.

Appellant(s)

VERSUS

PREMALATA MOHAPATRA (DEAD) THR. LRS.

Respondent(s)

Date : 12.11.2021 These matters were called on for hearing on 29.10.2021 and the Non-Reportable Judgment is being uploaded today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Appellant(s) Mr. P. S. Patwalia, Sr. Adv.
Mr. Som Raj Choudhury, AOR
Ms. Shrutee Aradhana, Adv.

For Respondent(s) Mr. Kedar Nath Tripathy, AOR
Mr. Vikas Singh Jangra, AOR

The Court made the following
O R D E R

On 29.10.2021, the following order was passed :-

*"Heard the learned counsel appearing for the parties.
Leave granted.
The appeals are allowed.
Reasons to follow."*

Delay condoned.

The Non-Reportable Judgment is being uploaded today and is placed on the file.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed Non-Reportable Judgment is placed on the file)

ITEM NO.1 Court 11 (Video Conferencing)

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6534-6535/2021

STATE OF ORISSA & ORS.

Appellant(s)

VERSUS

PREMALATA MOHAPATRA (DEAD) THR. LRS.

Respondent(s)

(IA No. 1/2017 - CONDONATION OF DELAY IN FILING)
(IA No. 108895/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/
FACTS/ANNEXURES)

Date : 29-10-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Appellant(s) Mr. P. S. Patwalia, Sr. Adv.
Mr. Som Raj Choudhury, AOR
Ms. Shrutee Aradhana, Adv.

For Respondent(s) Mr. Kedar Nath Tripathy, AOR
Mr. Vikas Singh Jangra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned counsel appearing for the parties.

Leave granted.

The appeals are allowed.

Reasons to follow.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER