
(2022) 11 OHC CK 0036
In the Orissa High Court
Case No : Writ Appeal No. 282 Of 2019

Budharam Lakra

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 03-11-2022

Acts Referred:

Orissa Gram Panchayat Act, 1964 — Section 59

Panchayat Extension to Scheduled Areas (PESA) Act, 1996 — Section 4(m)(iv)

Citation : (2022) 11 OHC CK 0036

Hon'ble Judges : S. Muralidhar, CJ;M.S. Raman, J

Bench : Division Bench

Advocate : Umarani Panda, Debakanta Mohanty

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, CJ.

1. This writ appeal is directed against a judgment dated 8th April 2019, passed by the learned Single Judge disallowing W.P.(C) No.16629 of 2018 filed by Respondent Nos.2 to 11 herein questioning a letter dated 28th July 2018 issued by the District Panchayat Officer (DPO), Sundargarh to the Sarpanch, Kutra Gram Panchayat (GP) and the consequential auction notice dated 7th September 2018, whereby 17 shop rooms of a newly constructed market complex in the Kutra GP were put up for public auction.

2. The background facts are that Respondent Nos.2 to 11 were stated to be the road side vendors in and around Kutra Bus Stand of Sundargarh District. In 2015, there was a proposal for expansion of State Highway No.10 from Sundargarh to Sambalpur. According to Respondent Nos.2 to 11, this resulted in their having to be evicted and they were purportedly assured by the District Administration that alternative sites would be provided to them. It is stated that the Kutra GP through a resolution dated 17th January 2015, had approved the proposal for providing shop rooms to the dispossessed shop keepers as part of

the rehabilitation scheme. 10 beneficiaries i.e., Respondent Nos.2 to 11 were selected for allotment of such shop rooms.

3. It is the case of the present Appellant that the said market complex was in a scheduled area and was constructed out of the Integrated Tribal Development Fund (ITDF) under which members belonging to the Scheduled Tribes (STs) were to be the beneficiaries. Sundargarh is a scheduled area to which the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act) applies.

4. It appears that even before the resolution dated 17th January 2015 could be acted upon and allotments were made of the 17 shop rooms constructed in the market complex, the Kutra GP passed another resolution on 2nd October 2017 whereby the earlier decision taken on 17th January 2015 was withdrawn/cancelled and it was decided to have another meeting to consider what further action should be taken.

5. However, on the basis of the earlier resolution dated 17th January 2015, the Sub-Collector, Sadar, Sundargarh on 22nd May 2018 issued a letter to the Block Development Officer (BDO), Kutra informing that 12 persons had been identified as beneficiaries for allotment of shop rooms. Following this, the DPO, Sundargarh wrote a letter dated 1st June 2018 for allotment of shop rooms to 12 displaced beneficiaries as mentioned in the said resolution with certain terms and conditions of security deposit of Rs.50,000/- and monthly rent of Rs.3,000/- which would be enhanced by 10%.

6. On 2nd June 2018, a letter was written by the members of the Kutra GP to the BDO, Kutra Block and Sarpanch, Kutra GP that the decision regarding allotment of a community resource like a market complex in a tribal area ought to have been left to the discretion of Gram Sabha. In the meanwhile, ignoring the above request, in furtherance of the letter dated 1st June 2018 of the DPO, the allotments were made to 12 beneficiaries which included Respondent Nos.2 to 11 i.e., 10 persons.

7. It has been stated by the DPO in a counter affidavit filed in the present appeal that of the twelve beneficiaries, two belonged to the ST category. Apart from the 12 shop rooms, as far as remaining 5 shop rooms are concerned, it had been decided to go in for a public auction among the ST people observing all formalities.

8. Further to the above letter dated 2nd June 2018, a letter was written on 28th June 2018 by the members of the Kutra GP to the Collector, Sundargarh protesting the decision of the Kutra GP in going ahead with the above allotments to non-ST persons. When no response was received, they addressed a letter on 11th July 2018 to the Governor, Odisha with copies to the District Collector, Sundargarh and Chairman of the National Commission for the Scheduled Tribes, New Delhi.

9. Basing on the above letters, the DPO, Sundargarh on the orders of the District

Collector issued the impugned letter dated 28th July 2018 proposing that the earlier decision communicated by the letter dated 1st June 2018 be kept in abeyance and a direction be issued that the 17 shop rooms should be put to public auction. Thereafter, the Kutra GP held a monthly meeting on 10th August 2018 whereby a unanimous decision was taken for fresh auction of the shop rooms. Following this, a statutory meeting of the Kutra GP was held on 15th August 2018 where the resolution relating to the Kutra Market Complex was unanimously adopted by the members present. It was stated therein that the land of the Kutra Market Complex was a community resource and that the allotment of shops in the said market complex in favour of non-tribal businessmen was illegal and arbitrary. It was resolved that the non-tribal beneficiaries should not be allotted any shop and instead, new eligible persons preferably among STs were to be given allotment. The resolution dated 15th August 2018, made a reference to the earlier resolution adopted on 2nd October, 2017.

10. Thereafter, W.P.(C) No.16629 of 2018 was filed by Respondent Nos.2 to 11 in this Court questioning the letter dated 28th July 2018 of the DPO and the consequential auction notice dated 7th September 2018 whereby there was re-allotment of the shop rooms in favour of 17 persons including Opposite Party Nos. 4 to 16 in the writ petition who have been impleaded in the present writ appeal as Respondent Nos.14 to 25.

11. Before the learned Single Judge, it was submitted that the allotment in favour of the writ Petitioners i.e., Respondent Nos.2 to 11 herein was legally made in fulfilment of the promise held by the District Administration that the said persons were allotted shop rooms by way of rehabilitation as a result of displacement suffered by them due to expansion of the State highway.

12. On behalf of the new set of allottees i.e., Opposite Party Nos.4 to 16 in the writ petition (Respondent Nos.14 to 25 in the writ appeal), it was submitted before the learned Single Judge that in view of the proviso to Section 59 of the Orissa Gram Panchayat Act, 1964 (OGP Act) and Section 4 (m) (iv) of the PESA Act, no decision could be taken except in accordance with those provisions; and the resolutions passed by the GP consistent with those provisions should not be interfered with.

13. The learned Single Judge observed that the earlier decision to cancel the allotment in favour of the writ petitioners could not have been taken by the GP without following the due process of law. It was held that the letter dated 1st June 2018 had simply kept the earlier decision communicated on 22nd May 2018 to implement the resolution dated 17th January 2015, in 'abeyance'. There was therefore no occasion for the DPO to take a decision regarding auction by the letter dated 28th July 2018 which was pre-mature. Accordingly, it was held that the said letter was unsustainable in law. As a result, the consequential decisions including the fresh auction and allotment thereafter to the fresh allottees was also held to be illegal.

14. The learned Single Judge relied on the decision in *Canara Bank v. Debasis Das* AIR 2003 SC 2041 to hold that the cancellation of the allotments earlier made in favour of the writ Petitioners was in violation of the principles of natural justice. Consequently, while upholding the allotment in favour of the 10 writ Petitioners, the learned Single Judge directed the competent authority to go ahead for a fresh auction for the remaining seven shop rooms.

15. In the present writ appeal, notice was first issued by the Court on 6th December 2019 pursuant to which, Mr. B. Sahoo, learned counsel, entered appearance on behalf of Respondent Nos.2 to 11.

16. At the hearing on 10th August 2021, on the request of the learned counsel for the Appellant, the DPO, Sundargarh and the Sarpanch of the Kutra GP were impleaded as Respondent Nos.12 and 13 in the appeal. At the subsequent hearing on 21st September 2021, learned counsel for Respondent Nos.2 to 11 pointed out that the other contesting Opposite Parties in the writ petition had not been impleaded. Thereupon this Court permitted learned counsel for the Appellant to implead Opposite Party Nos.4 to 7 and 9 to 16 in the writ petition to be impleaded as proforma Respondent No.14 onwards in the writ appeal. This was because only one of the successful allottees i.e., Budharam Lakra had filed the present appeal.

17. At the hearing on 7th December 2021, Ms. Manisha Sahoo, learned counsel entered appearance for Respondent Nos.14 to 25 and Dr. Sujata Dash, learned counsel, for Respondent No.13. Written notes of submissions have been filed by both learned counsel for the Appellant as well as Respondents Nos.2 to 11.

18. On 27th April 2022, this Court directed the DPO, Sundargarh as under:

"2. Before we proceed further, we direct the District Panchayat Officer, Sundargarh to produce the relevant record relating to the approval, if any, of the resolution dated 17th January, 2015 as per the relevant rules; similarly that of the subsequent resolution No.2 dated 2nd October, 2017 and subsequently dated 15th August, 2018 regarding the allotment of the shops constructed in the new market place within the Revenue Estate of village Kutra."

19. Thereafter, on 26th September 2022, the following order was passed:

"1. In paragraph 5 of the affidavit dated 24th June 2022 filed by the District Panchayat Officer, Sundargarh, it is not stated when the newly constructed shop rooms were allotted in favour of the present occupants. It is also not clear how despite the newly elected GP passing subsequent resolutions on 2nd October 2017 and 15th August 2018, differing from the resolution passed earlier on 17th January 2015, the later resolutions could be ignored.

2. The exact dates of handing over the shop rooms to the occupants have to be indicated and the relevant documents have to be placed on record with a supplementary affidavit to be filed before the next date.

3. List on 27th October, 2022.”

20. Apart from the affidavit filed by the DPO, Sundargarh in the present writ appeal on 27th January 2020, a further affidavit has been filed by the DPO on 24th June 2022 placing on record copies of the resolutions dated 17th January 2015, 2nd October 2017 and 15th August 2018 of the Kutra GP. Enclosed with the said affidavit, is also a copy of the letter dated 20th June 2022 addressed by the BDO, Kutra to DPO, Sundargarh enclosing the above resolutions and also setting out the status of the occupants of the shops. This shows that of the 17 shops, 5 remain to be allotted while 12 appeared to be occupied by the original allottees.

21. The submissions of the learned counsel for the parties have been considered.

22. At the outset, the Court would like to note that there is no dispute in the fact that Sundargarh is a Scheduled area and the proviso to Section 59 of the OGP Act would apply. The said provision reads as under:

“59. Private markets- No person shall open a new private market after the commencement of this Act, or continue to keep open a private market unless he obtains from the Grama Panchayat a licence to do so for a period not exceeding one year in the prescribed manner and such licence may be renewed every year.”

[Provided that in the Scheduled Areas, the Gram Panchayat subject to the control and supervision of the Gram Sasan shall have the power to manage village markets by whatever named called.]

23. It is plain from the proviso to Section 59 that it is a GP in a scheduled area which will have the power to manage the village market. In other words, the OGP Act implicitly acknowledges the subsequent enactment namely the PESA, Section 4 (m) (iv) of which reads as under:

“4. Exceptions and modifications to Part IX of the Constitution—Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that part which is inconsistent with any of the following features, namely:—

xxx xxx xxx

(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self Government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with—

xxx xxx xxx

(iv) the power to manage village markets by whatever name called;”

24. There can be no doubt therefore that as far as the Kutra GP is concerned, the resolution of the GP in relation to allotment of private market would be authoritative in deciding in what manner the said village private market would be

utilized.

25. There is no doubt that the decision regarding allotment of shop rooms in the Kutra Market Complex are to be governed by the resolution of the Kutra GP.

26. The Court finds that before the learned Single Judge, the attention was not drawn towards important facts concerning the GP resolution of 2nd October, 2017 which cancelled/annulled the earlier resolution dated 17th January, 2015. The said resolution dated 2nd October 2017, has now been placed officially on record in these proceedings by the DPO by the affidavit dated 24th June, 2022. A reading of the said resolution leaves no manner of doubt that the Kutra GP decided to annul the earlier decision dated 17th January, 2015.

27. The decisions taken by the letter dated 22nd May 2018 of the Sub-Collector, Sundargarh and the consequential letter dated 1st June 2018 issued by the DPO, Sundargarh to the Sarpanch, Kutra GP allotting the shop rooms to the 12 beneficiaries included Respondent Nos.2 to 11 herein. This was clearly impermissible in law since the GP resolution dated 17th January 2015, no longer was valid in the eye of law. This important fact appears to have been overlooked by the learned Single Judge. Interestingly, in response to the specific query of the Court in its order dated 27th April 2022, the DPO has in the affidavit dated 24th June 2022 stated in para 5 of the said affidavit that "so far as the fate of the two subsequent resolutions dated 2nd October 2017 and 15th August 2018, is concerned, it is submitted that since newly elected body of the GP differed with the views taken earlier by the GP on 17th January 2015, no action has been taken on the same, as before the decision was taken up on 2nd October 2017 and 15th August 2018, the shop rooms were already handed over and occupied by the occupants pursuant to the earlier decision taken by the GP on 17th January, 2015."

28. In other words, there was no dispute in the fact that the later resolutions of the Kutra GP were 'different' from the earlier resolution dated 17th January, 2015. What is sought to be glossed over is that the later resolution dated 2nd October 2017, in fact cancelled the decision taken by the earlier resolution dated 17th January, 2015. Consequently, that decision as expressed in the resolution dated 17th January 2015, could never have been acted upon by the Sub-Collector or the DPO.

29. What is ab initio void, cannot be rectified by subsequent ratification which in the present case has not even taken place. In other words, once the Kutra GP by its resolution dated 2nd October 2017 decided to cancel/annul its earlier decision taken on 17th January 2015, it could not have reverted to reviving that decision. Every subsequent GP meeting only reiterated that the shop rooms have to be allotted by way of public auction. Consequently, neither the Sub-Collector nor the DPO could have ignored either of the resolution dated 2nd October 2017 or any of the subsequent resolutions.

30. There was no estoppel against law and therefore the allottees/beneficiaries

i.e., Respondent Nos.2 to 11 cannot claim to have altered that position irrevocably as a result of the assurance purportedly held out to them of rehabilitation by way of allotment of shops. Since the shops rooms are in the market complex which is in a scheduled area, by combination of the proviso to Section 59 of the OGP Act and Section 4(m)(iv) of PESA Act, the decision of the GP would be final and binding and cannot be overridden by the Sub-Collector.

31. Since the decision to allot the shop rooms in favour of Respondent Nos.2 to 11 herein was ab initio void, it would have made no difference to that result even if a hearing had been given to Respondent Nos.2 to 11 before cancelling the allotment and going in for a public auction. The hearing would have been an empty formality which would not have produced a different result.

32. The decision to go for a public auction has been explained in the affidavit dated 27th January 2020, of the DPO in the present appeal. It is stated that it was decided to go in for auction of 75% of the total 17 shop rooms in the market complex to ST and SC category and 25% to those other than ST and SC.

33. The Court is unable to find any error having been committed by the DPO in taking a subsequent decision dated 28th July 2018 and a consequential auction notice as well as the allotments made pursuant to such auction. These were in accordance with law and did not warrant interference.

34. For the aforementioned reasons, the Court sets aside the impugned judgment of the learned Single Judge and restores the decisions challenged in the writ petition to file. The writ appeal is allowed in the above terms with no order as to costs.

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