

(2023) 02 OHC CK 0082
In the Orissa High Court
Case No : Writ Petition (C) No.23872 Of 2019

Jayanta Kumar Das & Others

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 06-02-2023

Acts Referred:

Citation : (2023) 02 OHC CK 0082

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : G. Mukherjee, P.K. Rout, T. Mishra

Final Decision : Dismissed

Judgement

Arindam Sinha, J.

1. Mr. Mukherjee, learned senior advocate appears on behalf of petitioners. He submits, his clients are street vendors, who were evicted for construction of the market complex. The complex was to be ground plus two stories high. Only ground floor was constructed. The open space is where the un-accommodated vendors, his clients, are carrying on their business but they are being prevented. Now the Municipality is causing subterfuge by purporting to relocate his clients to outside the city.

2. Mr. Mishra, learned advocate appears on behalf of the Municipality and submits, his clients are willing to relocate petitioners. On query from Court regarding omission to construct two floors in the complex he submits, the funds stood returned to the administration.

3. Mr. Rout, learned advocate, Additional Government Advocate appears on behalf of State. He submits, unutilized funds were returned to the government. Report of the District Magistrate is that petitioners in carrying on their business are obstructing the road. They must accept the relocation.

4. On 6th January, 2023 we had made observations in our order made that day.

Paragraphs 4 to 6 are reproduced below.

"4. Construction of the market complex as planned, is in the realm of administration, to be executed by State and the Municipality. Court is not inclined to interfere in the administrative matter unless State and the Municipality create a situation where petitioners can demonstrate that they are unable to administer. Accordingly, we adjourn hearing of the writ petition in the hope that there will be further construction in the market complex to accommodate petitioners, who stand covered by said order dated 27th August, 2019.

5. List on 3rd February, 2023.

6. We make it clear that on adjourned date, in event we are unable to dispose of the writ petition on parties having worked out the controversy, we will hear and adjudicate on it."

5. Mr. Mukherjee points out from his clients' rejoinder dated 19th July, 2021 that there is covered space in the ground floor, which is occupied by motorcycles and squatters. There is also open area, enclosed by the construction made of ground floor. On query from Court he submits, the plan was obtained under Right to Information Act, 2005. He submits further, the covered area occupied by squatters and parked motorcycles be allotted to his clients, of floor area 10 ft by 10 ft each, till relocation on completion of construction. He reiterates, the offer of relocation outside the city is an act of subterfuge.

6. Mr. Mukherjee points out there is order dated 27th August, 2019 made in his clients' earlier WP(C) no.10585 of 2019. In effect, this writ petition is for enforcing directions made in the earlier writ petition. Relied upon paragraphs in said order are reproduced below.

"It is submitted by learned counsel for the petitioners that there are vacant places available near the construction area, where the street vendors are carrying out their business. The Municipal Council is to further construct shop rooms. Accordingly the persons, who are waiting for allotment, may be permitted to carry out their business for the time being to eke out their livelihood till such construction is completed.

Accordingly we direct the Municipal Council to consider such applications of the street vendors to continue with their business in the vacant place and their application for allotment of shop rooms shall be considered on completion of such construction in future on priority basis.

With the above observation/direction this writ petition is disposed of."

(emphasis supplied)

On query from Court Mr. Mishra submits, existing allottees are parking their motorcycles in the covered space earmarked for parking. That is a condition for the sanction. Accommodating petitioners would be in violation of said condition.

7. There were eight petitioners in aforesaid WP(C) no.10585 of 2019. Of them only six are before us. The facts are that construction is not complete. The funds could not be utilized and were returned. That does not mean there cannot be reallocation of funds for completing the construction. In the circumstances, there is no impediment for the municipality to implement directions made in said order dated 27th August, 2019. Petitioners are to be allowed to carry on their vending business in aggregate of 600 sq.ft. covered constructed area (100 sq.ft. each) and their case for allotment of shop rooms shall be considered on completion of construction in future, on priority basis. This temporary arrangement should not be seen as violation of condition of sanction since, the construction is not yet complete. On contingency of there being no further construction, existing constructed area then has to be revisited by the municipality, for purpose of utilization, in line with the directions made herein. Petitioners will communicate this order to concerned opposite parties, for implementation thereof within three weeks hence.

8. The writ petition is disposed of.

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