
(2022) 08 OHC CK 0028

In the Orissa High Court

Case No : Writ Petition (C) No. 27546 Of 2011

Kumar Jena And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 03-08-2022

Acts Referred:

Citation : (2022) 08 OHC CK 0028

Hon'ble Judges : Dr. S. Muralidhar, CJ;R. K. Pattanaik, J

Bench : Division Bench

Advocate : Asok Mohanty, Santosh Kumar Pattnaik, P.K. Muduli, M. Mohapatra

Final Decision : Disposed Of

Judgement

1. This is the third round of litigation concerning the claim of the Petitioners who are twenty-five in number and running Kiosks upon the vacant Government land in Plot Nos.295 and 304 at Bapujinagar near Rajmahal Square, Bhubaneswar since 1980 by paying license fees collected by the Bhubaneswar Municipal Corporation (BMC).

2. The first writ petition was OJC No.6483 of 1995 which was disposed of on 9th August 1996, directing the Opposite Parties to consider the case for rehabilitation at 'alternative places'. This was reiterated by an order passed on 11th September, 2009 in the second writ petition being W.P.(C) No.4643 of 2008.

3. In the present third writ petition, a detailed order was passed by this Court on 3rd March, 2021 pursuant to which an affidavit has been filed by the Opposite Party No.1-State in which it is stated in Paragraphs-10, 11, 12 and 13 as under:

"10. That the Addl. Commissioner, BMC in letter No.6132 dated 09.03.2015 and No.1466 dated 07.05.2015 has requested for sanction of land and allot in favour of BMC in respect of area measuring Ac. 1.000 dec. of Government land for rehabilitation of the petitioners in compliance to the orders passed by the Hon'ble High Court in WP(C) No.4643/2008. That suitable Govt. land measuring area

Ac.1.000 dec. is not available in Unit-1 Bapuji Nagar area for allotment of alternative land.

11. That the prayer of the petitioners is to regularize the allotment process in respect of Plot No.295 or to allot alternative land in the vicinity. The Plot No.295 is not suitable at this stage due to the fact that the area has been kept for the development of "Public Plaza" under Bhubaneswar Janpath Smart City Project". Further, Bhubaneswar Development Authority did not accord possession in favour of Bhubaneswar Municipal Corporation in respect of Plot No.295 for construction of Kiosks even though permissive possession was granted in favour of BMC vide GA Deptt. order No.952/CA, dated: 22.01.1994 and No.9314/CA, dated:08.08.1994.

12. That on verification of the Comprehensive development plan of BDA, it is seen that the Plot No.295 and the adjoining plot nos. 294 and 296 are coming under "Road Zone".

13. That it is further submitted that suitable land in the vicinity is not available for allotment in favour of Bhubaneswar Municipal Corporation. Even though Bhubaneswar Municipal Corporation has requested for allotment of land measuring Ac.1.000 dec. vide letter No.6132 dated 09.03.2015 and No.1466 dated 07.05.2015, no specific land schedule has been indicated for consideration."

4. It is accordingly submitted by Opposite Party No.1 that the BMC should identify suitable Government land in the vicinity in consultation with the Petitioners, Bhubaneswar Development Authority and Bhubaneswar Smart City Limited "and submit specific proposal before the General Administration Department for consideration in the prescribed Form No.1 as envisaged in Odisha Government Land Settlement (Second Amendment) Rules, 2020".

5. Mr. Manas Mohapatra, learned Senior Advocate appearing for BMC submits on instructions that there is no plot available in the vicinity of the aforementioned plots 295 and 304 of Bapuji Nagar. Mr. Asok Mohanty, learned Senior Advocate appearing for the Petitioners submits that it is the BMC who should locate the land even if it is not in the immediate vicinity at least at a reasonable distance to in order that the Petitioners may be rehabilitated. Mr. Mohapatra states that he needs some time for instructions on this aspect.

6. The Commissioner, BMC is requested to place before the representatives of the Petitioners at a meeting to be convened in the next one month, with at least one week's advance notice to the Petitioners, at least 3 or 4 alternative plots at a reasonable distance from where they are presently located, and offer the Petitioners a choice of one of them. An affidavit in this regard be filed on the next date.

7. List on 29th September, 2022. The interim order passed earlier shall continue.

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