
(2002) 08 OHC CK 0016

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2955 of 2002

Mohinimohan Parida

APPELLANT

Vs

Chief District Medical Officer and Others

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105(1)

Constitution of India, 1950 — Article 226

Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 4(1), 5(1), 7(1), 7(2), 8

Citation : (2002) 08 OHC CK 0016

Hon'ble Judges : P.K. Balasubramanyan, C.J.;A.S. Naidu, J

Bench : Division Bench

**Advocate : B. Pal, R.K. Bose, A. Pal and B.P. Mohapatra, for the Appellant;
Additional Government Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—O.J.C. No. 1163 of 1994 was fled in this Court challenging the illegal construction taking place in the compound of Balasore District Hospital and seeking to restrain the State of Orissa. the Director of Health Services, Orissa, the District Collector, Balasore and the Chief District Medical Officer, Balasore from constructing a market complex therein and from letting out the rooms thereof to any one.

On 26.4.1995, this Court rendered the following judgment therein.

This is a public interest litigation by a citizen of Balasore town challenging the decision of the Hospital Advisory Committee to construct a market complex inside the hospital. Pursuant to the notice issued by this Court. learned Advocate General appeared for the State and submitted that no doubt a decision had been taken by the Hospital Advisory Committee with the local M.L.A. as its Chairman to construct a market complex in the space available within the hospital premises between the Gate No. 1 and Gate No. 2 with the opening towards road side so

that the Red-Cross Society will get some monetary benefit. But that decision was of a tentative nature and permission of the State Government was sought for. The State Government at no point of time has accorded any permission and yet pursuant to the aforesaid decision of the Hospital Advisory Committee, people have forcibly constructed structures. The Hospital Advisory Committee no doubt, consisted of responsible persons. But such a decision, to our mind, is wholly against the welfare of the patients as well as smooth functioning of the hospital. In these days, when there is scarcity of space and increase in number of patients in every hospital, the fact of which, this Court takes judicial notice of, it is difficult for us to conceive that the same space in the hospital should be utilised by a market complex even at the cost of getting some financial benefit to the Red-Cross Society. The very decision of the Hospital Advisory Committee, in our considered opinion, was wholly unjustified and such a decision should not have been taken. At any rate, the State Government has not accorded sanction so far and therefore, the construction already made must be deemed to be unauthorised. If the persons have already constructed and occupied the premises, they are to be evicted in accordance with due process of law by proceeding against them under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act. We accordingly quash the decision of the Hospital Advisory Committee to construct a market complex in the hospital campus of Baiasore hospital and direct the State Government to take appropriate action for evicting the unauthorised occupants in accordance with law.

The writ application is disposed of accordingly.

(Emphasis supplied)

2. Feeling aggrieved by the said judgment, a number of persons who claimed to have been permitted to occupy portions within the compound including the petitioner herein, filed Civil Review No. 83 of 1995 seeking a review of the above judgment. In fact, there were 75 petitioners therein and the petitioner herein was petitioner No. 1 therein. In that review petition, this Court while refusing to review the judgment and permitting the petitioners and Ors. to take whatever defences that may be available to them in the proceeding for eviction, held as follows:

The present application for civil review has been filed by seventy five petitioners for recalling the order/judgment dated 26.4.1995 disposing of O.J.C. No. 1163 of 1994.

2. In the aforesaid judgment, there is an observation, i.e. the State Government has not accorded sanction so far as the persons in occupation of the land within the hospital complex are concerned. It has been further observed that the construction already made must be deemed to be unauthorised. If the persons have already constructed and occupied the premises, they are to be evicted in accordance with due process of law by proceeding against them under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act. The

Division Bench quashed the decision of the Hospital Advisory Committee to construct a market complex in the hospital campus of Baiaore Hospital and directed the State Government to take appropriate action for evicting the unauthorised occupants in accordance with law. Aforesaid decision was made in a public interest litigate by the citizens of Baiaore town challenging the decision of the Hospital Advisory Committee to construct a market complex inside the hospital.

3. Pursuant to the notice issued by the aforesaid Bench, the then Advocate General appeared for the State and submitted that no doubt a decision had been taken by the Hospital Advisory Committee with the local M.L.A. as its Chairman to construct a market complex in the space available within the hospital campus between the Gate No. 1 and Gate No. 2 with the opening towards road side so that the Red Cross Society will get some monetary benefit. It was made clear that the said decision of the Advisory Committee was of a tentative nature and permission of the State Government was sought for. The State Government at no point of time has accorded any permission and yet-as per the decision of the Hospital Advisory Committees, people have forcibly constructed structures. In the aforesaid context, this present review application has been filed.

4. In the present application for review of the aforesaid judgment, it is submitted by Mr. Pal in support of the petitioners that they were not parties to the aforesaid writ proceeding and they have constructed their structure outside the hospital but resting it on the outside wall of the hospital. Since they were not made parties to the proceeding, the said judgment may have an adverse effect on their interest. It is submitted that the aforesaid judgment be reviewed and/or recalled and after impleading the present seventy five petitioners and also opposite party No. 6 -Indian Red Cross Society. District Branch, Balasore opposite party No. 7 Advisory Committee of District Headquarters Hospital, Balasore and opposite party No. 8 - Balasore Municipality, the matter may be reconsidered in its proper perspective and decided once again.

5. With great anxiety we considered the matter. In a public interest litigation, it is not necessary that all the persons should be impleaded as parties to the proceeding. It is comprehensively, a decision on the basis that no market complex can be conceived in and around hospital. and the acts done and/or caused to have been done for raising unauthorised construction, were found to be unwarranted and uncalled for. Such a decision by nature is not adversarial adjudication in character so that it would be binding only on the parties to the proceeding. It has a wide ranging effect so that even person or persons concerned with the actual incident/cause cannot circumvent the right decision. Besides we do not find that there is any error in the order of giving a fresh life to the litigation in impleading persons in a disposed of case.

6. In that view of the matter, we are not going to review the order. All that we observe is that if proper proceeding is initiated for eviction of any person including the petitioner/petitioners, it will be open to him/them to take

independent defence as permitted under law. The adjudicating authority will consider and dispose of the proceeding as law permits taking notice of any lawful defence and any observation made in the order/judgment dated 26.4.1995 and/or any observation made incidentally therein will not effect their defence nor will their defence be prejudiced in any manner.

7. With the observation aforesaid, the review petition is disposed of without any order as to costs.

(Emphasis supplied)

The judgment in O.J.C. No. 1163 of 1994 thus became final. So did not order passed in Civil Review No. 83 of 1995.

3. Therefore, with some reluctance, (we say, with reluctance, since the order in the review petition was passed by this Court on 25.9.1995 and the Chief. District Medical Officer initiated proceedings under the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 only on 7.5.1997 even though in its order dated 26.4.1995 this Court had directed him and Ors. to initiate proceedings for eviction under that Act) the Chief District Medical Officer, Balasore, initiated proceedings under the Orissa Public Premises (Eviction of Unauthorised Occupants)"Act, (hereinafter referred to as the "Act") on 7.5.1997. On 13.5.1997, the Sub-collector and Estate Officer. Balasore, the authority under the Act, started the proceedings against the occupants by the following order:

Perused the report submitted by the C.D.M.O., Balasore vide his letter No 2652/M. dated 7.5.1997 wherein it has been prayed for initiation of proceeding against the unauthorised occupant of market complex within the premises of Headquarters Hospital, Balasore for his eviction in pursuance of the orders of Hon"ble High Court of (sic) in O.J.C. No. 1163 of 1994 and in Civil Review No. 83/95. Start of proceeding under Orissa Public Premises (Eviction of Unauthorised Occupants) Act. 1972 against the opposite party.

The notice specifically directed as follows:

In pursuance of Sub-section (1) of Section 4 of the O.P.P. (Eviction of Unauthorised Occupants) Act. 1972. I do hereby order and require and member of the opposite party and all persons who may be in occupation of the said premises to appear in my Court on 27.5.97- at 10 A.M. in person or through Advocate and show cause if any as to why he should not be evicted from the public premises and accordingly order should not be passed.

On receipt of this notice, the occupants including the petitioner, appeared before the authority concerned. They contended that they had been permitted by the Hospital Advisory Committee to put up the structures for the market complex: that their occupation was not unauthorised and that the initiation of the proceeding was misconceived. The occupants made a prayer that an order u/s 7(1) of the Act may be passed permitting them to pay the rent. The Estate Officer purported to pass an order on their request apparently without application

of mind and the nature of the notice he had himself issued earlier and without reference to the binding direction of the High Court in OJC No. 1163 of 1994. But on an application by the Government Pleader bringing to the notice of the authority that no order u/s 7(1) of the Act can be passed and an order can be passed only u/s 7(2) of the Act in view of the fact that the occupants were unauthorised occupants, the authority reviewed the said order in exercise of his power as conferred by Section 8 of the Act and held that what the occupants had to pay or what the occupants were liable to pay. was only damage for use and occupation in terms of Section 7(2) of the Act. Thereafter, on a final consideration of the relevant aspects, the authority held that the occupants were liable to be evicted in terms of the Act and passed an order u/s 5(1) of the Act calling upon the opposite parties in the various eviction cases to vacate the respective rooms of the market complex in the premises of the District Headquarters Hospital, Balasore within fifteen days from the date of publication of the order and its affixure on the outer door of the respective rooms of the said market complex, failing which the unauthorised occupants were to be evicted and possession of the land was to be taken by use of such force as may be deemed necessary. The petitioner herein and the other occupants filed appeals before the Collector, Balasore, the appellate Authority under the Act. Before the Appellate Authority three questions were raised on behalf of the petitioner and the other occupants. The first question was whether the construction of the market complex was supported by Government sanction. The second question was whether extraction of rent from the occupants conferred any tenancy right on them and the third question was whether the presence of the Government Officials at the foundation stone laying function of the market complex would amount j to approval by the Government for construction of the market complex within the,, hospital compound.

4. The petitioner and other occupants could not produce any materials to show a Government sanction for the construction, either prior or subsequent. In fact in the judgment in OJC No. 1163 of 1994 and in the review order, it has been reiterated and found conclusively that the construction was unauthorised and it was raised without the approval or permission from the Government. In fairness to learned Counsel for the petitioner, we must observe that he did not argue that there was either prior consent of the Government for putting up the building or subsequent consent or approval for the construction, given by the Government. The appellate Authority on the first point, therefore, rightly found that there was no Government sanction or approval for the construction. As noted, this point was not pursued before us, and the argument proceeded on the basis that there was no Government sanction for the construction of the building.

5. On the second point, the Appellate Authority took the view that since the original authority had reviewed his earlier order purported to be one u/s 7(1) of the Act and substituted it by Anr. order under Sanction 7(2) of the Act nothing turned on the first order. It also stated that the subsequent order was not challenged independently by the petitioner and Ors. . They were hence bound by

the second order. Learned Counsel contended that going by Section 8 of the Act, the CPC has application and the petitioner in terms of Section 105(1) of the Code can challenge the order passed u/s 7(2) of the Act in the appeal against a final order. Even if we accept this submission of the learned Counsel for the petitioner in this case and the petitioners in other connected case, nothing turns on the argument. This Court had directed initiation of the proceeding under the Act for eviction of the occupants. The petition for review filed by the petitioner and Ors. had not succeeded except that they were given a right to raise whatever objections they may have on initiation of the proceeding for eviction under the Act. In such a proceeding, there was no question of the original authority permitting them to deposit the rent in terms of Section 7(1) of the Act on the ground that they were liable to pay rent, especially when the Chief District Medical Officer had initiated the proceedings for eviction and on his initiation the original authority had himself issued the notice to show cause why an order for eviction shall not be passed on the basis that the occupants were unauthorised occupants. Therefore the first order passed by the authority u/s 7(1) of the Act was clearly without jurisdiction and erroneous on the face of the record. That order was rightly reviewed by the authority when that patent error was pointed out to him by the Government Pleader by filing a petition for review of the first order. After giving notices to the occupants including the petitioner, and after giving them an opportunity of being heard, the first order was reviewed and made an order for damages for use and occupation on the basis that the occupation was unauthorised. Therefore, the second order passed by authority is correct and was justified. In our view, nothing turns on the argument of the learned Counsel for the petitioner that an order u/s 7(2) of the Act could not have been passed before an order for eviction u/s 5(1) of the Act was passed. Even if we accept that position, the fact that some amount was paid by way of compensation for use and occupation during the pendency of the proceeding for eviction initiated u/s 5(1) of the Act after the High Court had clearly found that the occupation was unauthorised, that the project was detrimental to the District Hospital and public interest and against interests of the public health would not enable the petitioner to contend that he cannot be evicted under the Act.

6. The Appellate Authority held that the fact that the Minister, the Member of the Legislative Assembly and some officials participated in the foundation stone laying function would not mean that the Government had sanctioned the project. As a fact, there was no prior permission or sanction. As the representatives of the people, the Minister and the M.L.A. were free to attend any function, and that fact would not prove that the construction of the building had the prior approval or sanction of the Government which was essential. As noted, there is no dispute that the Government had not given any sanction when the proposal was made by the Hospital Advisory Committee. In fact the Government had turned down that proposal and the construction was made clearly unauthorisedly and without permission or sanction from the Government. The finding of the Appellate Authority in that regard therefore does not suffer from any error. The absence of

sanction prior or subsequent could not be questioned by the learned Counsel for the petitioner.

7. What learned Counsel for the petitioner actually argued was that the petitioner and the Ors. may be given yet Anr. opportunity to defend the proceedings. We are not satisfied that there is any justification at all for granting such an opportunity. The proceeding was initiated on 13.5.1997. The order sheet shows the various dates to which it was posted. The matter was pending before the original authority from 13.5.1997 till 14.9.2001 we may notice that the occupants appeared before the authority was early as on 27.5.1997. Thus, the matter was pending even after they appeared, for more than four years. The petitioner and the other occupants had ample opportunity to substantiate their objections. There is no justification in contending that the matter should be remanded again at this stage for a fresh decision. The petitioner and Ors. did not have a case before the Appellate Authority that they did not have sufficient opportunity before the original authority. A copy of the written argument which was submitted before the appellate authority made available to us by learned Counsel for petitioner also does not indicate that there was such a plea before the appellate authority. Therefore, the prayer for a further remand of the proceeding lacks bona fides and is rejected. We may also note that this Court, as early as on 26.4.1995, found that the construction was wholly unauthorised, wholly against public interest and the interests of the District Hospital and that the occupants should be evicted forthwith in public interest. Even then, the matter has lingered on for more than seven years, by this time.

8. Moreover, we find that it was an admitted fact that permission was only given by the Hospital Advisory Committee that Government sanction was needed to make the permission valid that the recommendation of the Hospital Advisory Committee was not accepted by the Government and that the Construction was made without prior permission of the Government or the subsequent sanction of the Government. Hence, it can only be held that the occupation is an unauthorised one. There is no dispute that the land belongs to the Government. Therefore, it is clear that the Act applies. In fact this Court had held that the Act applies and then in the review petition filed by the petitioner and Ors., this Court had reiterated that position. That finding is binding on the occupants. Therefore, it is clear case where the petitioner and Ors. are in unauthorised occupation of the premises belonging to the Government. Therefore, invocation of Section 5(1) of the Act is within jurisdiction and is perfectly justified. Since the occupation is unauthorised the order of conviction is also perfectly justified. There is no merit in the claim of the petitioner that the order for eviction under the Act suffers from illegality.

9. The petitioner and other occupants have invoked the discretionary jurisdiction of this Court under Articles 226 of the Constitution of India. That the original authority and the appellate authority under the Act have jurisdiction is clear not only from the factual situation, but the question is also concluded by the decision

of this Court rendered in O.J.C. No. 1163 of 1994 and the order passed in the review petition filed by the petitioner and Ors. . Hence, there is no point of jurisdiction involved in this case. What we find is that the premises of the District Hospital is being permitted to be used for putting up a commercial complex by the so called Advisory committee attached to the hospital even without waiting for the sanction of the Government or the approval by the Government in that regard. Such approval or consent was necessary, is not disputed. The construction of the market complex inside the hospital compound cannot certainly be said to be in public interest. It is clearly against public interest. It has been so found by this Court also while disposing of OJC No. 1163 of 1994. Thus what is sought to be done by the petitioner and other occupants is to seek to maintain the unauthorised construction inside the hospital compound to the detriment of the public, the sick and the infirm who come for treatment in the hospital and to the detriment of expansion of the hospital to meet the growing need to cater to public health in our welfare State. In such a situation, should this Court when called upon to exercise its discretionary jurisdiction under Article 226 of the Constitution of India to enable to petitioner and other occupants to maintain the illegal intrusion into the hospital complex for carrying on the commercial activities, exercise it in their favour? We have absolutely no doubt that in such a case this Court ought not to exercise its discretionary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner or those of his ilk. In such a situation, even if there is any irregularity or illegality in the order sought to be challenged there is no obligation in this Court to interfere. We hasten observe that in the case on hand there is absolutely no case of irregularity or illegality attached to the order passed by the original authority or the appellate authority. What we mean is that even if such illegality is existing this Court should decline to exercise its discretion since exercise of such jurisdiction would be against public interest and public health. In fact this aspect has been dealt with by this Court in the review petition filed by the petitioner and other occupants. Taking note of the illegal activity that was sought to be carried on inside the compound of the District Hospital and the circumstances obtaining, we have absolutely no hesitation in holding that there is no justification for exercising our discretionary jurisdiction in this case. We may note that even if about seventy five persons are likely to be affected by our non-interference, by our interference, the sufferers will be the public in general and the people of the District in question since it is the District Hospital and the detriment will be to the public as a whole. When the two are balanced again, the scale tilts against the petitioner and other occupants. Pitted against public-interest, their claim to retain their illegal structure must give way. Therefore, in any event, no interference by this Court is called for. We dismiss the writ petition.

10. The opposite parties are directed to enforce the orders passed by the authorities under the Act forthwith. The Superintendent of Police, Balasore and all those officers under him are directed to render the necessary help to opposite parties 1 to 3 to enforce the order of eviction passed by the authorities under the

Act.