
(2000) 12 OHC CK 0008
In the Orissa High Court
Case No : Org. Jurs. Case No. 5200 of 2000

M/s. Swastik Builders and Development Pvt. Ltd.	APPELLANT
Vs	
State of Orissa and others	RESPONDENT

Date of Decision : 18-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Development Authorities Act, 1982 — Section 103(3), 15, 16, 17, 18

Citation : AIR 2001 Ori 47

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : M/s Ashok Mukerjee, G. Mukherjee, P. Mukerjee and P. Patnaik, for the Appellant; M/s. Surya Kanta Radhi, Ms. Dipali Mohapatra, P. Parida, B.M. Sahoo, S.K. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Pradipta Ray, J.—The writ petitioner-company submitted a plan for construction a multi-storied residential building over Plot No. 195 (Hal), Mouza-Gandhigahat, Shit No. 25 in Puri before the Puri-Konark Development Authority (in short- "The Development Authority") for approval, by letter No. 132.PKDA dated January 21, 1999 the Development Authority ultimately approved the said building plan for construction of Stilt 7 Floors Residential Apartment over the disputed plot by its letter No. 132 PKDA dated January 21, 1999 with several conditions. The permitted coverage was 31% of the land and the maximum height was up to 23 meters. The concerned plot is a triangular land. Excepting a small portion in the South-East corner the plot is situated beyond 500 meters from High Tide Line. On the basis of the said approved plan and after obtaining necessary clearance from the Fire Bridgade authorities, the petitioner started construction of the super structure. When the writ petitioner-company completed super structure of the said building and the brick-work was nearing completion, the opp. party No. 4, an outsider, filed an appeal U/s. 18 of the Orissa Development Authorities Act. 1982 (hereinafter referred to as "the Act"). By order dated May 20, 2000 the

Secretary, Department of Housing & Urban Development allowed the said appeal holding that the permission accorded by the Development Authority is invalid, illegal and nonest and directed the Development Authority not to permit further construction work, Being aggrieved by the said order passed by the Appellate Authority the petitioner-company has filed this writ application.

2. The Opp. party No. 4-Jagannath Bastia is admittedly an outsider. He filed the appeal on the ground that the permission granted by the Development Authority was illegal and in contravention of the guidelines issued by the Hon"ble Supreme Court and the Coastal Area Classification and Development Regulations. According to him, the disputed building is being constructed with 500 meters of the High Tide Line Zone of Puri sea-beach and no building having more than 33% coverages and 9 meters in height can be permitted in the said zone.

3. The present writ petitioner appeared in the said appeal and contended that the opp. party No. 4 being an outsider has no locus standi to file any appeal u/Ss. 18 or 91 of the Act. The said objection was over ruled by the appellate authority on the ground that the issues raised by the appellant therein were public issues concerning violation of Coastal Area Classification and Development Regulations (in short - "CRZ Regulations"). The appellate authority thereafter considered the appeal on merit and held that the building should be treated as a building within CRZ II and as such the height of the building could not be more than 9 meters. The appellate authority further held that the Development Authority failed to ensure the measures for additional sewarge, sullage system and that the high-rise building is against the aesthetics of the town and violative of Clause-III under CRZ-II of CRZ Regulations. The appellate authority further proceeded on the basis that as per the notification of the Forest & Environment Development No. 13668 dated July 21, 1997 the entire Puri Municipal area comes under CRZ-II and as such it is immaterial whether a part of the plot comes within High Tide Line or not.

4. While issuing notice of this writ application this Court directed the Development Authority to justify the permission granted by it in the context of the various illegalities and infirmities as mentioned by the appellate authority. In pursuance of the said order, the Development Authority has filed a counter affidavit justifying the approval permission granted by it. In the said counter it has been pointed out that the building has been permitted to be constructed beyond 500 meters from High Tide Line, and no part of the construction is within the prohibited zone of CRZ-II. It has been pointed out that the Development Authority has a Sea-Beach Development Plan published in the Orissa Gazette in 1983 depicting the area within 500 meters from High Tide Line. It has been further stated that all other measures like fire safety measures, environmental measures, sewerage arrangement have been duly ensured in the permission and the Development Authority would not give permission for occupation unless it is satisfied that all other safety measures required to be undertaken under the permission granted by the Development Authority have been duly complied with.

5. By notification dated February 9, 1991 the Ministry of Environment and Forests, Govt, of India in exercise of the power conferred by clause (d) of sub-rule (2) of Rule 5 of the Envirarment (Protection) Rules, 1986 declared the coastal stretches of seas, bays, estuaries,creeks, rivers and backwaters which are influenced by tidal action (in the landward side) up to 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the High Tide Line as Coastal Regulation Zone, and imposed various restrictions regarding constructions in the said Coastal Regulation Zone. For the purpose of the said notification the High Tide Line means the line on the land up to which the highest water line reaches during spring tide and is to be demarcated uniformly on all parts of the country by Demarcating Authority so autorised by the Central Govt, in consultation with the Surveyor General of India. The Coastal Area Classssification and Developmental Regulations classified the coastal regulator zone into various categories from category 1 to category 4. Category 2 (CRZ-II) includes the area that have already been developed up to or close to the shore line. The developed area means the area within municipal limits or any other legally designated urban area which is already substantially built up and which has been provided with drainge and approach road and other infrastructural facilities such as water supply and sewerage mains. The category 3 (CRZ-III) covers the areas which do not belong to either CRZ-I or II. CRZ-III includes coastal zone in the rural areas (Developed and undeveloped) and areas within the Municipal limits or any other legally designated urban areas which are not substantially built-up.

6. Regarding construction of buildings within CRZ-II the following provisions have been made :

"CRZ-II (i) Buildings shall be permitted only on the landward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) or on the landward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed road/existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of Floor Space Index (FSI)/ Floor Area Ratio (FAR): Provided that no permission for construction of building shall be given on landward side of any new roads (except roads proposed in the approved Coastal Zone Management Plan) which are constructed on the seaward side of an existing road.

(ii) Reconstruction of the authorised buildings to be permitted subject to the existing FSI/FAR norms and without change in the existing use.

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style."

7. It appears from various regulations that the restriction regarding covered area up to 33% of the plot size and height of 9 meters are for the construction of dwelling units between 200 and 500 meters from the High Tide Line within CRZ-

II.

8. The Development Authority has stated in its affidavit that the disputed construction is beyond 500 meters from the High Tide Line and no part of the building falls within the said area of 500 meters. According to it only a small corner part of the plot falls within the area between 200 & 500 meters from High Tide Line, but no construction has been permitted on the said portion although construction up to the prescribed height therein was permissible. It has also been stated by the Development Authority that at the material point of time there was no other restriction regarding height of the building in Puri.

9. After hearing was completed on the basis of the counter affidavit filed by the Development Authority an additional counter affidavit on behalf of the said Development Authority was filed after its new Secretary assumed office. In the additional counter the Development Authority sought to take a stand different from that in the original counter. It has been alleged that Regulation 34 (1) of the Bhubaneswar Development Authority (Planning and Building Standard) Regulation, 1993 was applicable and the said Regulation of 1993 restricted the maximum height of a building to 17 meters in case of plot having an area of 100 Sq. Meters or more with a maximum coverage of 50%.

After filing of the said additional counter, the case was put up for further hearing. New Secretary of the Development Authority could not produce anything to show that the said building Regulations were adopted by the Development Authority and brought into operation for Puri Municipal Town at the material point of time. No notification was published in the official Gazette. The position appears to be undisputed that at the material point of time i.e. at the time of approval of the petitioner's plan there in was no restriction in Puri Municipal Town regarding height of building constructed beyond 500 meters from High Tide Line within CRZ-II.

10. It thus appears to be undisputed that no construction has been raised within 500 meters from the High Tide Line. Within CRZ II construction is totally prohibited within an area 200 meters from the High Tide Line. Construction upto 33% coverage and 9 meters in height is permissible within the area between 200 and 500 meters from the High Tide Line. There is no special restriction under the CRZI Regulations for areas beyond 500 meters from the High Tide Line. Restriction, if any under the Building - Development Rules or Regulations of the concerned local authority are applicable. The part of the land which falls within 500 meters from the High Tide Line has been kept vacant and the plan has been sanctioned as per the prevailing Building Regulations in Puri Municipal town. As already stated, at the material point of time there was no restriction regarding height of the building in Puri Municipal town. Accordingly, it cannot be, accepted that the disputed construction is in violation of any of the CRZ Regulations or the Building Rules or Regulations in the area.

11. The conditions relating to fire safety measures, environment control and

sewerage arrangement have been incorporated at the time of sanction/approval of the building plan and the Development Authorities will be required to supervise, inspect and ensure that all conditions relating to environment, fire safety, drainage and sewerage have been duly satisfied before issuing any completion certificate and permitting occupation of any part of the building.

12. It has been contended by the opp. parties 1 & 2 that notification No. 13668/F&E dated July 21, 1997 the entire Puri Municipal area has been designated as CRZ-II pending clarification from the Government of India. Accordingly, no building above 9 meters of height can be permitted to be constructed in Puri. The said contention appears to be misconceived inasmuch as there is no general restriction within entire CRZ-II. Within CRZ-II the restriction on construction of building is only for the area up to 500 meters from High Tide Line and not beyond that. The restrictions in CRZ-II over lands beyond 500 meters from High Tide Line have already been quoted hereinbefore. No such general restriction as alleged in the impugned order of the appellate authority was there for construction of building upon land beyond 500 meters from the High Tide Line. The restriction of height up to 9 meters was applicable to lands situated between 200 meters and 500 meters from High Tide Line.

13. Mr. Mukherjee appearing for the writ-petitioner has contended that an appeal u/S. 18 of the Development Authorities Act at the instance of a third party is not entertainable at all. He has referred to S. 18 (1) of the Act which is quoted below :

"18. Appeal against the decision of the Authority under Ss. 16 or 17 - (1) Any applicant aggrieved by an order under S. 16 or S. 17 may, in such manner and accompanied by such fee as may be prescribed by rules prefer an appeal within forty five days of the receipt of the order to the State Government or an officer appointed by the State Government in this behalf."

The right of appeal u/S. 18 has been conferred only upon an applicant for permission u/S. 16 of the Act. Right of appeal is a creature of statute and nobody has any natural or inherent right to appeal. The Supreme Court in *Smt. Ganga Bai Vs. Vijay Kumar and Others*, has pointed out the distinction between right of suit and right of appeal :

".....There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, however frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

There cannot be any doubt that the opp. party No. 4 had no right of appeal u/S.

18 of the Act. It may be pointed out that all regulations relating to development of an area is for the benefit of the inhabitants of an area. If provisions of any Act or Regulation is infringed by the Development Authority or by any builder a person residing in the locality may move the High Court under Article 226 of the Constitution of India or file a suit in the civil forum challenging the legality of any such illegal or irregular Act, but he cannot file an appeal u/S. 18 or u/S. 91 (2) of the Act as the statute does not confer such right of appeal on any and every person.

14. The appeal u/S. 91(2) of the Act can be filed by a person aggrieved by an order passed under sub-sec. (1) of S. 91. Section 91 (1) of the Act authorise an empowered officer of the Development Authority to make an order to remove any development by demolition where any development has been commenced or is being carried on has been completed in contravention of the development plan or without the permission, approval or sanction referred to in S. 15 of the Act or in contravention of any condition subject to which such permission, approval or sanction has been granted. In the present case there is still no complain that the construction is being raised in contravention of the sanctioned development plan or without any sanctioned or approved development plan. If any person finds that any unauthorised development is being made within the meaning of S. 91 of the Act he can approach the authority for appropriate order and/or action. If the Development Authority passes any order u/S. 91(1) of the Act, a person aggrieved by the said order can file said appeal to the State Govt, or an officer appointed by the State Govt. The appeal filed by the opp. party No. 4 can not be an appeal u/S. 91 (2) of the Act. Accordingly, the appellate authority completely misdirected himself and failed to appreciate the basic concept about the right of appeal while holding that the opp. party No. 4 had Locus standi to file the present application and that he came under the category of any applicant aggrieved.

15. Although the impugned order does not indicate that the opp. party No. 2 was exercising his powers u/S. 103 (3) of the Act, in the counter affidavit it has been claimed that u/S. 103(3) of the Act the Commissioner-cum-Secretary was quite competent to call for the records of any case for the purpose of satisfying himself as to the locality or propriety of any order passed or direction issued by the Development Authority. This impugned order nowhere mentions or shows that the opp. party No. 2 was exercising his power u/S. 103(3) of the Act. It is very clear that he proceeded on the basis that an appeal u/S. 18 of the Act at the instance of opp. party No. 4 was maintainable. Accordingly, this Court cannot accept the contention that the opp. party No. 2 exercised his power u/S. 103 (3) of the Act.

16. Although the appeal was not maintainable, but this Court also wanted to be satisfied that the Development Authority approved the plan without violating the provisions of Building Regulations and/or CRZ Regulations and/or any other restrictions. It has already been held herein above that neither the CRZ

Regulation nor the Building Regulation as prevailing on the material date was violated or infringed by the Development Authority in approving the development plan.

17. For the foregoing reasons this writ petition is allowed. The impugned order passed by the appellate authority is set aside, the Puri-Konark Development Authority is, however, directed to keep vigil, supervise and ensure that the conditions attached while approving the development/Building plan are strictly complied with and that no construction is raised in violation or in contravention of the approved Building/development plan. No permission for occupation of any part of the disputed building will be granted unless the Development Authority is satisfied that there is no infringement as indicated above.