

(1971) 09 OHC CK 0006
In the Orissa High Court
Case No : Civil Reference No. 1 of 1970

Muralidhar Patnaik

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 07-09-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 113
Constitution of India, 1950 — Article 14
Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 4, 5, 5(1)
Orissa Public Premises (Eviction of Unauthorized Occupants) (Amendment) Act, 1970 — Section 10A, 10E
Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 5

Citation : (1971) 37 CLT 1229

Hon'ble Judges : G.K. Misra, C.J.; B.K. Patra, J

Bench : Division Bench

Advocate : P. Kar, for the Appellant; A.G., for the Respondent

Judgement

G.K. Misra, C.J.—This reference has been made u/s 113, Code of Civil Procedure, by The District Judge, Cuttack for the opinion of the High Court as to whether Section 5 of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1961 (Orissa Act 25 of 1961), hereinafter to be referred to as the Act, is constitutionally valid.

Section 5 of the Act runs thus:

5. (1) If, after considering the cause, if any, shown by any person in pursuance of a notice u/s 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Estate Officer is satisfied that the public premises are in unauthorized occupation, the Estate Officer may, on a date to be fixed for the purpose, make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other

conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within forty five days of the date of its publication under Sub-section (1), the Estate Officer or any other Officer duly authorized by the Estate Officer in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary:

Provided that in the case of any such person who is not an employee of the State Government or Company or Board, as the case may be, and who has been in continuous occupation of the public premises for a period exceeding three years immediately preceding the date of the publication of the order of eviction, the Estate Officer shall not if an application is made to him in this behalf, evict such person from the public premises within ninety days of such publication.

2. Section 5 of The Public Premises (Eviction of Unauthorized Occupants) Act, 1958 (Central Act 32 of 1958), hereinafter referred to as the Central Act, which came up for consideration before a Bench of this Court *Hari Sahu v. Union of India* 37 C.L.T. 860, is almost similar to Section 5 of the Act. For reasons given in that case, which need not be repeated, we hold that Section 5 of the Act is hit by Article 14 of The Constitution and is void and unconstitutional.

3. To get over the objection that Section 5 is hit by Article 14, Section 10-A was inserted in The Act by the Orissa Public Premises (Eviction of Unauthorized Occupants) (Amendment) Act, 1970 (Orissa Act 15 of 1970), hereinafter to be referred to as the Amending Act. Section 10-A runs thus:

10-A. Bar of suit and other proceedings:

No suit or other proceedings in respect of matters or disputes for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under and in conformity with the provisions of this Act.

To get over similar difficulty, Section 10-E was inserted in the Central Act by an Amending Act. Despite it, it was held by this Court in that aforesaid decision that the amendment without a complete re-enactment would not cure the infirmity.

For reasons given in that case, we hold that by insertion of Section 10-A, the infirmity in Section 5 of the Act that it is constitutionally void is not cured.

4. We accordingly answer the reference made by the District Judge that Section 5 of the Act is void and unenforceable in law. The records be sent back at once for disposal by the District Judge. There will be no order as to costs.

B.K. Patra, J.

5. I agree.