
(2007) 04 OHC CK 0057
In the Orissa High Court

Nakula Dalai and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Citation : (2007) 104 CLT 477 : (2007) 1 OLR 876 Supp

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—This Writ Petition has been filed in the nature of Public Interest Litigation challenging the action of the Government in transferring/allotting a piece of Government land situated in Cuttack City in favour of the S.C.B. Medical Public School- Opp. Party No. 5.

2. The Petitioners have filed this Writ Petition claiming themselves to be fishermen by profession and members of different Fishery Co-operative Societies and also as members of the public. The question with regard to the locus standi of the Petitioners to maintain the present Writ Petition as a Public Interest Litigation would be dealt with at a later stage of this Judgment.

3. As per the averments made in the Writ Petition, the land proposed to be transferred to the Opp. Party No. 5 constitutes an area of Ac. 5.715 decimals covering several plots under khata No. 136 in mouza - Cuttack Town, Unit No. 20, Mangalabag. The Record of Rights of the said land which has been annexed as Annexure-2 to the Writ Petition. From the same, it is revealed that the said land stands recorded in the name of the Irrigation & Power Department of the Government of Orissa. It is alleged that over the said land, four Fishery Nursery Tanks, two Laboratory buildings and 32 numbers of staff quarters are situate. In addition to above, there is a bore well and some sheds for Class-IV employees. Administrative building of the Director of Fisheries also stands adjacent to the said area. It is the Petitioners' case that the said area is known as Dry Dock Area

as in the long past, it was used as Dock Yard when goods were transported by boats and steamers on the Taladanda Canal. Such transportation having been stopped, the area remained unutilized and the Dockyard became defunct. The Petitioners have asserted that the above land was transferred to the Fishery Department for Research Development and production of fish seeds. Various other averments have been made in the Writ Petition with regard to the use of the said land for Research and Development work of the Fishery Department. It has been alleged in the Writ Petition that though 13 out of 14 such Fishery Farms were surrendered to the Revenue Department, the Dry Dock Fish Farm over the land in question, due to its potentialities, was not surrendered, for implementation of all future plan and programme of the Fishery Department. The Petitioners have taken the pain of obtaining certain documents from the Directorate of Fisheries under the provisions of the Right to Information Act and relying upon the history sheet of Dry Dock Fish Farm as at Annexure-7 to the Writ Petition, it has been contended on behalf of the Petitioners that certain amounts have been sanctioned for construction of "E" and "F" type Government quarters. The said portion of the history sheet as at Annexure-7 is quoted hereunder:

That basing on the proposal submitted by the Director of Fisheries, Government of Orissa. Fisheries and Animal Resources Development Department have accorded sanction of Rs. 56.00 lakhs for construction of 18 (eighteen) E - Type Government Quarters and 4 (four) F - Type Government Quarters at one side of the Dry Dock Fish Farm in the 1st phase. Later Government have also sanctioned further Rs. 23,76,500/- towards construction of more 4 (four) F - Type and 6 (six) E - Type Quarters in the year 1990-91 and 1996-97 respectively at one side of the Dry Dock Farm. The sanction orders communicated by the Government in Fisheries and ARD Department from time to time towards construction of 32 numbers of Staff Quarters on the land of Dry Dock Fish Farm located at Cuttack in front of the Directorate are reflected at Annexure IV to IX. Now 32 staff quarters have already been constructed at one side of the Dry Dock Fish Farm and allotted to the staff/Officers of Directorate of Fisheries.

4. When the matter stood thus, the Opp. Party No. 6 who is stated to be Headmistress of Opp. Party No. 5 school came up on the land in the first week of June, 2006 and tried to fill up the fishery tank with sand which gave rise to a hue and cry amongst the staff of the Fishery Directorate as well as the general public. Pursuant to such action, it is alleged that the Director of Fishery vide letter dated 30.6.2006 under Annexure-8 addressed to the Commissioner-cum-Secretary, Fisheries and the A.R.D. Department, Government of Orissa intimated the said Commissioner-cum-Secretary regarding the action of filling up of the dry dock fishery and on query, the authorities of the Opp. Party No. 5 school intimated the Director that advance possession of land has been given to the school authority for construction of the school building.

5. It appears from Annexure-8 that the Director has attempted to disclose before

the Commissioner-cum-Secretary that though the said area has not been recorded in the name of the Fishery Department, but it is an admitted position that it is under the possession of the said Department and that certain proposals have already been submitted by the Directorate to the Government with regard to construction of a Farmers' Awareness Centre in the remaining un-utilized area of the said farm.

6. From the Writ Petition, it appears that pursuant to the aforementioned letter dated 30.6.2006, the Under-Secretary to the Government in the Fishery Department intimated the Director of Schools that after careful consideration, the Government has decided that the land may be transferred in favour of the S.C.B. Medical Public School-Opp. Party No. 5 This letter has been annexed as Annexure-1 to the Writ Petition.

7. According to the Petitioners, the said letter under Annexure 1 gave rise to cause of action for the Petitioners to file the present public interest litigation. The prayer made in the Writ Petition is for quashing the proposal of the Government for transferring the Dry Dock Fish Farm at Jobra in the city of Cuttack in favour of Opp. Party No. 5 school or anybody else.

8. Three counter affidavits have been filed. One, jointly by the Opp. Party Nos. 2 and 4 being the Secretary, Fisheries and the A.R.D. Department and the Director of Fisheries, another separately by the Director of Fisheries and the other by the Opp. Parties 5 and 6 being the S.C.B. Medical Public School and its Headmistress. In all the three counter affidavits, the maintainability as well as the locus standi of the Petitioners have been questioned.

9. From the counter affidavits, it appears that a society in the name and style of "Sishu Kalyan Samiti" was registered under Societies Registration Act, 1962 some time in the year, 1972 with the aim and object to make available public school education at low cost to the general public at large. The said society started a nursery school which gradually grew up into a full-fledged school up to I.C.S.E. standard with a new name being S.C.B. Medical Public School managed by the said society.

10. From Annexure B/4 to the joint counter affidavit filed on behalf of the Opp. Parties 2 and 4, it appears that the Under-Secretary to the Government in its Health and Family Welfare Department intimated the Director of Medical Education Training, Orissa that the Governor has been pleased to allow the "Sishu Kalyan Samiti", S.C.B. Medical College, Cuttack to organize the nursery school and the existing premises in the college campus is allotted to them subject to the condition that they are to maintain the buildings for the specific purpose of the nursery school and would undertake any alteration and addition as may be felt appropriate at their own cost. It was, however, clarified in the said letter that the Samiti will have no legal claim or title to the property assigned to them for the specific purpose as indicated. Under the letter dated 15.5.1989, the Revenue Divisional Commissioner (Central Division), Cuttack on the approach of

the Managing Committee of the schools which consisted of doctors as well as some members of the general public, taking into consideration the immediate necessity for construction of additional class rooms as proposed by the said committee for opening of higher classes from the session beginning from July, 1989 asked the Chief Architect-cum-Additional Secretary to the Government in its Works Department to take necessary action for inclusion of proposed additional class rooms as per the plan enclosed with the said letter, in the master plan. It was stipulated in the said letter that the proposed expansion will take place within the area already handed over to the nursery school and shall not cause any obstruction to any of the buildings of the S.C.B. Medical College and Hospital nor shall encroach upon the existing thorough fares. The R.D.C. further authorized that pending conclusion of the proposed construction in the master plan, the managing committee of the school is permitted to take up the construction in the ground floor for stating of higher classes, (emphasis supplied)

11. It is the case of the Opp. Parties that subsequent to the above permission, further permission was accorded by the appropriate authority of the Government. The first floor of the school building was also constructed by the managing committee of the school with all modern amenities. It further appears from the counter affidavit filed on behalf of the school that after being duly authorized by the Government the school spent huge amount in making the school edifice large and adequate to meet modern educational standards. It has made huge investments from its own funds on due approval of the Government. Considering the brilliant progress of the school, the Revenue Divisional Commissioner (Central Division), Cuttack in his letter dated 13.5.1989 requested the State Government for approval of plans for extension of the school building. On the same being approved, the school building was constructed as aforesaid. At this juncture, a Public Interest Litigation being O.J.C. No. 1415 of 1996 was filed before this Court alleging encroachment to have been made by the school inside the hospital premises. From the record of said O.J.C. No. 1415 of 1996, it appears that this Court disposed of the said Writ Petition by Order dated 12.3.1996 with certain directions to the concerned authorities for removal of unauthorized encroachments made within the S.C.B. College and Hospital Campus and for taking appropriate steps with a view to ensure maintenance of law and order situation within the said hospital campus and to take effective steps against the persons committing illegal activities within the said hospital campus. Several other directions were also issued With regard to entry of unauthorized persons to various Wards of the hospital. No order whatsoever was passed for removal of the school or eviction of the school from the said campus. It appears that Special Leave Petitions were filed against the Judgment passed by this Court in the said Writ Petition, O.J.C. No. 1415 of 1996 and against the Judgment passed in another Writ Petition being O.J.C. No. 9123 of 1996 by Jaya Mangala Harijan Kalayan Samity and others. The said Special Leave Petitions were registered as Civil Appeal Nos.1830-31 of 1997 and were disposed of by a common Order dated 3.3.1997 wherein the Supreme Court observed that since a

specific stand has been taken by the Government that action is being taken for ejection of all those who have trespassed and put up tenements within the compound of the hospital and no action has been taken vis-a-vis those who were having the tenements outside the campus, the apprehension of the Appellants before the Supreme Court that they would be ejected, if their tenements are really outside the campus, is unfounded. On the above finding, the Supreme Court confirmed the order passed by this Court.

12. We, therefore, find that the said Judgment has no nexus or relevance to the present dispute before us. However, it appears that on wrong interpretation of the Judgment passed by this Court in the aforementioned Writ Petition, the Revenue Divisional Commissioner (Central Division), Cuttack issued a notice of eviction to the school for which the school has preferred O.J.C. No. 4205 of 2000 in which by an interim order, the possession of the school has been protected.

13. We find that under the Chairmanship of Revenue Divisional Commissioner (Central Division), Cuttack, in a meeting held on 20.1.2003, it was resolved under agenda No. 26 as follows:

Agenda No. 26: Shifting of Public School- The S.C.B. Medical Public School has utilized a space of 564 decimal in the Hospital campus between the Ladies Hostel and Dental Wing. More over a crowd is gathered near the O.P.D. and the roads are jammed. So this School may be shifted to some other place and the present site may be utilized for development of Hospital. In this connection the proposal submitted by the School authority may be seen (Annexure-V).

It was unanimously resolved that the Medical Public School occupying an areas of 564 decimal in front of the Ladies Hostel should be shifted at the earliest and it is creating great problem in every respect in the College and Hospital traffic in administration. In this connection a proposal submitted by the President and Secretary of the School through the Head Mistress is enclosed for decision on priority basis by Govt. They have offered that the school Building in an area of 564 decimal along with its P.H.D. & G.E.D. works which they claim to be around Rs. 80- (Eight Lakhs only) will be handed over, the College and Hospital in lieu of a land measuring about 1,500 Decimal in a place as has been indicated in their application (enclosed-Annexure-V).

Accordingly, on the above resolution, the authorities of the Hospital moved the Government under Annexure-K/5 to the counter affidavit filed on behalf of the school which is dated 31.7.2003.

14. The school authorities claim that the structure which has been constructed by them would be around Rs. 2.00 crores and in a meeting held in the Chamber of the Chief Secretary, it was decided to lease out the land which is the subject-matter of the case, without premium in exchange of the entire school property. The said resolution has been annexed as Annexure-L/5 to the counter affidavit filed by the school authorities.

15. From the counter affidavit on behalf of the State, it is revealed that the land initially proposed to be allotted to the school constituted an Area of Ac.1.569 decimals appertaining to plot No. 439, under khata No. 138 of Cuttack Sadar, Unit No. 20 and the valuation of the said land was determined at Rs. 90,21,750/- @ Rs. 57.50 lakhs per acre and the school building inside the hospital campus has been valued at Rs. 98.63 lakhs. Accordingly, there was a proposal for allotting the aforementioned land to the school authorities in lieu of their vacating the school building without claiming any right thereon which is proposed to be utilized for the department of Bio Chemistry and other Departments. The proposal was sent to the Law Department, framing certain questions, for opinion. The specific questions put before the Law Department were (i) Whether exchange is possible between the land of Health Department with that of the above institution or permission can be given for use of the land, (ii) if yes, what would be the modality of the exchange, (iii) if it will be registered who will bear the cost of registration, and, (iv) whether it requires the approval of the Cabinet? The Secretary, Law Department in his note sheet dated 29.11.2004 opined that the cost of the building raised by the school authorities, as calculated, is higher than the value of the land proposed to be allotted to them. As such, there will be no loss to the Government. In the above circumstances, the Government may allot the aforesaid land to the school authorities and likewise the school authorities by a resolution of the Managing Committee should leave the existing building free from all encumbrances along with electrical and sanitation fittings in favour of the Government of Orissa without making any further claim for such building or fittings. The Secretary, Law Department further opined that as the Government is not going to transfer any land in the form of lease or mortgage or exchange, no registered document was necessary and the letter of allotment and undertakings would be sufficient and as it is a mere allotment and not a sale or grant of lease of the Government property, the Administration Department may take the approval of the Cabinet. Pursuant to the above opinion, it is stated in the counter affidavit, that the Cabinet Committee suggested that the above land may be allotted in favour of the Samiti and the balance Ac. 0. 564 decimals may be kept reserved for construction of staff quarters in future.

16. It appears that subsequent to the above recommendation, on a note of the Chief Secretary putting some queries, again a meeting was held under his Chairmanship on 27.9.2005 with regard to shifting of the school from the hospital campus and the present land constituting an area of Ac. 2.174 decimals under khata No. 136 under plot No. 228, mouza-Cuttack, Unit No. 20 was identified for the school. Under the letter dated 26.9.2005 in Annexure-J/4, the Collector, Cuttack wrote to the Principal Secretary to the Government in its Revenue Department that the land recorded in the name of the Irrigation and Power Department should be relinquished by the said department in favour of the Revenue Department for eventual settlement in favour of the Secretary of the Managing Committee of the School. The Collector further stated that the proposed land though recorded as "Jalasaya" has lost its nature as a "Jalasaya"

in course of time, as ascertained on verification of the present field position by the Tahasildar and, as such, the kissam of the land can be changed by the Tahasildar under Rule 34(e) of the Orissa Survey and Settlement Act, 1962 and thereafter, the land can be leased out in favour of the school authorities.

17. It is stated in the counter affidavit filed by the State that the said land constituting an area of Ac. 2.174 decimals has already been handed over to the school authorities. It has been mentioned in the counter affidavit that the land in question has been law fully transferred in favour of the school after thorough consideration by the different authorities of the Government and the same has been settled in exchange of the building constructed by the school authorities inside the hospital premises.

18. Mr. B.H. Mohanty, Learned Counsel for the Petitioners, in reply to the above contentions, vehemently argued that the value of the land which is proposed to be settled/leased out in favour of the school authorities is much more than the value of the building said to have been constructed by them inside the hospital campus and the authorities of the State in order to show undue favour to the school have illegally decided/allotted the said land in favour of the school in exchange of the building, free from premium.

19. However, on carefully considering the respective submissions made by the Learned Counsel for the parties and the averments made in the Writ Petition and the counter affidavits, though we are of the view that the Petitioners have utterly failed in making out a case for quashing the proposal of the Government for transfer of the aforesaid land constituting an area of Ac. 2.174 decimals which was earlier treated to be Dry Dock Fish Farm, but as we find that admittedly, the school was in permissive possession of the land inside the S.C,B. Medical College & Hospital, Cuttack and constructed the school building with approval of the Government, nevertheless, in law, the school authorities cannot claim any equity while vacating the said premises on the ground that they would be entitled to a land free of premium in exchange of the building constructed by them. The above view of this Court gains support from the fact that when the initial permission was accorded to the school authorities by the Government for opening of the nursery school and developing/raising new constructions for the school, it was specifically stipulated that the Samiti will have no legal claim or to the property assigned to them (Annexure-B/4).

20. We also fail to understand as to how the Secretary, Law Department opined that right in Immovable property can be transferred in favour of the school by only a letter of allotment issued by the Government and an undertaking furnished by the school authorities stating therein that they will leave the school building for the use and occupation of the Hospital Authorities. We, however, find that the view of the Collector, Cuttack that the land should be transferred from the recorded tenant being the Irrigation and Power Department to the Revenue Department and, thereafter, on initiating an appropriate Lease Case, the Tahasildar can lease out the said land in favour of the school is correct and legal.

21. Now, coming to the question regarding maintainability of the Writ Petition and the locus standi of the Petitioners to file such a petition, as we find that admittedly, though the property in question was recorded in the name of the Irrigation and Power Department, but the Director of Fisheries was allowed to carry on research work etc. over the said land for production of fish seeds, we are of the view that the Petitioners, being fishermen and members of Fishing Co-operative Societies as well as the members of the general public, have locus standi to file the present Writ Petition and accordingly, the Writ Petition is maintainable.

22. But, nevertheless, as we find that no public interest will be jeopardized if the land in question is -allotted/leased out to the school authorities, as shifting of the full fledged school, from inside the S.C.B. Medical College and Hospital Campus, for utilization of the existing school building for the benefit of the patients, is also in public interest, in our view, the Petitioners have failed to make out a case for interference of this Court with the decision of the Government to allot/grant lease of the aforementioned land to the school authorities. We, therefore, while dismissing this Writ Petition observe that as the Government has already decided to provide the above land to the S.C.B. Medical Public School, the same is required to be transferred to the Revenue Department, and, thereafter, the Tahasildar may initiate a Lease Case and may lease out the same in favour of the school after converting the, status of the land from "Jalasaya" to "Homestead" in accordance with law, on such annual premium as may be fixed by him. The deed of lease to be executed shall be registered. As it is admitted by the Government that possession of the land has been given in advance to the school authorities, the school authorities would be at liberty to continue the developmental work as well as the construction work of the school building over the said land on obtaining due approval of the plan.

In the circumstances of the case, the parties shall bear their respective costs.

B.P. Das, J.

23. I agree