
(2000) 07 OHC CK 0023

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6309 of 2000

Nityananda Ram and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Orissa Municipal Act, 1950 — Section 254

Citation : (2000) 2 OLR 191

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Sourya Sundar Das, B.R. Das, R.R. Mohanty and K. Behera, for the Appellant; Additional Government Advocate (OPs. 1 and 2), for the Respondent

Judgement

P.K. Misra, J.—Heard learned counsel for the petitioners and learned Additional Government Advocate for opposite parties 1 and 2. In view of the order proposed to be passed, it is not necessary to issue notice to opposite parties 3 and 4. However, it is made clear that if opposite parties 3 and 4 feel aggrieved by the present order, they can seek for recalling/modifying the present order.

2. The common grievance of the petitioners is that notice u/s 254 of the Orissa Municipal Act was issued calling upon the petitioners to remove the encroachment from the road-side land near Khaprakhai Bus-Stand on Jajpur-Keonjhar Road. It has been indicated in the notice that because of the encroachment lot of inconveniences are being caused to the general public and in the movement of vehicles. The petitioners were called upon to remove the encroachment within a period of seven days failing which it was indicated that the encroachment would be removed by the authority.

3. Learned counsel appearing for the petitioners contends that before asking the petitioners to remove the encroachment a notice should have been issued. For the aforesaid purpose, learned counsel has relied upon the decision of this Court reported in 1992 OLR 255 : (Smt. Girija Mishra v. The Berhampur Municipality through the Executive Officer). There is an earlier Division Bench decision of this

Court reported in Ratnakar Sahani and Others Vs. State of Orissa and Others, , wherein it has been observed :

".....It was held in Emarti Devi and Ors. v. District Magistrate, Cuttack and Ors., ILR 1975 Cuttack 1470, that the power of demolition conferred u/s 254 is subject to the precondition of giving the owner or occupier reasonable notice to voluntarily demolish the encroachment or in default to show cause against such demolition. The notice must give reasonable time and after the end of the notice period, even before defences available against demolition are adjudicated upon by the concerned authority, encroachments may be demolished. But this power must be exercised bona fide. Exercise of the power of demolition before the defences put forth are heard and decided against the owner or occupier, can be held to be bona fide in certain circumstances where, for instance, the encroachment cannot be allowed to continue until the dispute raised is decided for weighty reasons like health, hazards or other emergent Reasons of like nature in the interest of the public. Keeping the said dicta in view, it does not appear that the Municipality has either given a reasonable notice to the petitioners for representation or for voluntary demolition or has acted bona fide in the matter"

In the subsequent Division Bench decision was not brought to the notice of their Lordships. Moreover, a closed satiny of both the decisions makes it clear that the requirement is regarding giving reasonable notice. As observed in the earlier Division Bench decision, in appropriate cases, even without waiting for the final determination of the show-cause, if any filed, the authorities may remove the encroachment.

4. In the present case, the petitioners could have treated the notice a notice to show-cause if they has any grievance to put forth before the authorities. However, the learned counsel for the petitioners submitted that the petitioners are now willing to file show-cause before the appropriate authority by 21st July, 2000 and if any such show-cause is filed the same may be disposed of by the appropriate authority by 28th July, 2000 and till 28th July, 2000, no forcible demolition shall take place. However, if no show-cause is filed by 21st July, 2000 the authorities are free to vacate the encroachments. It is made clear that I have not expressed any opinion regarding the merits of the contentions. Subject to the above direction, the writ application is disposed of.