
(2008) 09 OHC CK 0008

In the Orissa High Court

Case No : Writ Petition (C) No. 7790 of 2008

Omfed Bazar Sangha

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Constitution of India, 1950 — Article 162

Indore City Municipal Act, 1909 — Section 135, 135(2), 233(1)

Citation : (2008) 09 OHC CK 0008

Hon'ble Judges : B.S. Chauhan, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Advocate : Ashok Kr. Mohapatra and S.C. Rath, for the Appellant; Kaliprasad Nanda, D. Panigrahi and P. Panda, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed with a prayer to restrain the opposite parties from making allotment of kiosks by means of lottery, but allotting the same in favour of the Petitioners as they had earlier been dispossessed from the land encroached upon by them.

2. The Petitioners had admittedly been dispossessed from the land being trespassers and they claim that there had been a Resolution dated 22.5.1993 in the meeting held under the Chairmanship of Minister of State, Fisheries vide Annexure - 5 to rehabilitate them. Though the meeting was attended by various officers including the Executive Officer, Bhubaneswar Municipal Corporation and the Secretary of the Bhubaneswar Development Authority, it was provided for rehabilitation of the persons like Petitioners by making allotment of kiosks in their favour. Therefore, the Petitioners should be given the said kiosks/ shop rooms as per decision taken in that meeting dated 22.5.1993 instead of making the allotment by lottery.

3. The Bhubaneswar Development Authority for the reasons known to the Petitioners has not been impleaded as a party. Bhubaneswar Municipal

Corporation has contested the case by filing a counter affidavit stating that no land had ever been allotted for the said purpose by the said opposite party. Therefore, the question of rehabilitation of those persons in the land in dispute does not arise. More so, they do not have any lawful right being the trespassers of the public land and therefore, the writ petition is liable to be dismissed.

4. Learned Counsel for the Petitioners could not satisfy us as under what circumstances a decision taken in the meeting headed by the Minister of State, Fisheries can be binding on any authority. It is also not the decision of Bhubaneswar Municipal Corporation or Bhubaneswar Development Authority. Learned Counsel for Petitioners is not able to point out whether in view of the statutory provisions such a decision is binding on any authority. At the most, it may be called a resolution taken by a body having no competence to decide such a issue. This had never been executed.

5. In Ram Ganesh Tripathi and others Vs. State of U.P. and others, , the Apex Court observed that any decision or order or circular or guidelines issued in contravention of the statutory provisions must not be given effect to.

6. Similarly in Milk Producers Association, Orissa and Others Vs. State of Orissa and Others, the Apex Court has held that the milk producers had no right to claim rehabilitation unless any executive order in terms of Article 162 of the Constitution is passed in their favour or any scheme is framed and given effect to rehabilitate them. In such a case, the issue of promissory estoppel is not applicable and the Apex Court directed the authorities to proceed against them for their eviction.

7. It is settled legal proposition of law that while considering the issue of enforcement of an order, it must be examined by the Court as to whether the same has been passed by the authority under the Act.

8. The Hon"ble Supreme Court" in Poona City Municipal Corporation Vs. Dattatraya Nagesh Deodher, , while interpreting the provision under the Bombay Provincial Municipal Corporation Act, 1949, observed as under:

The benefit of this section would be available to the Corporation only if it was held that this deduction of ten per cent was "an act done or purported to be done in pursuance or execution or, intended execution of this Act." We have already held that this levy was not in pursuance or execution of the Act. It is equally clear that in view of the provisions of Section 127 (4) (to which we have already referred) the levy could not be said to be "purported to be done in pursuance or execution or intended execution of the Act." For, what is plainly prohibited by the Act cannot be claimed to be purported to be done in pursuance or in tended execution of the Act.

9. The Hon"ble Supreme Court, in Municipal Corporation, Indore v. Shri Niyamatulla AIR 1971 SC 97, interpreted Section 135 (2) of the Indore Municipal Act, 1909, which is similar to Section 233 (1) (a) of the Act in the following

terms:

The provisions contained in Section 135 of the Indore Municipal Act will be applicable to things done under the Act. It is manifest that in the present case the order of dismissal passed by Shri Ghatpande was beyond his jurisdiction and is therefore, not an act done under the Act.

(Emphasis added).

10. The aforesaid judgments were reconsidered and approved by the Hon''ble Supreme Court in J.N. Ganatra Vs. Morvi Municipality, Morvi, . Similar view has been reiterated in Borosil Glass Works Ltd. Employees Union v. D.D. Bambode and Ors. AIR 2001 SC 378.

11. Learned Counsel for the Petitioner is not able to point out as to under which statute, the resolution dated 22.5.1993 can be referred to. In such a fact situation, we are unable to take notice of the said resolution, what to talk of enforcing the same.

12. In view of the above, we do not find any force in the petition which is accordingly dismissed.

B.N. Mahapatra, J.

13. I agree.