
(2011) 08 OHC CK 0002
In the Orissa High Court
Case No : W.A. No. 63 of 2011

Prafulla Chandra Sahu and Others

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Constitution of India, 1950 — Article 21
Limitation Act, 1963 — Section 29(2), 5
Orissa Municipal Act, 1950 — Section 215

Citation : (2013) 115 CLT 855

Hon'ble Judges : V. Gopala Gowda, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Advocate : N.C. Panigrahi, S.K. Nayak-2, B.K. Pant, S.K. Nayak, K. Jena and Miss. A. Nayak, for the Appellant; S.N. Mishra -1. B. Dash, B.N. Mishra, G.K. Nayak, R.K. Mahapatra, S.C. Samantray, S.P. Panda, S. Patnaik and R.R. Swain, G.N. Mishra, S.C. Sahoo, P.K. Sahoo and B. Priyadarshi, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, C.J.—The Appellants have filed this appeal questioning the correctness of the impugned Order Dated 18.3.2008 passed in W.P. (C) No. 3287 of 2008 and Order Dated 11.1.2011 passed in Misc. Case No. 20148 of 2010 where the Learned Single Judge declined to recall the said order sought for on the ground that the Appellants were not served with the notice and thereby the Order Dated 18.3.2008 is in violation of the principles of natural justice. It is also stated that Learned Single Judge has failed to exercise his discretionary power though the Appellants have brought to his notice that the orders sought to be recalled is an ex parte order. Learned Single Judge while disposing of the Writ Petition directed the Tahasildar, Bhadrak to take up the OLR Case No. 37 of 2001 and dispose of the same as early as possible, preferably, within a period of three months from the date of receipt of certified copy of that order and further direction was given to the Special Planning Authority, Bhadrak to conclude the proceeding initiated against the Opp. Party No. 6 under Annexure-10 to the Writ

Petition within a period of three months from the date of receipt of certified copy of the order. The respective authorities were also directed to take immediate steps to prevent water logging by removing unauthorized constructions if any, over the land which is recorded as "Jalasaya".

2. Learned Single Judge dismissed the Misc. Case No. 20148 of 2010 for the reasons recorded in the impugned Order Dated 11.1.2011 stating that parties in the Writ Petition were heard by the Special Planning Authority in the proceeding which were then pending before them where directions were Issued to conclude the same. The said proceedings were finally concluded and the Special Planning Authority vide its letter dated 29.5.2008 addressed to Opp. Party No. 6 (Appellant No. 1 herein) has noted that the action of Opp. Party No. 6-Appellant No. 1 tantamounts to gross violation of the statutory rules provided under the O.T.P. & I.T. Act, 1956 making them liable for punishment/penalty u/s 152 of the said Act. Therefore, they are liable for any inconvenience caused to the general public as to the sanitary condition, obstruction of passage, channel to pass drain, storm and rain water and other amenities resulting from his illegal action.

3. Being aggrieved by the said order, the present appeal is filed by the Appellants. The same is supported by a Miscellaneous Application seeking condonation of delay which was allowed in view of the principles laid down by the Hon'ble Supreme Court in the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, . Having regard to the facts and circumstances of the case accepting the aforesaid principles laid down by the Supreme Court, the provisions of Section 5 of the Limitation Act are applicable to these proceedings in view of Section 29(2) of the Limitation Act to the Letters Patent Appeal is the view taken by the Supreme Court in the case of The Union of India (UOI) Vs. Ram Kanwar and Others, .

4. The same prayer has been opposed by the Writ Petitioner-Respondent No. 5 seeking to justify the Order Dated 18.3.2008 contending that the Learned Single Judge in the public interest litigation after hearing the parties therein and having regard to the undisputed facts that the land in question is a "Jalasaya" land i.e. a tank over which unauthorized construction had taken place passed the impugned order. The contention urged by the Learned Senior Counsel on behalf of Appellants is that the Municipal Council had issued holding number and collected holding tax from them. Subsequently it cancelled the same stating that holding number had been illegally issued to them.

5. Affidavit has been filed by the Addl. District Magistrate, Bhadrak on 24.10.2008 in the Contempt Case No. 948 of 2008 stating that the direction issued by this Court on 18.3.2008 has been complied with by the Special Planning Authority after hearing the parties. At that stage, the present appeal was filed.

Section 215 of the Orissa Municipal Act clearly provides that no obstruction can be put across a public drain so as to interfere in any way with the flow of water

over the drain whether the drain passes through a public or private ground. The case land i.e. plot No. 1765 is undisputedly a "Jalasaya" (i.e. tank) as can be seen from the description of the plot appearing in the Record of Rights (at page 56 of W.A. Memo) and in the Registered Sale Deeds produced in the Writ Appeal and the sketch map of the locality submitted by the Special Planning Authority, Bhadrak under Annexure-D/2 to the affidavit dated 23.9.2008 filed in the writ appeal clearly shows that construction of the buildings has been made by the Appellants on the "Jalasaya" plot blocking the mouth of the wide drain culvert which used to allow discharge of the rain water and storm water of the locality from the said tank. The said affidavit was also duly taken note of by this Court in the Contempt Case No. 948 of 2008. Further it is stated that in the garb of purchase of lands, the Appellants have caused interference with the flow of the drain water in violation of Section 215 of the Orissa Municipal Act and argument is advanced in this case that the construction of the buildings made on the case land does not cause water logging situation and to establish such plea, they relied on the joint field visit report of the Special Planning Authority which has been annexed with the show cause affidavit dated 23.9.2008 filed in the Contempt proceeding referred to supra by Sri Nabaghana Mohanty, SPA which is produced in the writ appeal. But the Appellants have purposefully suppressed the further fact that in response to such affidavit filed by the SPA, the contempt Petitioner (Respondent No. 5) filed his rejoinder affidavit in the contempt proceedings stating therein that actually no joint field visit had ever been conducted by the Special Planning Authority or any other officer. He also filed a number of affidavits sworn by the local inhabitants stating that there was constant water logging problem in the locality due to the unauthorized, construction over the "Jalasaya" land and that the authorities had never conducted any field visit nor had they obtained the statement of any local person.

6. Learned Single Judge after hearing the contempt petition and after duly considering and weighing the affidavit filed by the SPA and the rejoinder affidavit filed by the contempt Petitioner, arrived at a conclusion that the unauthorized construction was causing water logging and accordingly directed the authorities to comply with the Order Dated 18.3.2008 passed in the Writ Petition. Further it is contended that the illegal and unauthorized construction made by the Appellants over the case land which is a "Jalasaya" is in total disregard of the relevant statutory provisions. For the unauthorized construction, the Appellants have not produced any sanctioned plans or licenses obtained by them from the Bhadrak Planning Authority. In this regard, we have also directed the Learned Senior Counsel for the Appellants to produce the documents to substantiate that the construction of the buildings is not unauthorized. But he failed to do so, which could clearly go to show that the construction of the buildings are unauthorized. Learned Single Judge has rightly appreciated the pleadings in the case having regard to the undisputed fact that the land in question is undisputedly a "Jalasaya" (tank). On account of unauthorized construction by the Appellants; there is water logging. The said unauthorized construction of the

buildings over "Jalasaya" land is in utter disregard to the statutory provisions, master plan and has created grave consequences on the present as well as future generations of the localities including Respondent No. 5.

7. Learned Counsel for Respondent No. 5 has also placed reliance upon the decision of the Supreme Court in the case of Shanti Sports Club and Another Vs. Union of India (UOI) and Others, . Further, he has placed reliance upon the decision of the Supreme Court in the case of Hinch Lal Tiwari Vs. Kamala Devi and Others, in support of the proposition that material resources of a community like forests, tanks, ponds, hillocks, mountains, etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which would enable people to enjoy a quality life which is the essence of the life guaranteed under Article 21 of the Constitution. The said decision is applicable to the facts of this case having regard to the undisputed fact that construction of the buildings over the "Jalasaya" land which is a material resources. The direction of the Learned Single Judge to the Tahasildar, Bhadrak and Special Planning Authority, Bhadrak to remove the unauthorized construction over the land in question is perfectly legal and valid. The same does not call for any interference. Learned Single Judge after considering all the aspects of the matter came to the conclusion and held that unauthorized construction of the buildings has been made upon the land in question which is a "Jalasaya". It is urged on behalf of the Learned Senior Counsel for the Appellants that without issuing notice to them in the Writ Petition, the Order Dated 18.3.2008 was passed and therefore, the same is in violation of principle of natural justice. The action of demolition of the unauthorized construction of the buildings entails serious civil consequences. Therefore, the Appellants prayed that the order passed in the Misc. Case is necessary to be recalled and after hearing them, appropriate order may be passed. Learned Single Judge has rightly dismissed the Misc. Case No. 20148 of 2010 holding that direction issued on 18.3.2008 has to be complied with. Further in the Contempt Proceeding initiated by the Respondent No. 5, directions were issued to the Tahasildar, Bhadrak and Special Planning Authority, Bhadrak. The Order Dated 18.3.2008 is complied with and the Tahasildar, Bhadrak has concluded the proceeding in OLR No. 37 of 2001. Therefore, the question of recalling the Order Dated 18.3.2008 did not arise and accordingly, the Learned Single Judge has rightly dismissed the Misc. Case. Further the Order Dated 18.3.2008 does not call for any interference for the reason that the Appellants have not produced any material to show that the construction of the buildings upon the "Jalasaya" land is lawful and legal. Further the Appellants have not come to this Court with clean hands. Therefore, the rejection of the Misc. Case No. 20148 of 2010 to recall the Order Dated 18.3.2008 by the Learned Single Judge is perfectly legal. Hence the Appellants are not entitled for any discretionary order and the impugned order is not required to be interfered with by this Court as there is no substantial question of law involved in this appeal. Hence, the appeal is devoid of any merit and liable to be dismissed. Accordingly, the appeal is dismissed.

B.N. Mahapatra, J.

I agree.