

(2006) 01 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (C) No. 2437 of 2005

Prakash Chandra Padhi and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Orissa Municipal Act, 1950 — Section 254, 254(2)

Citation : (2006) 1 OLR 419

Hon'ble Judges : S.B. Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : Sanjit Mohanty, H.K. Panigrahi and D.K. Samantray, for the Appellant; Additional Government Advocate For O.Ps. 1 and 2, S.D. Das, H.S. Satpathy, D.R. Bhukta, D.R. Sundarray, D. Mohanty, Mandakini Panda, N. Bisoi, A.N. Sahu, P. Rath and D.K. Mallick for Opp. Party No. 3, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioner Nos. 1 to 8 are small traders. Their case is that they carry on business of vegetable vending over a vacant land named as "HATTA" situated over Plot No. 3085 pertaining to Khata No. 545 in Hinjilicut within the jurisdiction of Hinjilicut N.A.C. A notice was published in the Oriya daily "The Anupam Bharat" on 3.2.2005 and notices dated 1.2.2005 were also issued to the petitioners individually, notifying them to vacate the aforementioned land by 5.00 P.M. of 3.2.2005, failing which, they would be evicted from the said land. The notices have been annexed to the writ application as Annexure-3 series and the publication of the said notice has been annexed as Annexure-4. The petitioner No. 9 appears to be a Registered Association, registered under the Societies Registration Act of which the petitioner Nos. 1 to 8 and others are the members.

2. The petitioners claim that shop rooms of various sizes exist over the said land which are in possession of some of the petitioners and the others who carry on their business of selling vegetable in the said Hatta. In the year 2002, there was

an attempt to evict the petitioners from the said land for which many of them protested and an agitation was carried out. Ultimately, an understanding was arrived at, as stated in the letter dated 6.9.2002 of the Tahsildar-cum-Part Time Executive Officer, N.A.C., Hinjilicut annexed as Annexure-6 to the writ application. It is claimed by the petitioners that in the said understanding, the Hinjilicut N.A.C. clearly stated that both the demands raised by them are already fulfilled and no further demolition has been undertaken or will be undertaken in the vegetable market subject to the condition that there should not be any further construction by the vegetable vendors. It was also undertaken that immediately the evicted vendors may shift to the Regulated Market Committee yard if they so desire to carry on their day-to-day business or subsequently, when the N.A.C. will construct stalls, they will be allotted on priority basis. The petitioners allege that the N.A.C. has not undertaken any such construction of stalls and no steps have been taken asking the petitioners to shift to any such stalls being allotted in their favour on priority basis as undertaken by the N.A.C. Being aggrieved by the notices issued against the petitioners and the publication made in the newspaper, the petitioners have approached this Court under Article 226 of the Constitution for appropriate relief.

3. A counter affidavit has been filed on behalf of the Hinjilicut N.A.C., inter alia, stating that a Regulated Market Committee has been established under the Orissa Agricultural Produce Markets Act, 1956 at Hinjilicut and the petitioners can vend their vegetable in the said market. As a matter of fact, it is stated in the counter affidavit that the said market has organized a "Krusak Bazar" in its main market yard with an estimated project cost of about Rs. 69,00,000/- provided by the D.R.D.A., Chhatrapur and R.M.C., Hinjilicut jointly. In view of the provisions of the said Orissa Agricultural Produce Markets Act, the N.A.C. could not issue any licence to such vendors like the petitioners and the petitioners have absolutely no right to carry on their business in the aforesaid Hatta commonly known as "Hatapada". The N.A.C. has also stated in its counter affidavit that a project has been duly approved for construction of a market complex over the disputed plot and the N.A.C. has received some amount from the Government in September, 2003 towards the said project. It has been further stated that taking into consideration of such matters, the Collector, Ganjam being the Chairperson to implement the said scheme known as "Integrated Development of Small and Medium Towns" by his letter dated 27.1.2005 issued direction through the Sub-Collector, Chhatrapur to take necessary action in that regard by evicting encroachments over the municipal land in the disputed plot. Allegations have been made by the N.A.C. that some of the petitioners along with others have occupied municipal land unauthorisedly by constructing temporary sheds and in order to remove such encroachment, notices were issued.

4. A rejoinder affidavit has been filed by the petitioners denying the assertion of the N.A.C. that money has been allocated for construction of a market complex and further asserting that there is no plan for construction of any market complex over the land on which the petitioners are carrying on their business.

5. Mr. Sanjit Mohanty, learned Senior counsel appearing for the petitioners submitted that in view of the undertaking of the N.A.C. given in Annexure-6 in the year 2002, the Hinjilicut N.A.C. is estopped from evicting the petitioners from the land in question without rehabilitating them by constructing shop rooms as stated in the said letter under Annexure-6. He further submitted that the notices issued to the petitioners and the publication in the newspaper directing the petitioners to evict the premises by 5.00 P.M. of 3.2.2005, on the face of it, are arbitrary, unfair and violative of the principles of natural justice. He vehemently contended that the N.A.C. has absolutely no jurisdiction under the provisions of the Orissa Municipal Act, 1950 (for short, "the Act") to evict the petitioners by force without following due process of law.

6. Mr. S.D. Das, learned Senior counsel appearing for the Hinjilicut N.A.C., on the other hand, submitted that the petitioners have absolutely no right to forcibly occupy the land belonging to the N.A.C. and notices issued to the petitioners cannot be termed as illegal or contrary to law.

7. Section 254 of the Act is the provision for removal of encroachment. The said section provides that the Executive Officer may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction situated against or in front of such premises and in or over any road. A bare reading of Sub-section (2) of Section 254 of the Act would show that such notice to be issued u/s 254 of the Act will require the noticee to file a show cause and upon hearing him only, order of removal or alteration can be passed.

8. The notices in the instant case ex-fade show that no opportunity of hearing and filing of show cause have been afforded to the petitioners. Thus, we have no hesitation in concluding that issue and publication of the said notices under Annexure-3 series and Annexure-4 are unilateral and impetuous act of the N.A.C. in directing the petitioners to vacate the land without affording them any opportunity of hearing.

9. Moreover, from the letter under Annexure-6, we find that the N.A.C. previously assured the vendors carrying on business over the land in question that whenever shop rooms will be constructed by the N.A.C., they will be given preference while allotting such rooms. Nothing of that sort has yet been done by the N.A.C. The petitioners are small vegetable vendors carrying on their business in the daily market in question. Preventing them from carrying on such business would violate their fundamental rights under Article 21 of the Constitution of India as it is well settled that the right to life provided under Article 21 of the Constitution includes right to livelihood. (See *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, .

10. In the result, we quash the notices issued to the petitioners under Annexure-3 series and the publication dated 3.2.2005 under Annexure-4 to the writ application.

We, however, make it clear that in case any of the petitioners or any other

persons have encroached upon any area of the land in question by raising illegal and unauthorized constructions thereon they can be proceeded against by the Hinjilicut N.A.C. by following due process of law.

The writ application is accordingly allowed.

S.B. Roy, C.J.

11. I agree.