
(2004) 12 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 13312 of 2001

Rajpath Foot Path Byabasai Sangha

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Development Authorities Act, 1982 — Section 15, 16(3), 17

Citation : (2005) 1 OLR 21

Hon'ble Judges : B.P. Das, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Amitav Das and Associates, for the Appellant; Additional Government Advocate for OP No. 1, P.K. Jena, for OP No. 3 and D. Mohapatra, for OP No. 2 and 4, for the Respondent

Judgement

1. Heard Mr. A. Dash, learned counsel for the petitioner, Mr. D. Mohapatra, learned counsel for the B.D.A. and Mr. P. K. Jena, learned counsel for the Bhubaneswar Municipal Corporation.

2. The petitioner is a registered society registered under the Societies Registration Act, 1860 comprising of members who are carrying on their business in temporary sheds by the side of Rajpath in Unit-1 of Bhubaneswar Town. The petitioner has stated that the said members have been carrying on such business in the temporary sheds by the side of Rajpath, Bhubaneswar for the last 40 years and have been paying tax to the Bhubaneswar Municipal Corporation (previously Bhubaneswar Municipality). In the year 1998, the opp. parties threatened eviction of the said members of the petitioner-society from their respective sheds by the side of Rajpath in Unit-1 of Bhubaneswar Town. The petitioner filed a writ petition O.J.C. No. 13623 of 1998 and by order dated 15.10.1998 this Court while issuing notice of admission restraining the opp. parties from taking any coercive steps for eviction of the sixty persons named in Annexure-2 to the writ petition from their respective business sites. Thereafter, the writ petition was withdrawn on 11.7.2000 by the petitioner when the petitioner came to learn that

the Bhubaneswar Municipal Corporation by their letter No. 227, dated 6.1.2000 have issued a provisional allotment of space in favour of the members of the petitioner-society from Rajmahal square to Sisubhavan Chhak on the right side of the road. The Bhubaneswar Development Authority then granted permission in their letter dated 5.2.2001 to the Executive Officer, Bhubaneswar Municipal Corporation, Bhubaneswar under Sub-section (3) of Section 16 of the Orissa Development Authorities Act, 1982 for construction of sixty numbers of single storied temporary kiosks on Plot Nos. 408 and 338 in village Bapuji Nagar. One of the terms and conditions of such permission was that the Bhubaneswar Development Authority and the Government will be at liberty to remove their kiosks as and when required for widening of the road or for any other public purpose. Each of the members of the petitioner-society paid an advance of Rs. 5,000/- to the Bhubaneswar Municipal Corporation for construction of the kiosks. Subsequently, however, such permission was cancelled by the Bhubaneswar Development Authority vide their letter dated 9th April, 2001 annexed to the writ petition as Annexure-11 for the reason that construction of kiosks as contemplated by the said permission will cause impediment to imminent road widening of two major arterial roads of the Capital city and to providing for parking space for the vehicles adjacent to the roads. Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution praying for quashing the said order dated 9th April, 2001 of the Bhubaneswar Development Authority in Annexure-11 to the writ petition as well as the notice dated 15.5.2001 issued by the Bhubaneswar Municipal Corporation in Annexure-12 to the writ petition for refund of the advance taken for the purpose of construction of Kiosks.

3. In the meanwhile, the Municipal authorities have started taking steps to evict the members of the petitioner-society from their present business sites along the Rajpath. The petitioner has, therefore, filed Misc. Case No. 1629 of 2004 praying for restraining the opp. parties from taking any coercive steps for eviction of the sixty persons named in Annexure-3 for evicting them from their respective business sides.

4. Mr. Dash, learned counsel for the petitioner submitted that Section 17 of the Orissa Development Authorities Act, 1982 provides for revocation of permission by the development authority but the Proviso to the said Section 17 makes it clear that before making an order of revocation, the development authority shall give reasonable opportunity to the person affected to show cause as to why such order of cancellation should not be made. Mr. Dash further submitted that no such reasonable opportunity has been granted to the members of the petitioner-society to show cause as to why such order of cancellation should not be made, and therefore, the impugned order in Annexure-11 to the writ petition of the Bhubaneswar Development Authority cancelling the earlier permission granted to the Bhubaneswar Municipal Corporation for construction of kiosks for the benefit of members of the petitioner-society is in clear violation of the Proviso to Section 17 of the Orissa Development Authorities Act, 1982 (in short "the Act") and is

liable to be quashed.

5. Mr. D. Mohapatra, learned counsel appearing for the B.D.A., on the other hand, submitted that a plain reading of the letter of permission under Sub-section (3) of Section 16 of the Act in Annexure-8 would show that the said permission was granted to the Executive Officer, Bhubaneswar Municipal Corporation and not to the petitioner-society or its members. He further submitted that until now no temporary kiosks have been constructed pursuant to the said permission for the members of the petitioner-society. According to Mr. Mohapatra, the members of the petitioner-society therefore are not persons likely to be affected by the order of cancellation and hence no notice was served on the petitioner or the petitioner-society. He also argued that the impugned order of cancellation was passed in terms of the condition in the permission that the permission will be withdrawn for widening the road.

6. Section 17 of the Orissa Development Authorities Act, 1982 together with the Proviso quoted herein below :

"17. Revocation of Permission - If at any time after permission for development has been granted under Sub-section (3) of Section 16, the Authority is satisfied that such sanction was afforded in consequence of any material misrepresentation or fraudulent statement contained in the application for such permission, it may, by order in writing and for reasons to be recorded cancel such permission, and any development undertaken in pursuance of such permission shall be deemed to have been undertaken without permission as required Section 15 :

Provided that before making any such order the Authority shall give reasonable opportunity to the person affected to show cause as to why such order of cancellation should not be made."

It will be clear from Proviso to Section 17 quoted above that before making any order u/s 17 revoking or cancelling an earlier permission granted u/s 16 (3) of the Act, the Development Authority has to give a reasonable opportunity to the "person affected" to show cause as to why such order of cancellation should not be made. It is true that the permission was granted to the Executive Officer, Bhubaneswar Municipal Corporation, for construction of kiosks but the kiosks were to be constructed for the members of the petitioner-society and each member of the petitioner-society had also paid an advance of Rs. 5,000/- to the Bhubaneswar Municipal Corporation for construction of such kiosks. Thus, the expression "persons affected" in the Proviso to Section 17 of the Act would obviously include the members of the petitioner-society. If Bhubaneswar Development Authority proposed to withdraw the permission in terms of the condition of the permission letter, their also such "persons affected" had to be given an opportunity to show cause, otherwise principles of natural Justice would be violated. Since the members of the petitioner-society have not been given a reasonable opportunity of showing cause against the order of cancellation, the

impugned order dated 9th April, 2001 of the Bhubaneswar Development: Authority in Annexure-11 cancelling the earlier permission granted for construction of kiosks is liable to be quashed.

7. But this is not to say that the members of the petitioner-society can continue to occupy the business site by the side of Rajpath until kiosks are constructed for them at an alternative site. They have no right or interest in the land by the side of Rajpath and the facts that Bhubaneswar Municipal Corporation has been receiving tax or fine from them only shows that they were permitted by the Bhubaneswar Municipal Corporation to carry on their business in temporary sheds by the side of Rajpath and it is always open to the Bhubaneswar Municipal Corporation to discontinue such permission and refuse to receive tax or fine any further and initiate proceedings for eviction from the temporary sheds by the side of Rajpath. For this reason, we are not inclined to pass any order in Misc Case No. 1629 of 2004 to restrain the opposite parties from taking any coercive steps for eviction of the sixty persons named in Annexure-3 to the writ petition from their respective business sites.

8. In the result, we quash the order dated 9th April, 2001 of the Bhubaneswar Development Authority in Annexure-1 and direct that Bhubaneswar Development Authority will issue show cause notice to the petitioner-society and the petitioner-society will submit show cause reply within fifteen days from the date of receipt of such notice on behalf of its members and thereafter, the competent authority of the Bhubaneswar Development Authority will pass orders in accordance with law. Since we have quashed the impugned order in Annexure-11, we also quash the impugned notice in Annexure-12 issued by the Bhubaneswar Municipal Corporation as a consequence of the impugned order in Annexure-11.

9. The Bhubaneswar Development Authority will pass fresh orders as directed above within one month of filing of such show cause reply by the petitioner-society. Till fresh orders are passed by the Bhubaneswar Development Authority as directed above, kiosks will not be constructed pursuant to the permission in the letter dated 5.2.2001.