

**(1995) 01 OHC CK 0011**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 2572 of 1991**

Sachindra Kumar Swain

APPELLANT

Vs

The State of Orissa

RESPONDENT

**Date of Decision :** 06-01-1995

**Acts Referred:**

Constitution of India, 1950 — Article 14  
Orissa Government Land Settlement Act, 1962 — Section 2

**Citation :** AIR 1995 Ori 224 : (1995) 1 OLR 439

**Hon'ble Judges :** P.C. Naik, J;A. Pasayat, J

**Bench :** Division Bench

**Advocate :** Dibakar Bhuyan, B.N. Bhuyan and B.N. Das, for the Appellant; D.B. Das, A.G.A., for the Respondent

## Judgement

Pasayat, J.—Petitioner calls in question legality of the order passed by the Director of Estate and Ex-Office Joint Secretary Government of Orissa, Bhubaneswar (opposite party No. 2) determining the lease executed on 7-5-1984, and registered on 22-6-1984 in respect of plot No. N/1-117 granted in favour of the petitioner. The ground on which the determination has been done as appears from the impugned order dated 27-2-1991, a copy of which is annexed as Annexure-6 to the writ application, is that the petitioner's wife had purchased a house from the Bhu-baneswar Development Authority on 22-10-1982, and there was omission to indicate this aspect in the petitioner's affidavit dated 19-2-1984, on the strength of which lease was granted. Since petitioner's wife had purchased a house at Bhubaneswar prior to the grant of lease, he was not eligible for allotment/grant of lease.

2. The stand of the petitioner is that before such determination, no opportunity was granted to the petitioner though by the impugned order the petitioner has been prejudiced and his civil rights have been affected. Additionally it is submitted that the lease-cum-sale-deed in respect of the property referred to by the Director of Estate, was executed long after 1984, i.e., on 18-4-1988.

The learned counsel for State submits that there is no requirement to grant opportunity to the lessee when all the relevant materials were before the Director of Estate. In fact the order dated 13-2-1984 of the Director of Estate (Annexure-1) made it clear that determination can be made without show cause notice.

3. We do not think it necessary to consider the question whether there was in fact any lease-cum-sale-deed in existence prior to the grant of lease. It is the salutary requirement of the principles of natural justice that before any action is taken against a person which would prejudicially affect him, an opportunity of having his say in the matter is to be granted. Even where there is no specific provision for grant of such opportunity, the principles of natural justice would come into play and opportunity has to be granted. Though allotment and grant of lease is in essence an administrative action, there is no untrammelled discretion. There is a statute (Orissa Government Land Settlement Act, 1962) which regulates such grants. On a lease being granted in favour of a person, he acquires civil rights. While dealing with State's property or largesse, the authority dealing with it has to act fairly. Such action has to be tested on the touchstone of fair play. Article 14 of the Constitution strikes at arbitrariness in State action and ensures, fairness. The principle of reasonableness, which legally as well as philosophically is an essential ingredient of non-arbitrariness pervades Article 14 like a brooding omnipresence. The syllogism runs thus. Violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14; therefore, a violation of principles of natural justice by a State action is a violation of Article 14. The principles of natural justice are now considered so fundamental as to be implicit in the concept of ordered liberty, and therefore, implicit in every decision making function, call it judicial, quasi-judicial or administrative. It is no doubt true that the principles of natural justice can be modified, and in exceptional cases they can even be excluded. It can be excluded where the nature of action taken, its object and purpose and the scheme of the provisions warrant its exclusion. It can be excluded where importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands. Natural justice is not a static concept. It is part of a judicial vocabulary in the administration of justice. It is not "extra legal", though, it may be "extra legislative". It is recognised as a guiding factor in administrative law, and forms the constitutional basis for judicial scrutiny of legislative and executive actions. It is the sense of justice that represents the ethics of judicial conscience. Rules of natural justice are not embodied; and their aim is to secure justice or to prevent miscarriage of justice. Administrative action is not allergic to fairness in action in a democratic set up. Discretionary executive justice cannot degenerate into unilateral injustice. The exceptions to the rules are a misnomer or rather are but a shorthand form of expressing the idea that in those excusatory cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. It is

untenably heresy to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self-evident. The cardinal principle cannot be sacrificed for the cause of administrative immediacy. The full panoply may not be there, but a manageable minimum may make-do. The competing claims of hurry and hearing (as Lord Reid put it in *Wiseman v. Borneman* 1971 AC 297) can be reconciled by making situational modification. Lord Denning in *Howard v. Borneman* (1974) 3 WLR 660:(1974) 3 All ER 862 observed that no doctrinaire approach is desirable, but the Court must be anxious to salvage the cardinal rule to the extent permissible in a given case.

4. Great emphasis is laid in paragraph 2 of order dated 13-2-1984 to submit that the petitioner had due notice regarding non-necessity to issue show cause. The plea is clearly untenable. A unilateral decision where the person to be affected can throw light on the subject under consideration would be unfair. It is more so where civil consequences are involved. In a comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. Additionally, in the backdrop of Section 23 of the Indian Contract Act, 1872 the condition is unsustainable.

5. Undisputedly in the case at hand, no opportunity has been granted before impugned order was passed. The direction given in the impugned order to remove the structure or the materials from the lease land is set aside. We direct the petitioner to submit his reply to the Director of Estate within a month from today. On receipt of the reply, if any filed, the Director of Estate shall consider the case and take a fresh decision in the matter. If no reply is filed within the stipulated time, it would be open to him to pass such orders as are available in law.

The writ application is allowed to the extent indicated above.

P.C. Naik, J.

6. I agree.