
(2002) 06 OHC CK 0041
In the Orissa High Court
Case No : O.J.C. No. 4688 of 1996

Sanju Panda (Advocate)

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226

Citation : (2002) 94 CLT 26 : (2002) 2 OLR 189

Hon'ble Judges : P.K. Balasubramanyan, C.J.;A.S. Naidu, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; Laxmidhar Pangari, Bikash Jena, P. Patnaik, S.N. Sukla for O.P. No. 3 and Additional Government Advocate for O.Ps. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—Petitioner is a practising advocate. The petitioner has filed this writ petition in public interest. According to the petitioner, when she went to Puri, she found unauthorised constructions coming up on the beach in clear violation of Coastal Regulation Zone Notifications and in violation of Building Regulations and other laws relating to construction of buildings in urban areas. She was particularly shocked by the unauthorised construction put up by opposite party No. 3 encroaching into the beach near Chakratirtha, raising the construction and a boundary wall within 40 metres of the sea-shore. The petitioner understood that it was a hotel that was being constructed. On enquiry, the petitioner came to know that the building was being constructed by opposite party No. 3 and that opposite party No. 3 was doing it without obtaining the required clearance from the authorities for such construction. This Court issued notices to the opposite parties. The opposite parties appeared. No counter affidavit has been filed on behalf of opposite party No. 3 traversing the allegations in the writ petition.

2. The petitioner who appeared in person before us vehemently contended that there is blatant violation of the Coastal Regulation Zone Notifications issued by the Central Government and that this Court was bound to act to protect the Coastal Environment in the light of the direction of the Supreme Court in the decision of *Indian Council for Enviro-Legal Action v. Union of India* and JT 1996 4 263. She also submitted that opposite party No. 3 did not even have an approved plan for the construction and this was clearly in violation of the Orissa Development Authorities Act and the Building Regulations. She also submitted that the Puri Municipality and Puri-Konark Development Authority are criminally negligent in not protecting the environment and in permitting violations of Coastal Regulation Zone Notifications issued by the Central Government. Hence, the Puri Municipality, the District Collector, the Puri-Konark Development Authority and the State of Orissa should be directed to remove forthwith the unauthorised constructions put up by opposite party No. 3.

3. Learned Government Advocate submitted that it was the duty of the Puri Municipality, the Puri-Konark Development Authority, and the District Collector, Puri to ensure that Coastal Regulation Zone Notifications are not violated. It was equally their duty to ensure that the Orissa Development Authorities Act and the Building Regulations enacted in public interest are enforced strictly and no promoter or owner of land is permitted to put up a construction in violation of the Orissa Development Authorities Act, the Building Regulations and other Municipal Laws. He submitted that a direction may be issued to the District Collector and others to see to it that unauthorised constructions are removed. In fact, he submitted that a general direction may be issued to the concerned Authority under the Orissa Development Authorities Act and the District Collector to take steps for demolition of all unauthorised constructions made in violation of the Coastal Regulation Zone Notifications, the Orissa Development Authorities Act, the Building Regulations and the Municipal Laws. No attempt was made on behalf of opposite party No. 3 to meet the challenge raised by the petitioner. There was not even a plea that opposite party No. 3 had the requisite permission and an approved plan under the Building Regulations or that there has been no violation of the Coastal Regulation Zone Notifications.

4. In this state of the record, it is a clear case where a direction should be issued to opposite parties 1 and 2 to demolish the unauthorised constructions raised by opposite party No. 3 in violation of the Coastal Regulation Zone Notifications, the Orissa Development Authorities Act and the Building Regulations. It is clear from the allegations of the writ petitioner that the compound wall and two other rooms constructed by opposite party No. 3 are unauthorised *ex facie*. Therefore, we direct opposite parties 1 and 2 and the concerned authority under the Orissa Development Authorities Act to demolish the compound wall and the two rooms constructed by opposite party No. 3 on the seaward side. That will be done first. We direct the District Collector, thereafter, to conduct an enquiry with notice to opposite party No. 3 as to whether there are any further violations of the Coastal Regulation Zone Notifications and apart from that, whether there are any other

unauthorised constructions made in violation of the Orissa Development Authorities Act and the Building Regulations by opposite party No. 3. If such further unauthorised constructions are found, they will also be got demolished by opposite parties 1 and 2 and the concerned Authority under the Orissa Development Authorities Act. It is made clear that demolition of the compound wall on the seaward side of the building referred to in the writ petition and the two rooms towards seaward side will be carried out forthwith and their demolition is not to await the enquiry regarding the existence of any other unauthorised constructions by opposite party No. 3.

5. It is a matter of serious regret that the authorities concerned and the State have not been diligent about protecting the environment and the Coast and in ensuring that the Coastal Regulation Zone Notifications, fully, scrupulously and without discrimination, are enforced. As observed by the Supreme Court in the decision cited, posterity will not forgive the concerned authorities if, they themselves turn out to be despoilers of the environment and aid violations of the Orissa Development Authorities Act, the Building Regulations and the Regulations enacted in public interest. Learned Additional Government Advocate has a submission that the Civil Courts are responsible for the authorities not acting promptly as they intervene improperly and even without jurisdiction and grant injunctions when such violations are sought to be proceeded against. One does expect a Civil Court to apply its mind when it is approached for injunction and when an injunction is sought in aid of thwarting the enforcement of environmental laws and Municipal Laws, one expects the Civil Court to decline to come to the aid of the violator. There is also another aspect. When an authority is exercising a statutory power and is seeking to perform a statutory duty, it is not for the Civil Court to prevent the authority from performing its duty unless a clear case of mala fide exercise of power is established. It is for opposite parties 1 and 2 to bring those aspects to the notice of the Civil Court. The argument raised in general by the learned Additional Government Advocate cannot, therefore, be accepted. But the argument that Civil Court must approach the question more responsibly while dealing with cases of violation of Environmental Laws including Coastal Regulation Zone Notifications, the Municipal Laws and the Building Regulations has merit. This of course is in addition to any other law that may be there, placing restraint on the Civil Court like Section 91 of the Orissa Development Authorities Act.

The writ petition is thus allowed.

The Registry on its own will communicate a copy of this judgment to the District Collector, Puri forthwith for compliance. The District Collector will file an affidavit in this Court within three months from today reporting compliance with the directions issued as above.

A.S. Naidu, J.

6. I agree.