
(2014) 09 OHC CK 0101
In the Orissa High Court
Case No : W.P. (C). No. 20431 of 2012

Sawarmal Pasari	Vs	APPELLANT
State of Orissa		RESPONDENT

Date of Decision : 06-09-2014

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 6, 7, 8

Citation : (2014) 09 OHC CK 0101

Hon'ble Judges : Amitava Roy, C.J.; Akshaya Kumar Rath, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—The instant proceeding witnesses a second bout on the issue of alleged unauthorised construction of a building undertaken by the opposite party no. 7 and 8 herein by encroaching public road situated in the middle of Bargarh town. According to the petitioners, plot no. 4685 with area of Ac. 0.010 dec. and plot no. 4687 with area of Ac. 0.030 dec. in M.S. Khata No. 7 are recorded in the kissam "Sadaka" in the name of the Works Department of the State in the R.O.R. Similarly, plot no. 4686 of area Ac. 0.020 dec. in M.S. Khata No. 2535 is recorded in the kissam "Meladhia" with the status Sarbasadharan in the R.O.R. The aforementioned land was included for laying of the National Highway No. 6 in the year 1948 and eventually a portion thereof was allotted to the Bargarh Municipality as in the year 1975, the alignment of the National Highway was altered. Thus, since then, the Bargarh Municipality has been custodian of the said land.

2. The petitioners have asserted that the public road from Talipada to Bhainipada of Bargarh town joins the National Highway in Ward No. 4 of Bargarh town and the junction point of these three roads is located over Major Settlement plot no. 4685, 4687 and 4686. They have alleged that in the year 2004, one Deepak Kumar Agarwala (opposite party no. 7) and Kamal Kumar Agarwalla started raising permanent construction by encroaching upon the three plots whereupon

the general public being represented by one Naba Krushna Mohapatra approached the territorial Tahasildar and the said authority started Encroachment Case No. 1436 of 2005 and deputed a local R.I. to conduct a field enquiry and submit a report. On the said report being submitted, the Tahasildar passed an order on 8.11.2005 issuing notice to the encroachers to show cause as to why a case u/s 6, 7 and 8 of the Orissa Prevention of Land Encroachment Act, 1972 would not be initiated against them. Prohibitory order was also passed by the Tahasildar, Bargarh directing them to stop construction on the land. Thereafter, the authorities concerned became lukewarm in the matter so much so that while the encroachment proceeding was pending, opposite party no. 7 and 8 applied to the Special Town Planning Authority as well as Municipal Authority seeking permission for construction of Residential/Commercial building over the land on the basis of some prepared documents. The petitioners have admitted that the Town Planning Authority thereafter granted license vide order dated 20.8.2005 and the Executive Officer, Bargarh Municipality also granted permission to them for construction over the disputed plots by office order no. 77/05-1968 dated 20.9.2005. A representation was submitted by the local public ventilating their grievance on this issue whereupon the Tahasildar conducted an enquiry and being satisfied that the opposite party no. 7 and 8 had furnished incorrect information with regard to ownership of the land vide order dated 3.1.2006 cancelled the license earlier granted to them. Vide order dated 20.4.2006, the Executive Officer, Bargarh Municipality also cancelled the permission granted to the opposite party for raising construction. However, notwithstanding these, the unauthorized constructions were not removed and no steps to that effect were also taken by the public authorities. According to the petitioners, being aggrieved, the local public on 3.6.2006 submitted a representation before the Executive Officer, Bargarh Municipality whereupon according to them, it (Bargarh Municipality) issued notice u/s 273(a) of the Orissa Municipality Act, 1950 being notice no. 1502 dated 30.6.2006 directing the opposite party no. 7 and 8 to demolish unauthorized construction over plot no. 4685, 4686 and 4687 of mouza Bargarh. This fact was also communicated to the Collector, Bargarh vide its letter no. 1664 dated 7.7.2006. As in spite of this initiative, demolition of the unauthorized construction was not effected, Naba Krushna Mohapatra, a local resident approached this Court in WPC No. 13652 of 2006 seeking appropriate writ/direction to the District Collector, Tahasildar, Bargarh and Executive Officer, Bargarh Municipality to cause demolition of such unauthorized constructions.

3. In the said proceeding, the Tahasildar, Bargarh in his counter averred that the plot no. 4685 and 4687 had been recorded in the name of Public Works Department and he pleaded that no construction was going on over the plots and that the unauthorized buildings thereon were of one Ram Avtar Agarwal for which Encroachment Case under Orissa Prevention of Land Encroachment Act, 1972 had been initiated against the encroachers which was pending in the court of Sub-Collector, Bargarh. The answering opposite party admitted as well that the permission given by the Town Planning Authority and the Municipal Authority

for the constructions had been cancelled. He further averred that due to the protest of the local people, Municipal Authority had taken action for demolishing the building and that notice to that effect had been given. The opposite party further admitted that the constructions have not been razed. No counter was however filed on behalf of the Bargarh Municipality.

4. A co-ordinate Bench of this court on the basis of the pleadings available passed the order dated 10.5.2010 in the following terms.

"Heard Learned counsel for the petitioner, learned counsel for the State and learned counsel appearing for the private opposite parties.

The prayer in the writ petition is for a direction to the opposite parties 1 and 3 to execute the order of demolition passed by them against opposite parties 4 to 6 within a stipulated time. An additional affidavit has been filed by the petitioner and in paragraphs 3 and 4 of the said additional affidavit, it is stated that on the representation of the petitioner on 27.10.2007, the Collector, Bargarh had forwarded the matter to the Executive Officer, Bargarh Municipality for necessary action and thereafter the Executive Officer has issued notice on 30.6.2006 for demolition of the unauthorized construction over plot nos. 4685, 4686 and 4687 of Mouza Bargarh with due intimation to the unauthorized occupants.

In view of such affidavit, if any order of eviction/demolition has already been passed by the Executive Officer, the same be carried out, provided there is no order from any court of law prohibiting such demolition/eviction, within a period of two months from the date of communication of this order.

Requisites for communication of this order to opposite party no. 3 be filed by 12.5.2010.

The writ petition is disposed of accordingly."

5. Interim application being Misc. Case No. 8385 of 2010 was filed by the opposite party no. 4 to 6 in the said writ petition (alleged to be encroachers) for recalling the order dated 10.5.2010 contending inter alia that the disputed plots though had been recorded in the name of the Government, possession thereof is shown be of Gopinarayan Agarwala since 1940 and that they have purchased the same from him (Gopinarayan Agarwala) vide a sale deed dated 29.3.2004 and that since thereafter, they had been in occupation of the plots and buildings standing thereon as absolute owners.

6. A co-ordinate Bench of this court passed the following order on the said Misc. Case on 4.11.2010.

"Heard learned counsel for the parties. This application has been filed for recalling the order dated 10.5.2010. Having perused the order dated 10.5.2010, we find that the writ petition was disposed of on an affidavit filed by the petitioner that an order of eviction has been passed by the Executive Officer. This Court therefore directed that only if any order of eviction/demolition has been

passed by the Executive Officer, the same shall be carried out provided there is no order from any court of law prohibiting such demolition/eviction. If no order of eviction has been passed by the Executive Officer, the question of carrying out the same does not arise.

In view of the above, there is no need to recall the order..."

7. In the meantime, Encroachment Case No. 1436 of 2005 was dropped by the Tahasildar, Bargarh vide order dated 27.3.2006 by referring to Civil Suit No. 95 of 2010 of the Civil Judge (Jr. Division), Bargarh between the parties by directing them to maintain status quo of the said land.

8. Being aggrieved, Naba Krushna Mohapatra, preferred Encroachment Appeal No. 2 of 2006 in the court of the Sub-Collector, Bargarh. This appeal came to be dismissed by order dated 4.4.2012 recording inter alia that no eviction order had been passed by the Executive Officer, Bargarh Municipality. The report submitted by the Executive Officer, Bargarh Municipality was referred to clarify that only show-cause notice had been served on the respondent Deepak Kumar Agrawal vide notice no. 1502 dated 30.6.2006 whereby he was called upon to explain as to why the constructions in violation of Municipal Rules would not be demolished. The report further disclosed that from the show-cause submitted by Deepak Kumar Agrawal on 29.7.2006, the Municipal Authorities were satisfied that the pucca houses standing on the disputed land were very ancient and had been assigned with Municipal Holding number 991 in the name of Gopiram Agrawal and that the same had been subsequently renumbered as Holding no. 153. The Sub-Collector, Bargarh held that in view of the cogent materials in favour of the respondent Ram Avtar Agrawal and Deepak Kumar Agrawal, there was no reason to further proceed with the proceeding as there was no new construction allegedly raised on the plots. It was mentioned that as no eviction/demolition order had been passed by the Municipal Authority, the question of eviction/demolition did not arise in terms of the order dated 4.11.2010 passed by this Court in Misc. case No. 8385 of 2010 arising out of W.P. (C). No. 13652 of 2006.

9. It is in this background that the petitioners have instituted the instant proceeding seeking demolition of the structures standing on the aforementioned plots.

10. Mr. N. Sahu, learned counsel for the petitioners has emphatically argued that as the notice u/s 273(a) of the Orissa Municipal Act, 1950 had been issued to Deepak Kumar Agrawal (Opposite party no. 7) to demolish the unauthorized construction on the plots involved, the Sub-Collector, Bargarh committed an error in dropping the encroachment appeal by distorting the purport of the order dated 4.11.2010 of this Court passed in Misc. Case No. 8385 of 2010. In terms of the order of this Court, in the face of the notice for demolition of unauthorized construction on the plots involved, the Sub-Collector, Bargarh ought to have ensured that the same were demolished at the earliest, he urged.

11. It is more than apparent that a co-ordinate Bench of this Court vide orders

dated 10.5.2010 and 4.11.2010 had in categorical terms observed that eviction/demolition would be carried out if any order to that effect had already been made by the Executive Officer, Bargarh Municipality. It was clarified further in the order dated 4.11.2010 that if no order of eviction had been passed by the Executive Officer, Bargarh Municipality, the question of carrying out the same would not arise. It is thus patent that eviction/demolition of the private respondent and demolition of the structures on the plots could be undertaken only if, prior to the orders dated 10.5.2010 and 4.11.2010 of this Court, there was an order to that effect by the Bargarh Municipality. Though the petitioners have with reference to the communication dated 7.7.2006 (Annexure-8 to the writ petition) alluded to the notice no. 1502 dated 30.6.2006 asserting that it was addressed to Deepak Kumar Agrawal (O.P. No. 7) ordering him to demolish the unauthorized constructions, neither the said document has been produced by them nor by the Bargarh Municipality. To the contrary, as would be evident from the order dated 4.4.2012 of the Sub-Collector, Bargarh in Encroachment Appeal No. 2 of 2006, it had been the specific stand of the Executive Officer, Bargarh Municipality that notice no. 1502 dated 30.6.2006 was one addressed to opposite party no. 7 asking him to show cause as to why the constructions would not be demolished and that on receipt of the said show cause, the Municipal Authorities were satisfied that the pucca house stood since long and had been assigned with Municipal Holding No. 991 in the name of Gopiram Agrawal and subsequently re-numbered as Holding No. 153. On a consideration of the materials on record, the Bargarh Municipality was satisfied that there was no reason to proceed further pursuant to the notice no. 1502 dated 30.6.2006.

12. In view of the above recorded facts and the orders dated 10.5.2010 and 4.11.2010 of this Court, which in the absence of any challenge thereto have become final and binding, we see no persuasive reason to entertain the grievance of the petitioners as registered in the instant proceeding. The order passed by the Sub-Collector, Bargarh in Encroachment Appeal No. 2 of 2006 is not only based on materials on record, but also is in conformity with the letter and spirit of the order dated 10.5.2010 and 4.11.2010 passed by this Court.

13. In this view of the matter, we find no merit in the instant petition which is accordingly rejected.