

(1992) 07 OHC CK 0022

In the Orissa High Court

Case No : Original Jurn. Case No. 1772 of 1988

Smt. Girija Mishra

APPELLANT

Vs

The Berhampur Municipality

RESPONDENT

Date of Decision : 03-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Municipal Act, 1950 — Section 254(1), 254(2)

Citation : AIR 1993 Ori 152 : (1992) 74 CLT 872

Hon'ble Judges : B.L. Hansaria, C.J.; R.K. Patra, J

Bench : Division Bench

Advocate : B.P. Mohanty, R.P. Kar, A.N. Ray and B.C. Panda, for the Appellant;
Y.S.N. Murty, for the Respondent

Judgement

Hansaria, C.J.—The petitioner was asked by Annexure-1 to vacate the encroached portion of the premises within 24 hours from the receipt of the notice which is dated 21 -5-88. He there upon approached this Court by filing this petition on 28-5-88, as according to him, the authorities wanted to proceed with the demolition.

2. Validity of Annexure 1 is assailed on the ground that no prior notice was issued to the petitioner asking him to show cause as to why he should not vacate the premises in question. Annexure 1 is, therefore, violative of natural justice.

3. Shri Murty appearing, for the Municipality brings to our notice Section 264(1) of the Orissa Municipal Act, 1950, under which the impugned notice was issued. That section states that the Executive Officer may by notice require the owner or occupier of any premises to remove encroachment. This section does not require giving of any prior notice of show cause. Even so, as presently advised, we are of the view that reasonable opportunity to show cause has to be given to an encroacher before he is asked to remove the encroachment. Silence of Section 254 in this regard may not be conclusive in view of what was held in S.L. Kapoor Vs. Jagmohan and Others, in para 10 of which it was observed that it is not

always a necessary inference that if opportunity is not provided in a section, opportunity may not be treated to have been excluded. This view had been taken earlier by the Constitution Bench in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, in which it was stated that the silence of a statute in this regard has no exclusionary effect except where it flows from necessary implication. As presently advised, we should also state that we do not read exclusion of natural justice by necessary implication in all cases coming within the fold of Section 254 though it may be that in special circumstances previous notice may be dispensed with. We have said so keeping in view what was held by a Constitution Bench in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, .

4. Being thus of the view that natural justice was required to be complied with, the further question is whether Annexure 1, merits to be set aside on the ground of non compliance of natural justice. In this connection, we have noted the case of the petitioner as put in his writ application which is that he is protected by Section 254(2) of the Orissa Municipal Act. This is the only submission made on the merits of the case. Now even if it is conceded that Section 254(2) is attracted, all that that section visualises is that on the conditions mentioned therein being satisfied, the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal of the premises in question. As such, the petitioner has a right u/s 254(2) to receive only reasonable compensation. This being the fact, we are of the view that the present case attracts the observations made in *S.L. Kapoor Vs. Jagmohan and Others*, at page 147 wherein Chinnappa Reddy, J. stated that if on the admitted or indisputable fact only one conclusion is possible, the Court may not issue its writ compelling observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. In this case, it would be a futile exercise to issue writ because of violation of natural justice because the only relief which the (petitioner can get and only one conclusion which is possible is that he is entitled to reasonable compensation u/s 254(2).

5. We, therefore, dispose of the writ application by stating that the petitioner would be given an opportunity to establish his case u/s 254(2) of the Orissa Municipal Act. For this purpose, the petitioner would file his representation within a period of three weeks from today before the Municipality who shall, therefore, dispose of the same in accordance with law.

6. The petition is disposed of accordingly. The order of stay passed on 28-5-88 stands vacated.

R.K. Patra, J.

7. I agree.