

(1996) 03 OHC CK 0002

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8318 of 1995

Smt. Khirodini Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Orissa Development Authorities Act, 1982 — Section 91

Citation : (1996) 82 CLT 32 : (1996) 1 OLR 387

Hon'ble Judges : D. Misra, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.C. Ghose, S. Ghose and R.K. Sahoo for intervention and Amitav Das and B. Mohapatra, for the Appellant; Additional Government Advocate for opp. party No. 1, A.S. Naidu and D.R. Ray for opp. party No. 2 and, for the Respondent

Judgement

A. Pasayat, J.—Appellate order passed by the Commissioner-cum-Secretary to Government in the Housing and Urban Development Department (in short, "the Commissioner") in an appeal u/s 91 (2)[wrongly indicated in the impugned order to be u/s 91(1)] of the Orissa Development Authorities Act, 1982 (in short "the Act") is underchallenge in this writ application by Smt. Khirodini Sahoo (hereinafter referred to as "the petitioner").

2. Factual backdrop leading to filing of this application is essentially as follows :

On the allegation that the petitioner had constructed her ground floor over a plinth area of 1436 sq. ft. and first floor over a similar area without leaving any set-back, a proceeding was initiated against the petitioner by the Secretary of Cuttack Development Authority (hereinafter referred to as "the CDA"). It was alleged that such construction was in violation of the plan as approved by the competent authority. Notice in terms of Section 91(1) of the Act, and direction to stop construction in terms of Section 92(1) of the Act was issued, and the petitioner was required to show-cause as to why action for unauthorised construction shall not be taken. Reply to such notice was submitted by the

petitioner. Her stand was that construction was made within stipulated time as per approved plan. The Secretary noticed that one Arjun Charan Palai, who has made an application in this proceeding to be impleaded as an intervener, had made original complaint on the basis of which action was initiated against petitioner. Said Arjun Charan Palai is described as "objector". His locus standi shall be considered *infra*. After show-cause reply was submitted by the petitioner, the objector filed an application to be impleaded as a party in the proceeding, and *sa(sic)e* was allowed by the Secretary. Date of appearance of parties was fixed by the Secretary to 25-6-1993, when the objector appeared, but petitioner did not. An application for adjournment was filed by her which was rejected, and the matter was disposed of on perusal of certain documents filed by the objector. The Planning Member of CD A suggested for demolition of the unauthorised construction. The Secretary concurred with such suggestion of the Planning Member and by his order dated 25-6-1993 directed demolition, subject to confirmation by the Vice-Chairman. On 18-8-1993, the Vice-chairman endorsed the view. An appeal was carried by the petitioner before the Commissioner which was dismissed by the latter with following observations : "Planning Member, CDA contends that the appellant has made unauthorised construction. Therefore, the demolition order has been passed. On verification it is revealed that both the appellant and the intervenor has made unauthorised construction. It is in a Basti area.

Heard all the parties. Perused the joint inspection report, the documents submitted by the appellant and the petition filed by the intervenor. The excess construction beyond the approved plan is illegal. The order passed by the CDA is up-held. The CDA is directed to take action against the intervenor for his unauthorised construction. The appeal is dismissed."

It is to be noted here that an application for intervention was filed by Arjun Charan Palai before the Commissioner which was allowed.

3. Stand of the petitioner in the writ application is essentially two-fold, i. e. (i) the matter has been disposed of *ex parte* by the Secretary, and without a reasoned order by the Commissioner; and (ii) the applicant for intervention has no locus standi, and he should not have been impleaded either by the Secretary or the Commissioner. It is contended that the petitioner has been denied adequate opportunity of taking part in the proceeding and materials placed by petitioner have not been taken into consideration. Stand of CDA is that the Secretary had rightly refused to entertain the application for adjournment, and on the basis of materials placed by the applicant for intervention, and CDA, Commissioner has considered the appeal in its right perspective, and no interference is called for. Learned counsel for applicant for intervention submitted that on the basis of his complaint, proceeding was initiated by CDA and therefore, he is a necessary, or at least a proper party to the proceeding, and was rightly impleaded by the Secretary, and the Commissioner, and he should be permitted to participate in the present proceeding.

4. We shall deal with question of locus standi of the applicant for intervention. Section 91 deals with removal of unauthorised occupants. Action is to be taken by the concerned authority for removal of unauthorised development and the action may be initiated on the basis of information given by any functionary or employee of the Development Authority (In short, "the Authority") or on the basis of complaint received from any person about commencement or continuance or completion of any unauthorised development. After initiation of the proceeding, the dispute becomes one between the Authority and the notice i.e. the person allegedly making unauthorised development. Thereafter person making the complaint has no right to participate in the proceeding. The proceeding is a statutory one, and can only involve the Authority and the person making unauthorised development. In such proceeding the original complainant is neither a necessary nor a proper party. Where presence of a person before a Court, Tribunal or Authority is necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions in the dispute, such a person should be added as a party. This finding is a condition precedent for exercise of the jurisdiction by the forum for addition of a party. Two tests for determining the question who is a necessary party to a proceeding are ; firstly, there must be a right to some relief against such party in respect of the matter involved in the proceedings in question; and secondly, it should not be possible to make an effective adjudication in the absence of such a party. As observed by the apex Court in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, , a necessary party is one without whom no order can be made effectively, a proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceeding, A party seeking such a joinder as a proper party will have to prima facie establish that such a party has interest in the subject-matter of the litigation and as such should be impleaded. The simple test in such controversy would be as to whether the presence of such a party is appropriate in view of the subject-matter of adjudication. If the answer is in the affirmative, joinder can be permitted. By reason of direct interest in the subject-matter or even by reason of eventual reliefs sought, such a test would be answered. There is distinction between necessary party and proper party. A proper party is one whose impleadment may facilitate disposal of a proceeding. A necessary party is one without whose impleadment it may not be possible to adjudicate completely and effectively the points in issue in a proceeding. Without a proper party a proceeding can continue, but without a necessary party it would fall.

5. In order that a person may be added as a party, he should have a direct interest in the subject-matter of litigation as opposed to indirect interest or commercial interest or equitable interest or eventual interest. In an almost somewhat similar situation, it was observed by a Full Bench of this Court in *Krushna Kishore Bal Vs. Sankarsan Samal and Others*, that in the Orissa Municipal Act, 1950 (in short, "the Municipal Act") there is no provision for a person, who is

aggrieved by unauthorised construction, either sanctioned by the Municipality contrary to rules or done by a person In contravention of the municipal plan to move the municipal authorities for redress of grievances. The Municipal Act does not oust, either expressly or impliedly jurisdiction of the Civil Court to take cognizance of suits in which relief sought is against the injury caused by such unauthorised construction. The authorities may be privy to the illegal construction or might not take steps to remove the unauthorised construction. In either case, a third party suffering injury is not without remedy. A suit lies and Civil Court's jurisdiction is not ousted.

6. The dispute involved in the case at hand is whether there has been any unauthorised development and whether there has been any deviation from the approved plan. It is for the CDA authorities to adjudicate that aspect and come to a finding. The applicant for intervention has no role to play in the adjudication, and therefore, was neither a necessary or a proper party in the proceeding. Both the Secretary and the Commissioner have lost sight of this aspect and illegally accepted prayer for intervention. Prayer for intervention in the writ application is rejected.

7. Coming to the second plea, we find that the petitioner had prayed for an adjournment before the Secretary which was rejected, and the matter was taken up ex parte. The proviso to Sub-section (1) of Section 91 provides for grant of a reasonable opportunity to show-cause. Prayer of the petitioner for adjournment was rejected without assigning any reason, and primarily on the ground that the notice had been duly served. Had the notice not been served on the petitioner, question of her seeking adjournment would not have arisen. That was not a factor for considering acceptability of prayer for adjournment. Without indicating any reason as to why the prayer for adjournment was not to be accepted, the Secretary has rejected the prayer and disposed of the matter ex parte. Documents filed by the applicant for intervention were taken into consideration. Obviously the petitioner had no opportunity to meet such materials. The documents filed by the private complainant were not to be taken note of. As a matter of fact, the documents filed appear to be order of status quo passed by the learned Munsif, First Court, Cuttack, and order of the Executive Magistrate, Cuttack restraining construction. These had no relevance so far as the question of unauthorised construction is concerned, In any event that aspect is really academic in view of our conclusion that the applicant for intervention was not to be impleaded.

8. Order of the Commissioner presents very interesting features. He has come to the conclusion that both the applicant for intervention and petitioner had undertaken unauthorised construction, and directed demolition of such constructions, even the former had come into the arena of adjudication relating to construction of petitioner. Since the intervenor has not challenged that order as yet, it is for the CDA to take such action as is available in law and we express no opinion on merits. A bara perusal of the extracted portion of the impugned

order of the Commissioner would show complete non-application of mind as no reason has been indicated to buttress the conclusions,

9. Reason is the soul of law. Principles of natural justice have assumed a wider horizon these days. Right to reason is, therefore, an indispensable part of sound system of judicial review. Without reason an order becomes soulless, lifeless. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. Reason pre-supposes logic. The various stages of reasoning should be properly interlinked, Jumping to a particular conclusion overlooking any intermediate fact or event, is a process opposed to reason. The giving of reasons is one of the fundamentals of good administration as observed by Lord Denning in *Brage v. Amalgamated Engineering Union* : (1971) 1 All ER 1149. The requirement of furnishing reasons is a shackle on acting arbitrarily and whimsically. It is the only visible safeguard against possible injustice and arbitrariness. They disclose how the mind is applied to the subject-matter for a decision, whether it is considered in the set-up of purely administrative or quasi-judicial order. They should reveal a rational nexus between the facts and the conclusions reached. Only in this way can opinions or decisions recorded be shown manifestly just and reasonable. The failure to give reason can lead to a very justifiable complaint that there has been a breach of natural justice. Reasons if given substitute objectivity for subjectivity.

10. An order has to be reasoned or speaking order. A speaking order means an order speaking for itself. To put it simply, every order must contain reasons in support of it. Giving of reasons in support of an order is considered to be the third principle of natural justice; the other two being (a) no man shall be a judge in his own cause (*Nemo debet esse iudex in propria causa*), (b) hear the other side, or both the sides must be heard, or no man should be condemned unheard (*Audi alteram partem*). A party has a right to know not only the decision but also the reasons in support of the decision. Reasoned orders are necessary if judicial review is to be effective. The condition to record reasons introduces clarity and excludes arbitrariness. The principle requiring reasons to be given in support of an order is V basic principle of natural justice which must inform every quasi-judicial process and it must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

11. The order of the Commissioner does not pass the acid test of rationality being unreasoned. Accordingly the order passed by the Commissioner is vacated. Since the matter was disposed of ex parte by the Secretary, we feel it would be appropriate if the said authority takes up the matter afresh. To avoid unnecessary delay, we direct the petitioner to appear before the Secretary, CDA (opp. party No. 2) without any further notice on 27-3-1996 so that the matter can be re-adjudicated.

The writ application is allowed to the extent indicated above. No costs.

Dipak Misra, J.

I agree.