

(2002) 11 OHC CK 0017
In the Orissa High Court
Case No : A.H.O. No. 125 of 2001

Smt. Santilata Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:

Orissa Development Authorities Act, 1982 — Section 91(1), 92(1)

Citation : (2002) 11 OHC CK 0017

Hon'ble Judges : R.K. Patra, J; L. Mohapatra, J

Bench : Division Bench

Advocate : Manoj Mishra, Pramod Kumar Das, D. Mishra and L. Mishra, for the Appellant; Ashok Mukherjee, G. Mukherjee, S. Barik, P.K. Rath and A.K. Sahu, (for No. 4) and D.N. Mohapatra, (for No. 3), for the Respondent

Judgement

R.K. Patra, J.—This Letters Patent appeal is directed against the order dated 28-6-2001 by which a learned single Judge of this Court has dismissed the appellant's writ petition.

2. The appellant purchased Ac. 0.069 decimals of land towards western portion of Sabik Plot No. 488 under Sabik Khata No, 682, Mouza-Ramgarh, Cuttack from one Palia Dei and Radharani Dei under two separate sale deeds dated 30-9-1985 and 1-3-1999 (Annexures 1 and 2 of the writ petition). After the purchase she remained in possession thereof. Respondent No. 4 and his co-sharers are owners of Sabik Plot Nos. 486 and 487 covering an area of Ac. 0.230 decimals under Sabik Khata No. 503 and the aforesaid plots adjoin plot No. 488 purchased by the appellant towards its west. During Hal Settlement operation, the area of the land occupied by respondent No. 4 was increased by Ac. 0.010 decimals and accordingly respondent No. 4 and his co-sharers were found to be in possession of Ac. 0.240 decimals of land instead of Ac. 0.230 decimals. With the intention of regularising the aforesaid increased area in favour of respondent No. 4, a complaint was made by him before the Cuttack Development Authority alleging that certain portion of the land belonging to him is within the purchased land of

the appellant. This complaint was registered as Unauthorised case No. 134 of 1995. The said respondent also filed T. S. No. 459 of 1995 in the Court of the Additional Civil Judge (Senior Division), Cuttack for declaration that the appellant has no right to make any construction on her purchased land without leaving any space and for a decree of mandatory injunction directing the appellant to remove and demolish all constructions which were made in violation of Municipal Building Rules, The said suit is pending. In the above complaint case, the Cuttack Development Authority issued notice dated 12-10-95 directing the appellant to remove the construction. After receipt of the notice, the appellant filed her reply on 27-11-95 at Annexure-4 wherein she pleaded that she had purchased the land in the year 1995 with an existing house and in order to make it habitable she was carrying repair works. She further stated in her reply that she had already obtained approved plan for construction of the building and also applied for approval of the extension of the building and the said application has been registered as B.P. No. 949 dated 15-11-95. She also expressed her willingness, in the reply, to compound the offence, if any, alleged to have been made by way of construction. After reply was filed on 10-1-96, the Cuttack Development Authority issued a letter (Annexure-5) directing the appellant to furnish Court affidavits from the neighbours on the western and eastern side of the plot indicating their "no objection" for regularisation of the building constructed with no set back. Pursuant to such direction, the appellant filed affidavits of two neighbours and in the said affidavits it was stated that they have no objection, if the compounding is allowed and unauthorised construction alleged to have been made by the appellant is regularised. Inquiries were conducted by the Authority and reports were also submitted and in the report dated 20-8-99 it is clearly mentioned that there has been no change in the construction of the building after submission of the earlier report. There were two earlier reports and in the report dated 20-7-96 it was suggested for compounding and regularising the structure and in the Inquiry dated 22-7-98/22-9-98 it was reported that the holding is old one and lies in the Basti area and that the usual practice is to allow 0 (zero) set back. The further case of the appellant is that in spite of such reports and suggestion for compounding the irregularities, on 27-8-99 an order was passed by the Secretary, Cuttack Development Authority, respondent No. 3, for demolition of the structure. The appellant challenged the above order before the government which was dismissed. The appellant thereafter filed O.J.C. No. 4535 of 2000 which was dismissed giving rise to the present appeal.

3. The learned single Judge while dismissing the writ petition observed that despite notice by the Cuttack Development Authority to stop construction, the appellant continued the construction and completed the same. Looking at the photographs, he also observed that the construction work undertaken could not be repairing work and in absence of valid approved plan construction was done unauthorisedly.

4. On consideration and submission of counsel for parties, it appears from Annexure-A/4 that the appellant had applied on 11-4-1986 for grant of

permission for construction of a double story building on plot No. 488 in Mouza-Ramgarh, Cuttack. The Cuttack Development Authority by order dated 21-6-1986 granted permission for construction of a building with certain conditions mentioned therein. In paragraph-(n) of the said approval order the appellant was directed to construct the building with the following conditions :--

"(a) The set back of the building as per the plan submitted approval :

Front--Eighty feet six inches. Rear--Twenty nine feet. Side--Three feet in each side.

(b) The plot area as recorded is 1830 sft. The plinth area of the building should not exceed 900 sft. (in word Nine hundred sft. only)."

5. After obtaining approval, the appellant started construction of the building in the year 1995. On the basis of the complaint filed by the respondent No. 4 U. C. Case No. 134 of 1995 was initiated against the appellant under Sections 91(1) and 92(1) of the Orissa Development Authorities Act, 1982. In the said proceeding notice was issued to the appellant to show cause and an order of stay was passed on 10-10-1995. Pursuant to the said notice, the appellant appeared and filed a reply stating that she had purchased the land and the building thereon in the year 1985 and as the building was old one, she had taken up repair work to make it habitable. She also stated that she had applied for permission to the C.D.A. to take up further construction vide B.P. No. 949 dated 15-11-95. The respondent No. 4 appeared as an intervenor and stated that the appellant has not left any set back on the western side of his residential house and because of it, he has been deprived of natural air and light. After receipt of the reply of the appellant and the allegation of respondent No. 4 it was decided to conduct an Inquiry and the Planning Assistant conducted an Inquiry and submitted report. As per the report, the appellant had not undertaken any further construction after 20th July, 1996. It is mentioned in the report that the building is situated in thickly built Basil area where almost a major percentage of buildings have been constructed without leaving any set back either in the front or in the side. It is farther mentioned that not only the appellant but also the objector respondent No, 4 has also constructed the ground floor of their respective buildings without leaving any set back in the front and side except one foot space in between side walls as indicated in the Panchayat Faisalanama made on 30th March, 1997 by the Mahammudia Bazar Mehendipir Panchayat Committee. It was suggested by the Planning Assistant that the appellant may be asked to furnish the ownership of the document in support of her title which may be taken into consideration for compounding and she should also be asked to furnish no objection certificate in shape of affidavits from the side neighbours. After receipt of such report, the Planning Member informed the appellant to furnish the following documents for the purpose of regularisation of unauthorised construction :--

(1) Approved plan if any in support of the existing structure.

(2) No objection certificate from the neighbours from the western and eastern side in the form of a Court affidavit to the effect that they have no objection to regularisation of her building constructed at 0 (zero) set back.

(3) Willingness of the appellant to pay the compounding fee, if any, for regularisation of the structure.

6. Pursuant to the aforesaid letter, the appellant furnished affidavit of two neighbours, namely, Sarat Kumar Dey and Sanatan Panda who in their respective affidavits stated that they have no objection for regularisation of the construction of the building made by the appellant with 0 (zero) set back. The appellant also submitted her willingness to compound the offence and pay the compounding fee. In spite of the aforesaid documents and affidavits filed on behalf of the appellant, the Secretary, Cuttack Development Authority by order dated 27-8-99 directed for demolition of the structure on the following ground :--

The appellant had submitted documents in support of her title in respect of 42 decimals of land out of Sabik Plot No. 488 and had also placed some documents indicating purchase of a further 27 decimals of land out of the said plot. Though the land purchased under the aforesaid documents indicated acquisition of 69 decimals of land, during inquiry she was found to be in possession of 58 decimals of land. Due to the above fact and on the ground that the document in respect of purchase of 27 decimals of land is only authorised the Secretary disbelieved the ease of the appellant that she had purchased the entire land under two deeds. The Secretary has further observed that in the year 1986 the appellant had been permitted to take up the construction of ground floor and first floor on plot No. 488 measuring a total area of 1798 sft. but she had undertaken unauthorised construction of ground floor and first floor deviating the approved plan. It is further observed by the Secretary that in order to regularise the unauthorised construction the appellant purchased 27 decimals appertaining to the said plot in the year 1999 and even if such deeds are accepted, it is difficult to determine the extent of land the appellant is entitled to. On the basis of the above findings, an order of demolition was passed to the extent of 502.50 sft. in the ground floor and 387 sft. in the first floor.

7. On perusal of the Annexures, it appears that an order of stay was passed in the proceeding on 10-10-95. There is no material on record to show as to the date on which the aforesaid order was served on the appellant. On the other hand, the reports of the Amin and Planning Assistant dated 22-9-98 clearly indicate that the appellant had not taken up any construction work after 20th July, 1996. In absence of any material indicating the date on which the order of stay was served on the appellant and in absence of any other material to show that what type of construction had been undertaken by the appellant in between service of notice and 20th July, 1996 we are of the view that the observation made by the authority that the appellant continued the construction work in course of the proceeding in spite of the stay order cannot be accepted. It further appears from the record that after receipt of the report of the Planning Assistant

the Secretary had directed the appellant on 10-1-96 to produce the documents for regularisation of the unauthorised construction. Therefore, there cannot be any doubt in mind that the unauthorised construction, if any made, is compoundable and can be regularised. Had there been any bar under statute, for regularisation of such construction, the Cuttack Development Authority could not have directed the appellant to produce documents for the purpose. It also appears that in compliance with the order dated. 10-1-96 the appellant not only expressed her willingness to pay compounding fees but also submitted the affidavits of neighbours and the earlier approved plan for the aforesaid purpose. From the report of the Planning Assistant also it appears that the respondent No. 4 who has complained for such unauthorised construction has himself violated the provision and has not left any set back while constructing his own house. Though the aforesaid fact is not very much material for deciding the case of the appellant, it appears from the report that most of the houses in the locality have been built with almost 0 (zero) set back and there was a panchayat In the month of March, 1997 and the matter was settled by the Panchayat. These aspects and the report of the Planning Assistant have not been taken into consideration at all by the Secretary or by the appellate authority under the Act. The authorities also committed illegality in rejecting the plea of the appellant that she had purchased further 27 decimals of land in absence of any one claiming title over the same. 8. In the result, the orders passed by the authorities under the Act and the order passed by the learned single Judge are hereby set aside. The matter is remitted to the Secretary, Cuttack Development Authority for fresh disposal according to law keeping in view the observations made by us in this judgment.

The A.H.O. is allowed.

L. Mohapatra, J.

9. I agree.