
(2004) 06 OHC CK 0003

In the Orissa High Court

Case No : Misc. Case No's. 6907 and 10904 of 2003 and 169 and 883 of 2004
(Arising out of W.P. (c) No. 6587 of 2002)

Srikanta Panda and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 98 CLT 584 : (2004) 2 OLR 59

Hon'ble Judges : M.M. Das, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : J. Pal, M.R. Patra and Md. G. Madani, for the Appellant; P.K. Mohanty, Additional Government Advocate for Opp. Parties 1 to 5, Bijan Ray, B.P. Routray, M.K. Pathy, S. Samal, P.K. Das, P.C. Mishra, A.K. Mohapatra, A.K. Mohanty (1), R.K. Behera and R.C. Pradhan (Intervenors) for O.Ps. 6 to 36, for the Respondent

Judgement

A.K. Patnaik, J.—Writ Petition W.P.(C) No. 6587 of 2002 was filed as a Public Interest Litigation by 10 petitioners on behalf of the general public of Salipur area. The petitioners have stated in the writ petition that a proposal for widening the State Highway connecting Jagatpur (Cuttack) and Chandbali had been finalized since long. But this project of widening the State Highway could not be executed because of unauthorized encroachments on the road side Government lands by different persons and shopkeepers mainly at Salipur and Nischintakoili areas. In the writ petition, the petitioners have further stated that most of the encroachers have approached different Courts of law and have obtained stay orders against their eviction through encroachment proceedings. A statement of such unauthorized encroachments and the cases pending in Civil Courts and this Court filed by the so-called encroachers has been furnished in Annexure 1 to the writ petition. The petitioners have narrated in the writ petition the hardships the general public of Salipur area are suffering on account of non-execution of the project of widening the State Highway from Cuttack to Chandbali. The petitioners

have prayed for a writ in the nature of mandamus or any other writ directing vacation of all stay orders and interim orders passed by different Courts and directing the concerned authorities to immediately evict the encroachers from the road side of Cuttack-Chandbali road, Salipur-Balichandrapur R and B road and Salipur College road within a time-frame to be stipulated by the Court and further directing the authorities to take immediate steps for widening the Cuttack-Chandbali road including the Salipur-Balichandrapur R and B road and Salipur College road and for providing for drainage facility,

2. In the said W.P.(C) No. 6587 of 2002 initially only the State of Orissa, Collector-cum-District Magistrate, Cuttack, Executive Engineer (R and B), Salipur, Sub-Divisional Officer, Salipur and Tahsildar, Salipur had been impleaded as Opp. Parties 1 to 5. The Tahsildar, Salipur, Opp. Party No. 5 filed a counter-affidavit stating inter alia that the Cuttack-Chandbali State Highway No. 9A passes through Salipur Bazar and the said road and its side plots stand recorded in P.W. Department Khata of respective revenue villages, namely, Balisahi, Chandradeipur and Lunahar. and the side plots have been unauthorisedly encroached by encroachers most of whom are carrying on business in shop rooms or wooden cabins constructed on the encroached plots and the Tahsildar has already initiated eviction proceedings under the provisions of the Orissa Prevention of Land Encroachment Act (for short, "the OPLE Act"). In the said counter-affidavit, the Tahsildar, Salipur has also stated that a large number of encroachers have approached Civil Courts and the Civil Courts have already passed restraint orders not to proceed with the eviction proceedings under the provisions of the OPLE Act. Statements showing the civil suits in different Courts and the nature of the orders/decrees passed by the Civil Courts have been annexed to the counter-affidavit as Annexures B-5 and C-5. In the said counter-affidavit, the Tahsildar, Salipur has also stated that some of the eviction proceedings against the encroachers are also subject-matters of writ petitions in this Court, namely, OJC No. 1250 of 1981, OJC No.3045 of 1998, OJC No.8192 of 1998, OJC No. 10826 of 1998, OJC No. 10829 of 1998, OJC No. 10831 of 1998, OJC No. 10833 of 1998, OJC No. 10835 of 1998 and OJC No. 10686 of 1998. in the said counter-affidavit, the Tahsildar, Salipur has not disputed the averments in the writ petition that due to the encroachments, the Cuttack-Chandbali road, Salipur-Balichandrapur road and Salipur College road have become congested causing traffic problem during the peak hours of traffic and as a result, the general public of the Salipur area have been put to serious inconvenience, but he has stated that as restraint orders have been passed by different Courts, the authorities have not been able to evict the unauthorized encroachers.

3. Misc. Case No. 962 of 2003 was filed by 31 applicants for intervention. The case of the applicants in the said intervention application was that they have their residential houses as well as business establishments on the road side of Salipur market and they have obtained orders/decrees from Civil Courts in their favour. Misc. Case No. 1292 of 2003 was filed by another applicant for intervention and his case in the application for intervention was that he has been

in possession of the land for more than 50 years and is having a clinic on the said land and is serving the people as a medical practitioner. By order dated 8.4.2003 passed in the said two Misc. Cases, the prayers for intervention in the said two Misc. Cases were allowed and the said intervenors have been impleaded as opposite parties in the writ petition.

4. On 8.4.2003 the writ petition W.P.(C) No. 6857 of 2002 was heard by the Court when it was agreed by the counsel for the parties that the case would be adjourned and the Additional Government Advocate will file necessary affidavit in the mean while. The case was thereafter taken up on 6.4.2003 when the learned counsel for the petitioners stated that there was a proposal to offer an alternative site to "the persons who are likely to be affected by eviction and the Court passed orders requesting the Additional Government Advocate to take instructions in the matter. Thereafter a further affidavit was filed by the Tahsildar, Salipur, Qpp. Party No. 5 on 3.6.2003 stating therein that the Collector, Cuttack, Sub-Collector, Cuttack Sadar and Tahsildar, Salipur had visited Plot No. 2249 under Khata No. 846 of Mouza-Lunahar and the same was found to be suitable to accommodate the encroachers to run their shops. In the said further affidavit, the Tahsildar, Salipur also stated that since several persons have obtained stay orders from different Courts, it was not possible for the District Administration to evict the encroachers and accordingly it was decided by the authorities that all persons who have encroached upon the main road of Salipur Bazar are to be rehabilitated at the site located by the District Administration as an alternative.

5. On 3.7.2003 three more applicants filed Misc. Case No. 6520 of 2003 for intervention and their case in the said application for intervention was that they have their residential houses as well as business establishments on both sides of the Salipur market and they have obtained orders/decrees from Civil Courts and the Court passed orders allowing their prayer for intervention and the intervenors have been impleaded as opposite parties in the writ petition.

6. On 3.7.2003 the Court also heard the writ petition W.P.(C) No. 6587 of 2002 finally and after observing that the omnibus prayer made by the petitioners in the writ petition cannot be granted disposed of the writ petition with some directions. Paragraph 5 of the said order dated 3.7.2003 passed by the Court which contains the directions of the Court is quoted herein below :

"Considering the facts and circumstances, we dispose of this writ petition with a direction that the intervenors who have got Civil Court decrees in their favour shall not be evicted from their present possession so long as they are not given vacant possession in Plot No. 2249 Khata No. 846 in Mouza-Lunahar in the event of their eviction. We also make it clear, that while expanding/ constructing the Highway through the area in question, the Officers in-charge of the execution of the work shall maintain that the width of the road should be 13.6 meters (including one meter on either side of the road) and should not evict anyone simply for eviction sake, In case any of the intervenors are affected by the proposed extension, they should be allotted land in the aforesaid plot. In case

the authorities after eviction would allot any vacant land to any third person, the first offer should go to the intervenors. It is made clear that there should be no eviction blindly and it should be limited to the width sanctioned above."

7. After disposal of the writ petition W.P.(C) No. 6587 of 2002 by the order dated 3.7.2003, Misc. Case No. 6907 of 2003 has been filed by the intervenors, Opp. Parties 6 to 36 for modification of the said order dated 3.7.2003. In the said Misc. Case petition the Opp. Parties 6 to 36 have, inter alia, stated that the State Government have never declared the Salipur-Chandbali road as a State Highway and that the Opp. Parties 6 to 36 are all Sthitiban tenants in respect of the land under their occupation and there are Civil Court orders/decrees in their favour and the Executive Engineer, Roads and Buildings Division, Salipur, Opp. Party No. 3 has been putting pressure through the contractors with the help of antisocial elements on the intervenors Opp. Parties 6 to 36 to vacate the land under their occupation so that the contractors can proceed with the extension work relating to the State Highway. In the said Misc. Case petition, the intervenors Opp. Parties 6 to 36 have also stated that the land pertaining to Plot No. 2249 under Khata No. 846 is a Gochar land and the villagers of village Lunahar who have been using the said Gochar land would object for allotment of the said land in favour of the intervenors Opp. Parties 6 to 36 pursuant to the order dated 3.7.2003 passed by this Court. Mr. Bijan Ray assisted by Mr. Amiya Kumar Mohanty, learned counsel appearing on behalf of the intervenors Opp. Parties 6 to 36, submitted that in view of the aforesaid difficulties the order dated 3.7.2003 passed by this Court be modified and the State Government be directed to allot land in Plot No. 2259 or the land in the bus-stand instead of the land in Plot No. 2249 for accommodating the Opp. Parties 6 to 36. In the said Misc. Case, the Opp. Parties 6 to 36 have also prayed that the land owners on both the sides of the road be duly compensated by the State Government by adopting the procedure of law for acquisition of land.

8. Misc. Case No. 10904 of 2003 has also been filed by the Opp. Parties 6 to 36 alleging that the Collector, Cuttack, the Sub-Collector, Cuttack Sadar and the Tahsildar, Salipur are asking the Opp. Parties 6 to 36 to vacate the land without making any measurement of the land under their occupation and without allotting any suitable alternative land to the Opp. Parties 6 to 36 as directed by the order dated 3.7.2003 of the Court. The said Opp. Parties 6 to 36 have therefore prayed for an order restraining the Opp. Parties 1 to 5 from evicting Opp. Parties 6 to 36 from their Sthitiban land until the order passed by this Court on 3.7.2003 for providing alternative land to the Opp. Parties 6 to 36 is implemented.

9. Misc. Case No. 169 of 2004 has been filed by the Executive Engineer, Roads and Building Division, Salipur, Opp. Party No. 3 stating that by the order dated 3.7.2003 the Court has observed that the road will be widened upto 13.6 meters and eviction on either side of the road will be effected for the purpose of widening the road up to 13.6 meters, but to accommodate the drain and footpath

portion of the road it will be necessary to widen the road to 18.0 meters in place of 13.6 meters. It is also stated in the said Misc. Case petition that pursuant to the order passed by this Court on 3.7.2003, notices were served on the occupants of the land by the side of the road asking the persons who are in occupation of the land by the side of the road to submit their applications in the manner provided in the Orissa Government Land Settlement Act so that they could be allotted suitable alternative land for their rehabilitation in accordance with the said order dated 3.7.2003 of the Court, but none of them have applied for the same and from this attitude, it appears that the intervenors opposite parties are not co-operating with the authorities for implementing the order dated 3.7.2003 passed by this Court, In this Misc. Case, the Executive Engineer, Roads and Buildings Division, Salipur has prayed that the order passed by this Court on 3.7.2003 .be modified so as to indicate that the width of the road would be 18.0 meters in place of 13.6 meters and other orders be passed in the light of the submissions made in the Misc. Case petition.

10. Misc. Case No. 883 of 2004 has been filed by the State of Orissa, the Collector-cum-District Magistrate, Cuttack and the Executive Engineer, Roads and Buildings Division, Salipur, Opp. Parties 1, 2 and 3 respectively, reiterating the difficulties created by the encroachers of the land by the side of the road on account of which the project for widening the road could not be implemented. In the said Misc. Case petition, Opp. Parties 1, 2 and 3 have further stated that the State Government is under no obligation to compensate a land owner by another piece of land in the event such land owner is displaced from his land, but in order to expedite the matter, the State Government had earlier agreed to compensate persons in occupation of the land by the side of the road with alternative land in Plot No. 2249 and accordingly orders were passed by the Court on 3.7.2003 but in the mean time, the intervenors opposite parties have filed an application praying that land in Plot No: 2259 instead of plot No. 2249 be allotted to them and this proposal of the intervenors opposite parties has been examined and it has been found that Plot No. 2259 in village Lunahar is adjacent to Plot No. 2249, but for both the plots the approach road is the same and Plot No. 2259 is also under Gochar KISSAM like Plot No. 2249. It is also stated in the misc. case petition that the area of Plot No. 2259 is only Ac.0.296 decimals and this area is not adequate to accommodate all the persons who are in occupation of the land by the side of the road. In the Misc. Case petition, it is further stated that in view of these difficulties, it is now felt by the authorities that it would be more expedient to go in for land acquisition of the required land on either side of the existing road for the purpose of widening the road upto 18.0 meters, but the Government is unable to take appropriate steps under the Land Acquisition Act on account of the order dated 3.7.2003 passed by this Court. Opp. Parties 1, 2 and 3 have therefore prayed for modification of the order dated 3,7.2003 so as to permit the authorities to take recourse to the provisions of Section 17 of the Land Acquisition Act and to acquire the required land under the said Act for widening the road upto 18.0 meters. Mr. P. K. Mohanty, learned Additional

Government Advocate, submitted that in view of the aforesaid developments, the order dated 3.7.2003 be modified and the State Government be permitted to take recourse to the provisions of the Land Acquisition Act including Section 17 thereof for acquiring the required under the said Act for widening the road upto 18.0 meters.

11. Mr. Pal, learned counsel for the writ petitioners, on the other hand, submitted that the petitioner had filed the writ petition as a PIL for the purpose of ensuring that the road is widened as expeditiously as possible and if the order dated 3.7.2003 is modified and the State Government is allowed to take recourse to the provisions of the Land Acquisition Act, it will take a lot of time for the procedure for acquisition of land to be completed and the road to be widened.

12. It will be clear from the narration of facts in this order that on either side of the road which is now proposed to be widened by the State Government to width of 18.0 meters, different persons are in occupation of land and have constructed their houses and shops on such land and some of them have also obtained orders/decrees from Civil Courts as well as orders from this Court and for this reason it has not been possible for the authorities to evict them from the land under their occupation even though proceedings for their eviction have been initiated under the OPLE Act. The petitioners have prayed for a writ in the nature of mandamus or any other writ directing vacation of such orders passed by different Courts and directing the concerned authorities to immediately evict the encroachers from the road side land within the time-frame to be stipulated by the Court and to take immediate steps to widen the Cuttack-Chandbali road and to provide drainage facility along the side of the road. On 3.7.2003 the Court after hearing the parties observed that such an omnibus prayer made by the petitioners in the writ petition cannot be granted and disposed of the writ petition with the direction that the intervenors opposite parties who have got civil Court orders/decrees in their favour shall not be evicted from their present possession so long as they are .not given possession of land in Plot No. 2249 under Khata No. 846 in Mouza-Lunahar in the event of their eviction and that the officers in-charge of the execution of the work relating to the Highway shall maintain the width of the road at 13.6 meters and should not evict anyone simply for eviction sake and in case any of the intervenors opposite parties are affected by the proposed extension, they should be allotted land in the aforesaid plot. Obviously, this Court in exercise of its writ jurisdiction under Article 226 of the Constitution cannot pass a blanket order vacating all orders/ decrees passed by different Courts and directing the concerned authorities to immediately evict the encroachers from the road side land. It is only in individual cases that the Court may examine the facts of the case as well as law on the point and direct vacation of an order passed by a Court or set aside a decree passed by a Court. We therefore agree with the observation of the Court in the order dated 3.7.2003 in W.P.(C) No, 6587 of 2002 that the omnibus prayer made by the petitioners in the writ petition cannot be granted.

13. The direction on the said writ petition in the order dated 3.7.2003 that the intervenors opposite parties who have got Civil Court decrees in their favour shall not be evicted from their present possession so long as they are not given possession of land in Plot No. 2249 under Khata No. 846 in Mouza-Lunahar in the event of their eviction was given by the, Court on the statement made in the further affidavit filed on behalf of Opp. Party No. 5 on 30.6.2003 that the Collector, Cuttack, Sub-Collector, Cuttack Sadar and Tahsildar, Salipur had visited Plot No. 2249 under Khata No. 846 in Mouza Lunahar and found the same to be suitable to accommodate the encroachers to run their shops and it was decided by the authorities that all persons who have encroached upon the main road of Salipur Bazar area are to be rehabilitated on such land as an alternative. Now that the Opp. Parties 1, 2 and 3 have come to realize that no useful purpose will be served by allotting the land in said Plot No. 2249 to the intervenors" opposite parties who are not interested in Plot No. 2249 but in Plot No. 2259 the order dated 3.7.2003 passed by this Court will have to be modified. No provision of law has been brought to our notice by the counsel for the petitioners or the intervenors opposite parties that the State is under obligation to provide a land to a person who is displaced from the land under his occupation or ownership when such land is to be utilized for a public purpose such as widening a road. All that is provided in the Land Acquisition Act is that land owned by a person can be acquired for a public purpose on payment of compensation in accordance with the procedure as laid down therein. Hence, the order dated 3.7.2003 in W.P.(C) No. 6587 of 2002 is modified and we permit the State Government to take recourse to the provisions of the Land Acquisition Act for acquiring the land not owned by the State Government for the purpose of widening the road upto 18.0 meters or such other width as the State Government may think fit and proper. We make it clear that we have not expressed any opinion as to whether the State Government can take recourse to the provisions of Section 17 of the Land Acquisition Act invoking the urgency clauses therein and in case recourse is taken to the provisions of Section 17 of the Land Acquisition Act by the State Government, it will be open for the intervenors opposite parties to challenge the same before the appropriate Court if they are so advised. It will also be open for the State Government to file any appeal or appropriate application before the appropriate Court, if so advised, for setting aside any decree or for vacating any order passed by any Court.

14. The Misc. Cases stand disposed of accordingly.

M. M. DAS, J.

15. I agree.