
(2014) 03 OHC CK 0018
In the Orissa High Court
Case No : WP (C) No. 11585 of 2006

Tapaswini Kar

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14 226

Citation : (2014) 03 OHC CK 0018

Hon'ble Judges : A.K. Goel, C.J;A.K. Rath, J

Bench : Division Bench

Advocate : A.A. Das, for the Appellant; Ashok Mohanty, (State) Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rath, J.—This is an application under Article 226 of the Constitution of India for a direction to the opposite parties to allot Government land available in front of the respective houses of the petitioners in Acharya Vihar, Unit-14, Bhubaneswar, in the district of Khurda, and for a declaration that the demolition and construction of fence over the Government land is illegal and arbitrary. The petitioners are the residents of the Acharya Vihar, Unit-14, Bhubaneswar. They have constructed their respective houses over the plots. There is a road which connects the main road from the residential area. The Government land is available in front of the private plots of the petitioners, which cannot be utilized for any other purpose. The petitioners use the vacant plots for their ingress and egress to their respective houses and parking of the vehicles. Some of the petitioners have also planted trees in front of the vacant space. They made an application for allotment of the said Government land in their favour on payment of premium. Without considering their application, a letter was issued on 20.1.2013 wherein it was indicated that the drain earlier planned having been shifted to the lowest contour in the Madhusudan Nagar area and as approved by the Urban Development Deptt., there is no proposal for expansion of 30 ft. wide

road available in southern side of private plot of Acharya Vihar. It is further stated that there are several instances where additional lands available in front of the respective houses have been allotted in favour of the persons on payment of premium. As such, there is any justification not to allot the land in favour of the petitioners.

2. Pursuant to the issuance of notice, Additional Land Officer, G.A. Department, Government of Orissa, Bhubaneswar, has filed a counter affidavit. The specific case of the opposite party no. 1 is that the front size of space of the respective residential plots of the petitioners belong to the State Government and the same have been occupied by the petitioners unauthorizedly. When the said encroachment came to the notice of the opposite parties, the petitioners were evicted from the aforesaid land on 19.8.2006 by the Joint Eviction Squad comprising of the staff of Bhubaneswar Development Authority, Bhubaneswar Municipal Corporation and General Administration Department. Since the petitioners have encroached the adjacent Government land in between the public road and their respective private plots, they are liable to be evicted. A trespasser has no right to claim for settlement of the encroached land in his favour. So far as the allotment of land is concerned, it is stated that the allotment of additional land in favour of the persons have been made by G.A. Department in the past, but these cases are not similar. It is further stated that the suggestions given by the Planning Member, B.D.A. in his letter dated 20.01.2003 is not acceptable. The Planning Member has reported that there is no proposal for expansion of the existing 30 feet wide road available in the Southern side of the private plots but from the field position, it is ascertained that an area measuring of Ac. 0.741 appertaining to Revenue Plot Nos. 5, 6, 13 and 14 is available in between the Northern side and of the existing road and private plot owners. On shifting of the existing road to its Northern side, a good patch of land will be available on the Northern side of the road, which can be utilized by the Government for neighbourhood inhabitants.

3. One Sanjib Kumar Mishra, Commissioner, Bhubaneswar Municipal Corporation, has also filed a counter affidavit on behalf of opposite party no. 3, which is in terms of the counter affidavit of opposite party no. 1.

4. We have heard Mr. A.A. Das, learned Senior Advocate for the petitioners and the learned Advocate General for the State.

5. Mr. Das, learned Senior Advocate, argues with vehemence that the petitioners use the vacant plot for the ingress and egress to their respective houses. In past, the State authorities have also allotted the vacant space available in front of the respective houses of the different persons on payment of premium. In view of the fact that the petitioners are using the same for long, there is no justification on the part of the Government to treat the petitioners differently.

6. Per contra, Mr. Mohanty, learned Advocate General, submits that the Government is conscious regarding problem of water logging during rainy season

in the Acharya Vihar area where around 250 families reside. The rain water is supposed to be discharged through Drain No. 4 which commenced from Ekamra Kanan and passes through Acharya Vihar. The width of Drain No. 4 is very much reduced when it passes Acharya Vihar area. Widening of Drain No. 4 is included under Jawaharlal Nehru National Urban Renewal Mission which has been duly funded by the Central Government. In the Comprehensive Development Plan, 2010 approved by the Government in H&H.D. Department, the alignment of the said drain to achieve the required discharge capacity has been planned taking into consideration the topography of the area passes through Plot Nos. 5, 14, 26, 27, 28 and 63 under Khata No. 584 of Mouza-Madhusudan Nagar which is recorded in the name of Government in G.A. Department, Orissa. The Executive Engineer, Drainage Division, Cuttack was entrusted with the work of Drain No. 4. The work was allotted to Mahendra Swain, contractor, at a cost of Rs. 28.79 crores. The work was commenced on 25.02.2011. The stipulated date for completion of the work was fixed to 24.08.2012. The said contractor had already constructed the drain. But then, the petitioners and other residents of Acharya Vihar, who have encroached the Government land, filed the writ applications. They were earlier evicted by the joint eviction squad of the opposite parties on 19.8.2006. Again, they have encroached the said Government land. The order of status quo has been passed in Misc. Case No. 10275 of 2006 arising out of WP(C) No. 11585 of 2006. Due to an order of status quo, the construction of drain work near Acharya Vihar, a portion of 540 meters has been left out.

7. An encroacher has no right to claim for settlement of the Government land. Merely because in the past the Government has settled the Government land in favour of some of the encroachers, per se, does not confer any right on the petitioners to claim for settlement of the Government land. Article 14 of the Constitution is a positive concept. Settling the Government land in favour of the encroachers is just like rewarding a pickpocket. Construction of a drain is for a public purpose. The entire area is inundated in rain water during rainy season. To mitigate the hardship of the residents, the Government have entrusted the construction work of drain to a contractor but then due to the order of status quo only 540 metres have been left out. In view of the fact that the petitioners, who are the encroachers, have no legal right for settlement of the land and that construction of drainage is for the public purpose, we are not inclined to entertain the writ application.

Accordingly, the writ application is dismissed.