

(2002) 11 OHC CK 0023
In the Orissa High Court
Case No : Criminal Appeal No. 230 of 1986

The Executive Officer, Berhampur Municipality	APPELLANT
Vs	
Jhunu Sabat	RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Orissa Municipal Act, 1950 — Section 385A

Citation : (2003) CLT 15 (Suppl CrI) : (2003) CriLJ 1066 : (2003) OLR 15 (Suppl CrI) : (2002) OLR 768 Supp

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : K.C. Kar, for the Appellant; S.P. Das, B. Panda and A.S. Nandy, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—This appeal is against the order of acquittal in 3 (a) C.C. No. 317 of 1986 (delivered on 19th May, 1987) of the Court of Judicial Magistrate, Second Class, Berhampur.

2. On the basis of allegation of unauthorised construction made by accused/respondent in contravention of provisions in Orissa Municipal Act, 1950 (in short "the Act") prosecution was launched by the Berhampur Municipality (Appellant) against the accused (respondent) for punishment u/s 385-A of the Act. In support of the allegation Berhampur Municipality, the complainant, relied on the authorisation given by the Executive Officer, Exts. 4 and 5, the show cause notice issued against the accused Ext. 2, report of PW No. 1 which was marked Ext. 1 and oral evidence of PWs 1 to 3. Accused took the plea of complete denial to the allegation and also stated that she was not served with a copy of show cause notice (Ext. 2). After due consideration of such evidence the trial Court acquitted the accused/respondent, inter alia, on the ground that delegation of power which was made by the Executive Officer was not in conformity with the law in the Act and particularly u/s 99 of the Act. Trial Court also recorded the finding that

prosecution failed to give proper identity of the holding number and other particulars relating to the house in which there has been a breach of the provisions of the Act and the rules thereunder.

3. Mr. K.C. Kar, learned counsel, addressing the Court on behalf of Mr, N.K. Mishra, learned counsel for the appellant after placing the impugned judgment and the evidence on record also referred to the provision in Sections 92, 96, 97 and 99 of the Act and on perusal of the same he fairly concedes that there is no evidence on record to prove regarding due compliance of the provisions of law relating to obtaining sanction order of relating to delegation of power. Under such circumstance, this Court finds that the order of acquittal is not liable to be interfered with. Accordingly, the Criminal Appeal stands dismissed.