



Prasanta Kumar Rout v. Government of Orissa

1994 II OLR 444

Country: India

Region: Asia

Year: 1994

Court: High Court - Orissa

Health Topics: Disasters and emergencies, Environmental health

Human Rights: Right to life

Facts

The Cuttack Development Authority (CDA) developed a new township called Abhinaba Bidanasi Kattaka to relieve the congestion of the city of Cuttack. In 1994 a bout of heavy rains caused nearby rivers to flood Abhinaba Bidanasi Kanaka, cutting off the area from Cuttack, submerging local hospitals, and provoking looting. The people of Abhinaba Bidanasi Kanaka urgently petitioned the court to direct the State government and the CDA to drain the water.

The CDA confirmed that, at significant expense, it had already provided several high-power motor pumps to drain the area and had deputized experts to advise on certain aspects of flood management. Prior to the flood there had been no water-logging for eight years.

Decision and Reasoning

Considering that there had been no water-logging for eight years and therefore no early warning, the court considered that the authorities had tried their best to drain the water. However, the court questioned whether a permanent solution was required to protect the life and property of the Abhinaba Bidanasi Kattaka inhabitants.

The court noted the "right to life" in Article 21 of the Constitution had been interpreted broadly by prior courts to cover the dignified enjoyment of life, including the right to shelter. The courts further noted that CDA had advertised Abhinaba Bidanasi Kattaka to prospective inhabitants as a clean and comfortable place. Bearing in mind the expansive conception of the "right to life" and CDA's allurements, the court held that the State Government was required to determine the reasons for the seepage of water into Abhinaba Bidanasi Kattaka and to take all precautionary measures that would be necessary to prevent further inflow of water. The court confirmed that the State was not entitled to the "plea of resources constraint" in discharging these duties, particularly because it had developed Abhinaba Bidanasi Kattaka to lure people from overcrowded Cuttack.

Decision Excerpts

¶ Taking into consideration the fact that there had been no water-logging for eight years and therefore, there was no earlier warning and it became flooded on account of seepage of water from the river through the bundh only this year, the steps taken by the authorities cannot be said to be inadequate and under the circumstances, the authorities have tried their best to get the water drained out. But the question that remains to be considered is as to whether it can at all be said to be a permanent solution or something positive is required to be done so that the life and property of two lakhs of inhabitants, as is the objective of the C.D.A. for accommodating them in Abhinaba Bidanasi Kattaka, are not endangered and that they can live in the area and enjoy the right to life enshrined in Art 21 of the Constitution?

¶ With this expanded notion of the expression "right to life" in Article 21 of the Constitution, there can be no any doubt with regard to the power of the Court for issuing appropriate direction, when the inhabitants of a particular area apprehend danger to their existence from the vagaries of excess water rushing into the area on account of ill design or defect in construction of the protective bundhs. The right to shelter has been accepted as a part of the right to life. . . .

¶ To save the lives of two lakhs of people is the obligation of the State and the State, therefore must discharge it and is not entitled to take the plea of resources constraint, particularly when the area in question was carved out by the State itself and the idea to have a township therein is that of the State and people

have spent their life's savings with the hope of breathing some unpolluted air in a comparatively cleaner area being away from noisy, polluted atmosphere of the old city.

Copyright © 2015 www.GlobalHealthRights.org