

Prasanta Kumar Rout, Orissa Law Reviews

vs

**Government of Orissa, represented by Secretary, Urban Development
Department and Others**

Orissa High Court

27 September, 1994

Citations: 1994 II OLR 444

Bench: G Pattnaik, P Naik

JUDGMENT

G.B. Pattnaik, J.

1. This application is a public interest litigation by one of the inhabitants of Markatnagar alleging therein that the public authorities have failed to take appropriate steps in getting the excess water drained, as a result of which the so-called new township has been inundated and has been cut off from the city of Cuttack and the people living therein have been deprived of their right to life as enshrined, in Art. 21 of the Constitution. According to the petitioner, an obligation is cast upon the State to preserve the life of every person and right to life within the meaning of Art. 21 of the Constitution means, right to leave with human dignity. But the State has utterly failed in preserving the lives of the inhabitants of Markat- nagar on the pretext of a natural calamity and accordingly they are entitled to a direction from the Court to the State Government as well as the Cuttack Development Authority to take appropriate measures.

2. The city of Cuttack is situated between the two rivers Mahanadi and Kathjori and the city was facing with danger from the two rivers every year during the rainy season when the two rivers get flooded. In 1982 September, the flood became enormous and while the city was apprehending to get flooded, but it was saved as in several parts of the State the bundhs were washed out and several viliagos were flooded. The popular Government then decided to reinforce the embankment as a protective measure to the city of Cuttack which is practically the economic and cultural life-centre of the State and ultimately constructed the embankment on the rivers Mahanadi and Kathjori. On account of aforesaid construction when more than 2000 acres of land became available for development, the idea to have a new township there was conceived. The old city was getting congested day by day and the expansion of the city almost came to a stand-still as no vacant land was available. It is at this point of time when 2000 acres of vacant land was available, on account of the embankment on the rivers Mahanadi and Kathjori, a township was planned by developing those two thousand acres and naming it "Abhinaba Bidanasi Kanaka".

Under the Orissa Development Authorities Act, 1982, a Development Authority called the "Cuttack Development Authority" was constituted. The objective of such Authority is to take

up planned and systematic development of areas by preparing development plans and undertake works pertaining to construction of housing colonies, shopping centres, markets, industrial estates and provide public amenities. The Cuttack Development Authority (for short, the 'CDA') then drew up master-plan in respect of the aforesaid 2,000 acres which became available for developing a new township and the township is supposed to have been planned in accordance with the most modern and latest concept of town-planning. The C.D.A. prepared its 'Brochure for New Cuttack Development Scheme" in respect of the aforesaid area and the Brochure indicates that there is a proposal to accommodate a population of 2 lakhs within the new township. It was also indicated that the new township would be rich in roads, parks and open spaces, would provide all the modern urban infrastructure and facilities necessary for comfortable, clean and hygienic living like drainage, underground sewerage, drinking water supply, electricity supply lines, schools, colleges, hospitals, dispensaries, bus-station, shops and marketing centres etc. in a planned way. The project area was divided into 12 sectors and one central business district and plots were carved out into different categories. Those who were desirous of leading an urbanised life and were not getting any facility in the old city of Cuttack on account of paucity of space rushed to the C. D. A. for getting suitable plots of land for building up their residential houses and, in fact, by spending their life's savings many people had built up their residential houses and are living in the Abhinaba Bidanasi Kattaka.

While the inhabitants of Abhinaba Bidanasi Kattaka were enjoying comparatively a much comfortable urbanised life with much cleaner surroundings and the C. D. A. also was continuing its act of development in different sectors, nobody could ever dream that the entire area would be so flood as would endanger the human life therein. A continuous spell of rain in the latter part of August and early part of September, 1994, as well as the heavy rain in the upper catchment area of river Mahanadi and consequential discharge of water from the Hirakud Reservoir brought high flood in both the rivers Mahanadi and Kathjori and suddenly the water rushed into the Abhinaba Bidanasi Kanaka and the area got cut-off from the old city. People living there in out of panic left their homes and hearths and came away to their near and dear ones living in the old city by leaving all their belongings. It is also reported that anti-socials became busy with their job of stealing from the locked-up rooms. Several public buildings got submerged with water and the Eye Hospital which has been located there under the guidance and control of the Rotary Club also got submerged in water. The people of Abhinaba Bidanasi Kattak became restless and finding no other way rushed to the Court seeking some direction to the authorities, namely the State Government as well as the C. D. A. for taking effective steps for draining out the water in question. The matter was so urgent that it was taken up by a Bench of this Court on a public holiday and the State Government as well as the C. D. A. were called upon to intimate the Court by filing affidavits as to what remedial measures have been taken to drain out the water.

3. Pursuant to the "direction of the Court, the State of Orissa through the Joint Secretary to Government in the Water Resources (Irrigation) Department has filed an affidavit stating therein that the responsibility of the Water Resources Department is only to protect the city from flood in the Mahanadi river system and that has been discharged by constructing three Hood protection embankments. After such construction when 2000 acres of land became available, the entire area was handed over to the Cuttack Development Authority who was supposed to develop the land and take up the project of building up a new township and the said C. D. A. has not taken appropriate steps when the water has rushed into the Abhinaba Bidanasi Kanaka, (it has been further stated that on the request of the C. D. A.) and pursuant to the advice of the Engineer-in-Chief, the Department has taken steps to provide two extra

high-power motor pumps in order to facilitate draining out the water level from the C. D. A. colony and the C. D. A. itself has already fitted several motor pumps to discharge the excess water into the river Kathjori. It is also stated in the said affidavit that two experts had been deputed by the State Government to survey and advise as to whether the embankment should be cut off for quicker discharge of the water, but as the expert's advice was to the effect that it would lead to a disastrous effect if the embankment is cut before the end of the monsoon season, no further steps could be taken by cutting the embankment.

4. On behalf of the C. D. A., a memorandum was filed indicating therein that though the Bidanasi Housing Colony, commonly called "Markatnagar" has come up since 1986, but during the last eight years there has been no water-logging and water has never rushed into the area. But this year on account of unprecedented rain and the water level of both the rivers having increased, there has been some seepage from the embankment which is maintained by the Irrigation Department. ' The C. D. A. on its part has installed several pumps for draining out water from the project area, but there has been no appreciable reduction of water level. Of course, by now the water level has come down to a great extent though the main approach from Satichoura Road has not yet been established.

An additional memorandum was filed by the C. D. A. indicating that three more 70 H. P. Pumps have been installed for draining out water from inside the project area and heavy expenses have been incurred by the C. D. A.

5. The affidavits filed on behalf of the State as well as the memorandum filed on behalf of the C. D. A., no doubt, indicate that after the water has rushed into and the area got submerged, they have tried to take all possible steps for quickly getting the water drained out and since the water was getting in on account of seepage from the Bundh, the method adopted by them could not get the water drained out immediately, but after the water level in the river has gone down, by pumping out the water, a substantial quantity of water has been drained out though it may take some more time to get the area fully dry. Taking into consideration the fact that there has 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 it 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 ?

6. Before considering the question as to what direction this Court can give in the present case, it would be appropriate for us to notice as to the meaning of the expression "Site" in Art. 21 of the Constitution as given by different Courts. Field, J., in *Munn v. Illinois*, (1876) 94 U.S. 113, had observed that the expression "life' means ;

"... Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body, by the amputation of an arm or leg, or the cutting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. The deprivation not only of life, but of whatever God has given to everyone with life, for its growth and enjoyment, is prohibited by the provision in

question, if its efficacy be not frittered away by judicial decision." in the case of Francis Coralia Mullin v. The Administrator, Union Territory of Delhi and Ors., AIR 1981 SC 746, Bhagwati, J. (as he then was) held thus ;

"But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities "for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."

In the case of People's Union for Democratic Rights and Ors. v. Union of India and Ors., AIR 1982 SC 1473, Bhagwati.J. reiterated his earlier view and held that the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, were clearly meant to ensure basic human dignity to the workmen and if they are deprived of these that would clearly be violative of Art 21. Pathak, C. J., in the case of Vikram Deo Singh Tomar v. State of Bihar, AIR 1988 SC 1782, had observed :

".....We live in an age when this Court has demonstrated, while interpreting Art. 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. And, so, in the discharge of its responsibilities to the people, the State recognises the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and for whom, therefore, of necessity provision must be made for their protection and welfare."

Sabyasachi Mukharji, J. (as he then was) expressed himself in the case of Ramsharan Autyanuprasi and Anr. v. Union of India and Ors., AIR 1989 SC 549, as follows ;

".....It is true that life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Art. 21 of the Constitution....."

In the case of Miss. Mohini Jain v. State of Kamataka and Ors., AIR 1992 SC 1858, Kuldeep Singh, J., observed ;

"Right to life is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from the right to life. The right to life under Art. 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education....."

With this expanded notion of the expression "right to life" in Article 21 of the Constitution, there cannot be 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. The right to dwell in pavements or in slums was accepted as a part of tight

conferred by Article 21. in the Constitution Bench decision of the Supreme Court in the case of Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors., AIR 1986 SC 180. in the case of M/s. Shantistar Builders v. Narayan Khimalal Totame and Ors., AIR 1990 SC 630, the apex Court made the following observations '

"Basic needs of man have traditionally been accepted. to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect-physical, mental and intellectual....."

Bearing in mind the aforesaid concept of the expression "life" in Article 21 of the Constitution, and the scheme and allurements of the CD.A. to the people those who would decide to take shelter in the newly created area of 2000 acres called Abhinaba Bidanasi Kanaka to the effect ;

".....The proposed township would be very rich in roads, parks and open spaces. It would provide all the modern urban infrastructure and facilities necessary for comfortable, clean and hygienic living like drainage, underground sewerage, drinking water supply, electricity supply lines, schools, colleges, hospitals, dispensaries, bus station, shops and marketing centres etc. in a planned way....."

it would be first essential to secure the area from any future seepage of water from the river and unless that is checked and area is protected, the draining out of flood water through pumps cannot be a solution. In this view of the matter, we are of the considered opinion that the State Government in the appropriate Department of Water Resources (Irrigation) may immediately set up an Expert Committee under the Chairmanship of Minister, irrigation, with the Chief Engineer, Irrigation, Chief Engineer, Works, and the Collector, Cuttack, to enquire into and find out the reasons for the so-called seepage of water into the Abhinaba Bidanasi Kattaka area and then take all precautionary measures that would be necessary to prevent inflow of water into the area in question from rivers Kathjori and Mahanadi. The aforesaid exercise may necessitate the reinforcement of the ring-bundhs from Harihar Ghat to Naraj as well as from Naraj to Chahata-ghat. But that must be done in accordance with the advice to be given by the Experts even though it may involve a heavy finance. 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. The CO.A. which is the main architect in enforcing the plan of Abhinaba Bidanasi Kanaka through its Vice- Chairman must be taken as a member of that Expert Committee and all- out efforts must be made to plug the seepage of water on the basis of the report to be given by the Expert Committee before taking any further venture of expansion or allotment of any new area within the Abhinaba Bidanasi Kattaka. Apart from reinforcing the two bundhs as indicated by us, the question of providing two sluice gates may also be considered by the Expert Committee and if the same is found favoured with, then that must be provided for. Needless to mention that it is open for the expert body to suggest any other modern technique or method to save the new township from inundation in future.

The writ application is accordingly disposed of with the aforesaid directions.

Our order may be communicated to the Chief Secretary to the Government of Orissa as well as the Secretary, Water Resources (Irrigation) Department, Secretary, Works Department, and Secretary, Housing and Urban Development Department, and the Collector, Cuttack, for taking prompt action in the matter.

P.C. Naik, J.

I agree.