

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.7082 of 2006

In the matter of an application under Article 226 of the Constitution of India.

Pradeep Kumar Sahoo and others Petitioners

Versus

Sub-Collector, Kendrapara-cum-
Administrator, Kendrapara Municipality,
Kendrapara and another Opposite parties

For Petitioners -- Mr.Paresh Kumar Sahoo,
Advocate

For Opp. Parties -- Mr.Manoj Kumar Mishra,
Sr.Advocate,
Mr.Sangram Senapati,
Advocate

J U D G M E N T

PRESENT:

THE HON'BLE DR. JUSTICE A.K.RATH

Date of Hearing:16.04.2018 : Date of Judgment:30.04.2018

DR. A.K.RATH, J. By this writ petition under Article 226 of the Constitution of India, the petitioners have prayed, inter alia, for a direction to the opposite parties to demolish the shop room constructed on the staircase at Municipal Market Complex, Tinimuhani, Kendrapara.

2. The dispute lies in a very narrow compass. The facts need not be recounted in details. Suffice it to say that Kendrapara Municipality has constructed two storied market complex at Tinimuhani, Kendrapara. The petitioners are licensee of the shop rooms of the first floor. Their grievance is that without any resolution and approved plan, the Municipality has constructed a shop room at the vacant side of the staircase. The wide of the staircase has been reduced from 5 inch to 3 inch and the height of the lintel has also been reduced from 6 inch to 5 inch.

3. Pursuant to issuance of notice, the Executive Officer, Kendrapara Municipality, Kendrapara, opposite party no.2 has filed counter affidavit. The case of opposite party no.2 is that no shop room has been constructed on the staircase at Municipal Market Complex, Tinimuhani, Kendrapara. On the application of one handicraft person, namely, Fakir Singh, the vacant place under the staircase in the shape of a shop room was allotted to him after approval of the administrator of the Municipality. Thereafter an agreement was entered into between the parties. The staircase is intact.

4. Heard Mr.Paresh Kumar Sahoo, learned Advocate for the petitioners and Mr.Manoj Kumar Mishra, learned Senior Advocate along with Mr.Sangram Senapati, learned Advocate for the opposite parties.

5. Mr.Sahoo, learned Advocate for the petitioners submitted that since the Municipality has constructed the shop room by encroaching upon a portion of the staircase, the customers are

facing immense difficulties. It is difficult on the part of two persons to cross at the staircase at a time. The alleged construction was made without any approval of the Municipality and as such illegal.

6. Mr.Mishra, learned Senior Advocate for the opposite parties submitted that on the vacant side of the staircase a shop room has been constructed. The same would no way cause any hindrance to the customers to go to the upstairs. The said shop room has been allotted to Fakir Singh, a handicapped person, on the approval of the Municipality.

7. The photographs of the shop complex, vide Annexure-6 as well as Annexure-A/2, show that a small shop room has been constructed by the side of the staircase. The assertion of the Municipality that the shop room allotted to one handicapped person has not been denied or disputed. The shop room has been constructed prior to 2006 i.e., before filing of the writ petition. Since the shop owners of the upstairs are managing the affairs of their business for a long period, it will be too iniquitous to issue a direction to the Municipality to demolish the small shop room constructed by the side of the staircase to rehabilitate one handicapped person. Moreover, the staircase is sufficient for the customers to go to the upper floors. But then one aspect of the matter cannot be brushed aside. In the event the shop owner displays his goods outside the room by placing racks, the same will definitely cause inconvenience to the customers. The Municipality shall ensure that the shop owner shall not encroach upon any portion outside the shop room or display the goods by placing racks

in front of the shop room. With the aforesaid observations, the writ petition is disposed of.

.....
Dr.A.K.Rath, J.

*Orissa High Court, Cuttack.
The 30th April, 2018/CRB.*