

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3385 of 2024

**AFR**

*Trinath Panda*

....

*Petitioner*

*-versus-*

*Commissioner-cum-Secretary, Health &  
Family Welfare Department,  
Government of Odisha & Others*

....

*Opposite Parties*

**Advocates appeared in the cases:**

*For Petitioner*

:

Mr. Ghanashyam Dash, Advocate

*For Opposite Parties*

:

Mr. Lalatendu Samantray,  
Additional Government Advocate

**CORAM:**

**THE CHIEF JUSTICE**

**MR. JUSTICE S. K. SAHOO**

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**JUDGMENT**

21.02.2024

**Chakradhari Sharan Singh, C.J.**

1. We have noticed disturbing trend of the people approaching this Court by filing writ petitions under Article 226 of the Constitution of India in the nature of Public Interest Litigation (hereinafter referred to as 'PIL') concerning such matters, which could be duly addressed by the functionaries of the State (within the meaning of Article 12 of the Constitution of

India) including those, who have been vested with clear statutory powers under the provisions of the Code of Criminal Procedure (hereinafter referred to as the 'Code') and other provisions. Because numerous cases in the shape of PIL are being filed in this Court seeking direction for removal of encroachments from public places or removal of obstruction or nuisance from public places and also for removal of substances, injurious to health, maintenance of hygiene, etc., coupled with admitted inaction, in the majority of the cases, on the part of the officials, we have formed a *prima facie* impression, in our mind, that it is largely because the authorities have failed to exercise the powers conferred upon them under Section 133 of the Code and other mandatory statutory provisions and thereby omitting to perform their corresponding duties imposed upon them under Section 133 of the Code, rendering the said provisions irrelevant, redundant and otiose. This, possibly, maybe the reason why the litigants, who could have otherwise approached the District Magistrate, the Sub-Divisional Magistrates concerned seeking to invoke their powers under Section 133 of the Code, which deals with the removal of unlawful obstructions and nuisances, etc, are thus, being, advertently or inadvertently, made to approach this Court

for the exercise of extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

2. Exercise of jurisdiction, that too in PIL, cannot be made a routine affair, particularly when an alternative efficacious remedy is statutorily available. The present case is one such example where the petitioner has approached this Court seeking a direction to the opposite parties for eviction of encroachers residing over the land allotted in favour of the Dean and Principal of Saheed Laxman Nayak Medical College and Hospital (hereinafter referred to as 'SLNMCH'), Koraput. It has been stated in the writ petition that the said SLNMCH has been established by the Government. For its infrastructure and other facilities, the Government has provided about 21.43 acres of land in favour of the Dean and Principal of SLNMCH (opposite party no.6). It has been asserted that some people have encroached upon the allotted land and some of them have even constructed their houses. The opposite party no.6 had written to the Collector, Koraput (opposite party no.2) for eviction of the encroachers from the allotted land, and the opposite party No.2, in turn, had requested the Sub-Collector, Koraput (opposite party No.3) to evict the

encroachers from the allotted land. Thereafter, the Sub-Collector, Koraput asked the Dean and Principal of SLNMCH (opposite party no.6) to furnish the list of encroachers, who had occupied the land unauthorisedly. It is the petitioner's grievance that opposite party No.6 has not supplied the list of encroachers to the Sub-Collector, which is the consequence of blocking the developmental works of SLNMCH. This has caused a serious obstacle in the way of proper utilization of funds pending with the Dean and Principal of SLNMCH (opposite party no.6) for the construction of B.Sc. Nursing College attached to SLNMCH. The petitioner claims that after having sent the aforesaid letters and seen the inaction of opposite party No.6, he addressed a letter to the Commissioner-cum-Secretary, Health and Family Welfare Department, Government of Odisha, for eviction of encroachers, who have unauthorisedly occupied the allotted land in favour of opposite party No.6. He again made a representation to opposite party No.2 requesting therein for eviction of encroachers for utilization of funds and construction of the project for the benefit of common people at large, but all in vain.

3. The sum and substance of the case of the petitioner in the present PIL are that the petitioner is a social activist, who has learnt about a certain portion of public land allotted to SLNMCH has been unauthorisedly encroached upon by certain encroachers because of which the funds available with the SLNMCH for developmental work have not been utilized and despite the representations filed by him before the authorities, no action has been taken.

4. While passing the present order, we have kept in mind the observations made by the Supreme Court in the case of *Municipal Council, Ratlam v. Vardhichand and Ors.*, reported in AIR 1980 S.C. 1622, which have been followed in a Division Bench decision of Patna High Court rendered on 24.11.2015 in Civil Writ Jurisdiction Case No.4309 of 2015 (*Sanjay Jha vs. State of Bihar and others*).

5. In the wake of the facts noted above and keeping in mind the position that umpteen cases seeking similar reliefs are being filed before this Court, we have considered it desirable to deal with, a little elaborately, the scheme under Section 133 of the

Code and other provisions connected thereto. We have also taken into account the provisions under the Odisha Prevention of Land Encroachment Act, 1972 ('OPLE Act' for short).

6. The relevant provisions of Section 133 of the Code are extracted hereinbelow:-

“133. Conditional order for removal of nuisance.-(1) Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, *on receiving the report of a police officer or other information and on taking such evidence ( if any) as he thinks fit, considers-*

- (a) *that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or*
- (b) ... ..
- (c) ... ..
- (d) ... .. सत्यमेव जयते
- (e) ... ..
- (f) ... ..

Such Magistrate may make a *conditional order* requiring the person, causing such obstruction or nuisance, within a time to be fixed in the order,-

- (i) *to remove such obstruction or nuisance; or*
- (ii) ... ..
- (iii) ... ..
- (iv) ... ..
- (v) ... ..
- (vi) ... ..

*Or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter*

*provided, why the order should not be made absolute.*

(2) No order, duly made by a Magistrate under this Section, shall be called in question in any Civil Court.”

7. We find that sub-Section (1) of Section 133 of the Code lays down in clear terms that whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this behalf by the State Government, considers, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel, which is or may be lawfully used by the public, the Magistrate may make a *conditional order* requiring the person, causing such obstruction or nuisance, to remove such obstruction or nuisance within a time to be fixed by the order and, if he (i.e., the person proceeded against) objects to do so, then, to appear before the Magistrate, or any other Magistrate subordinate to him, at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the *conditional order* should not be made *absolute*.

8. It is manifest from the provisions of Section 133 of the Code that before the District Magistrate, Sub-Divisional Officer, or any other Executive Officer, duly empowered in this behalf by the State Government, makes a *final order* requiring removal of obstruction or nuisance from a public place, he is required to call upon the person against whom the order is being passed to either remove the obstruction or nuisance, as the case may be, or show cause against the direction for removal of such obstruction.

9. We may pause here to point out that according to Section 134 of the Code, service of notice of the *conditional order*, passed under the provision of sub-section (1) of Section 133 of the Code, shall be in the manner provided for service of summons or notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

10. What the person, against whom a *conditional order* is made, shall do is embodied in Section 135 of the Code, which lays down that the person against whom a *conditional order* is made shall (a) perform, within the time and in the manner specified in

the *conditional order*, the act as directed thereby; or (b) appear following such *conditional order* and show cause against the same.

11. Thus, Section 135 of the Code obliges the proceedee to either obey the *conditional order*, which has been made by the Magistrate, or appear, per such order, and show cause as to why the *conditional order* be not made *absolute*, that is to say, why the *conditional order* shall not be forced to be complied with. If a proceedee fails to obey the *conditional order* and does not also appear in the proceeding and shows cause against a *conditional order*, he will, in the light of the provisions of Section 136 of the Code, expose himself to prosecution under Section 188 of the Indian Penal Code. In the event of failure of a proceedee to appear and show cause, the Magistrate concerned shall make *absolute* the *conditional order*.

12. What follows from the above discussion is that if a proceedee does not perform the act as warranted by the *conditional order* or fails to appear and show cause against the *conditional order*, he shall be liable to prosecution under Section

188 of the Indian Penal Code and in that case the *conditional order* shall be made *absolute*.

13. Section 137 of the Code, while prescribing the procedure, when existence of public right is denied by a proceegee, states that where a *conditional order* is made under Section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the *conditional order* was made, question him as to whether he (i.e., the proceegee) denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under Section 138, inquire into the matter and, if in such inquiry, the Magistrate finds that there is any *reliable evidence* in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent court; but if the Magistrate finds that there is no such *reliable evidence*, he (Magistrate) shall proceed as laid down in Section 138 of the Code.

14. When Section 133 and Section 137 of the Code are read together, the scheme becomes clear that when a District

Magistrate or a Sub Divisional Magistrate or any other Executive Magistrate, specially empowered in this behalf by the State Government, on the basis of report of a police officer or on the basis of other information and on taking such evidence, if any, as the Magistrate thinks fit, considers that any unlawful obstruction or nuisance should be removed from any public place or any way, river or channel, which is or may be lawfully used by the public, the Magistrate may make a *conditional order* requiring the person, who is alleged to have caused obstruction or nuisance, to remove the obstruction or nuisance or to appear before the Magistrate at the time and place to be fixed by the *conditional order* and show cause as to why the *conditional order* should not be made *absolute*. On receiving the notice of the *conditional order*, the proceedee shall appear before the Magistrate, who shall question the proceedee as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if the proceedee so denies, the Magistrate shall hold an enquiry and, if the Magistrate finds, in the enquiry, that there is any *reliable evidence* in support of such denial, then, he shall stay the further proceedings until the matter is decided by a competent court.

However, if the Magistrate finds that there is no *reliable evidence* in support of the proceedee's denial as regards encroachment or obstruction in respect of any way, river, channel or place, he (Magistrate) shall proceed in the manner as provided in Section 138 of the Code, which provides that the Magistrate shall, in such a case, take evidence in the matter as in a *summons-case* and, if the Magistrate is satisfied that the *conditional order*, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the *conditional order* shall be made absolute without modification or, as the case may be, with such modification as deemed necessary, but if the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

15. Section 141 of the Code makes it clear that when a *conditional order* has been made *absolute*, the Magistrate shall give notice of the same to the proceedee and require him to perform the act directed by the order within a time to be fixed in the notice and also inform the proceedee that in case of disobedience, he (proceedee) shall be liable to be prosecuted under Section 188 of the Indian Penal Code. If such an act is not performed by the proceedee within the time fixed, Section 141 of

the Code empowers the Magistrate to get the work performed and recover the costs of performing the act in the manner, which has been provided in Section 141 of the Code. Sub-section (3) of Section 141 of the Code also makes it crystal clear that no suit shall lie in respect of anything done in good faith under this section.

16. It is worthwhile noting that according to Section 142 of the Code, if a Magistrate, who makes a *conditional order*, considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter and, in default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury, but no suit shall lie in respect of anything done in good faith by a Magistrate under this section.

17. It would be relevant at this juncture to notice the Supreme Court's observation in the case of *Municipal Council, Ratlam v. Vardhichand and Ors.* (supra), wherein the Court held that the provisions, embodied under Section 133 of the Code, must go into action, whenever there is public nuisance inasmuch as the public power of the Magistrate, as conferred upon him under Section 133 of the Code, is a public duty to the members of the public, who are victims of the nuisance, and the Magistrate must, therefore, exercise his power under Section 133, when the jurisdictional facts are present. Paragraph 9 of the said decision reads thus:

*“9. So the guns of Section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. “All power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist.” (1) Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.”*

(Emphasis is added)

18. The Supreme Court in *Municipal Council, Ratlam* (supra), has also made it abundantly clear that a Municipal Commissioner or other Executive Authorities are bound by an order, which may be passed by a Magistrate under Section 133 of

the Code, and in case of any disobedience of such order either by the Municipal Commissioner or any other Executive authorities, the penal consequences, as embodied in Section 188 of the Indian Penal Code, shall follow. The relevant observations made in this regard in Paragraph 13 of the aforementioned judgment read thus:

*“13. .... The Magistrate’s responsibility under S. 133 Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by S. 188, I.P.C. Therefore, the Municipal Commissioner or other executive authority bound by the order under S. 133, Cr.P.C. shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the Section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of S. 133, Cr.P.C. read with the punitive temper of S. 188, I.P.C. makes the prohibitory act a mandatory duty.”*

(Emphasis is supplied)

19. What crystallizes from the above discussion is that under Section 133 of the Code, a Magistrate has the statutory duty to proceed to make a *conditional order*, as contemplated by subsection (i) of Section 133 of the Code, if the report of a police

officer or other information requires the exercise of the powers under sub-Section (i) of Section 133 of the Code. “Other information”, occurring in Section 133 of the Code, would obviously mean information given to the Magistrate by any person, or taken cognizance of by the Magistrate *suo motu*, as regards the existence of public nuisance/unlawful obstruction causing annoyance or injuries to health or physical comfort of a community or other factors as enumerated in Section 133 of the Code.

20. In our opinion, once it is brought to the notice of the Magistrate, or if he, otherwise, comes to know about existence of obstruction/public nuisance, etc., as enumerated in Section 133 of the Code, he (Magistrate) is legally duty bound to swing into action at once inasmuch as his duties, in this regard, are directly concerned with public nuisance/unlawful obstruction, which may be injurious to health or physical comfort of public.

21. The Supreme Court in the case of ***Gurusimran Singh Narula vs. Union of India and Another***, reported in (2021) 1 SCC 152 has held as follows:

*“40. When a statute confers power on authority and that power is to be exercised for the benefit of the people in general, the power is coupled with the duty. This Court in Commr. of Police v. Gordhandas Bhanji, AIR 1952 SC 16, speaking through Vivian Bose, J., had laid down the oft quoted proposition in para 39:*

*“39. The discretion vested in the Commissioner of Police under Rule 250 has been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor can it be evaded; performance of it can be compelled under Section 45.”*

*41. This Court again in L. Hirday Narain v. CIT, (1970) 2 SCC 355, reiterated the same principle in the following words:*

*“14....if a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen.”*

*42. V.R. Krishna Iyer, J. had elaborately dealt the above principle in Municipal Council, Ratlam v. Vardichan, (1980) 4 SCC 162. The above case was a case where Municipal Council, Ratlam was entrusted with certain duties to the public which was sought to be*

*enforced by the residents through Section 133 Cr.P.C. where Magistrate issued certain directions to the Municipal Corporation which came to be challenged in this Court. Krishna Iyer, J. quoting Benjamin Disraeli, in para 9 of the judgment stated:*

*“9.....‘All power is a trust—that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist.’ Vivian Grey, Bk. VI Ch. 7, Benjamin Disraeli Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.”*

*43. With regard to the judicial process, important observations were made by this Court in the above Vardichan case (1980) 4 SCC 162 that affirmative action taken in the judicial process is to make remedy effective failing which the right becomes sterile. In para 16 of the judgment (Vardichan case (1980) 4 SCC 162 (1980) 4 SCC 162), following observations have been made:*

*“16...The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile.”*

*44. Krishna Iyer, J. also laid down that improvement of public health is the paramount principle of governance. In para 24, the following has been observed: (Vardichan case (1980) 4 SCC 162)*

*“24. ...The State will realise that Article 47 makes it a paramount principle of governance that steps are taken 'for the improvement of public health as amongst its primary duties'.”*

*(emphasis in original)*

22. It is also to be noted that the OPLE Act has been enacted to address the issues pertaining to unauthorized occupation of lands, which are the property of the Government. The property of the Government is defined under Section 2 of the OPLE Act, which reads as under:

*“2. **Property of Government** - Subject to the provisions of any law for the time being in force, the following classes of lands are hereby declared to be the property to Government for the purposes of this Act, namely:*

- (a) all public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nalas, lakes and tanks and all canals and water sources and all standing and flowing water and all lands including temple sites, house sites or backyards wherever situated, save in so far as the same are the property-*
  - (i) of any Ruler of an Indian State merged with the State of Orissa, Zamindar, Proprietor, Sub-Proprietor, Landlord, Jagirdar, Khoropshdar or any other tenure holder or any person claiming through or holding under any of them; or*
  - (ii) of any person paying shist, kattubadi jodi, porupu or quit rent to any of the aforesaid person; or*
  - (iii) of any person holding under raiyatwari tenure or in any way subject to the payment of cess or any other dues direct to Government; or*

- (iv) of any other registered holder of land having proprietary right; or
- (v) of any other person holding land under grant from Government otherwise than by way of licence;
- (b) land belonging to or vesting in any local authority which is used or intended to be used for any public purpose such as a road, canal, embankment, tank or ghat or for the repair or maintenance of such road, canal, embankment, tank or ghat;
- (c) land acquired under the provisions of the Land Acquisition Act, 1894 or under similar Acts for the purposes of any local authority, company owned or controlled by the State Government, Statutory Body or Corporation while such land remains as the property of the local authority, company owned or controlled by the State Government, Statutory Body or Corporation;
- (d) immovable property claimed by the Rulers of merged territories but conceded in their favour; and
- (e) land belonging to an establishment or undertaking owned, controlled or managed by-
- (i) any State Government or a Department of such Government ;
- (ii) any company in which not less than fifty-one per cent of the share capital is held by one or more State Government; or
- (iii) a corporation established by law which is owned, controlled or managed by any State Government.”

23. Section 7 of the OPLE Act has made provision for summary eviction of a person unauthorisedly occupying a

Government land. The OPLE Act is a self-contained Code and also provides that a person unauthorisedly occupying any land, which is the property of the Government, shall be liable to pay levy by way of assessment to be carried out by a Tahasildar.

24. There being clear statutory provisions under the Code and OPLE Act, we are of the view that once any unauthorized occupation of the property of the Government is brought to the notice of the Magistrate or if he otherwise comes to know about the existence of obstruction/public nuisance as enumerated under Section 133 of the Code, he (Magistrate or Tahasildar) is legally duty bound to swing into action.

25. Accordingly, we deem it proper to issue general directions to be followed by all concerned in the following terms:

- (i) Once a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this regard by the State Government, receives an information, on the basis of a report of a police officer or otherwise, that condition precedent for exercise of power under sub-Section (i) of Section 133 of the Code are present, the Magistrate shall at once make a *conditional order* for removal of obstruction or nuisance

from public place and it will be the bounden duty of the person—who may be a natural person or a juristic person, such as, a Municipal Body or a Gram Panchayat—to either comply with the order or appear in the proceeding and, upon appearance of the proceedee, the Magistrate shall be duty bound to ask the proceedee if he (the proceedee) wishes to deny the existence of facts leading to the *conditional order* and if the proceedee denies existence of any unlawful obstruction or nuisance on any public place or from any way, river or channel, which is or may be lawfully used by the public, and gives *reliable evidence* in support of such denial, the Magistrate shall stay further proceedings until a competent court decides; but if the proceedee fails to give any *reliable evidence* in respect of denial of the existence of the facts leading to making of *conditional order*, the Magistrate shall order the proceedee to comply with the *conditional order* and, if the *conditional order* is not complied with and obeyed, penal consequences, as embodied in Section 188 of the Penal Code, shall follow.

(ii) It will be the duty of the Chief Executive Officer or any other Officer, specially authorized by him/Head of the local body, by whatever name he may be called, to inform or cause to be informed the District Magistrate, Sub-Divisional Magistrate or any other Magistrate, specially empowered in this behalf by the State Government, as regards existence of obstruction/nuisance

and other factors, enumerated under Section 133 (1) of the Code. The Officer-in-charge of the concerned police station shall also have similar duty to inform the Magistrate concerned under Section 133 of the Code. In the event, any public nuisance or unlawful obstruction of the nature, as provided under Section 133 (1) of the Code, is found to be existing without any information to the concerned Magistrate, the Officer-in-charge of the concerned police station and the Chief Executive Officer or any other Officer, authorized on his behalf of the local body, shall be jointly responsible for inaction and will be liable for disciplinary action accordingly.

(iii) The Magistrate, upon receiving information, in the manner as aforesaid, shall proceed at once in accordance with Section 133 (1) of the Code and pass appropriate order as required of him under the said provision. Any inaction or dereliction of duty by the Magistrate in this regard shall make him liable for disciplinary action.

(iv) A *conditional order*, if not objected to, or an order, which has been made *absolute*, shall have to be obeyed by all concerned and any disobedience of the order shall attract penal provisions of Section 188 of the Indian Penal Code.

(v) The Tahasildar, within the meaning of Section 3(c) of the OPLE Act, shall also be duty-bound to act in accordance with the provisions of the OPLE Act once

any case of unauthorized occupation of Government property is brought to his notice.

(vi) This order must be followed with utmost scruples and without any demur. Any person, who is found to be not complying with the present order, shall be liable for disciplinary/criminal action apart from contempt of this Court.

26. There is no gainsaying that this Court, in exceptional circumstances, may pass appropriate orders in a proceeding in the nature of PIL if so warranted. We do not find any exceptional circumstance in the present case to exercise our extraordinary writ jurisdiction when the statutory provisions provide jurisdiction and procedure to deal with the situation as in the present case.

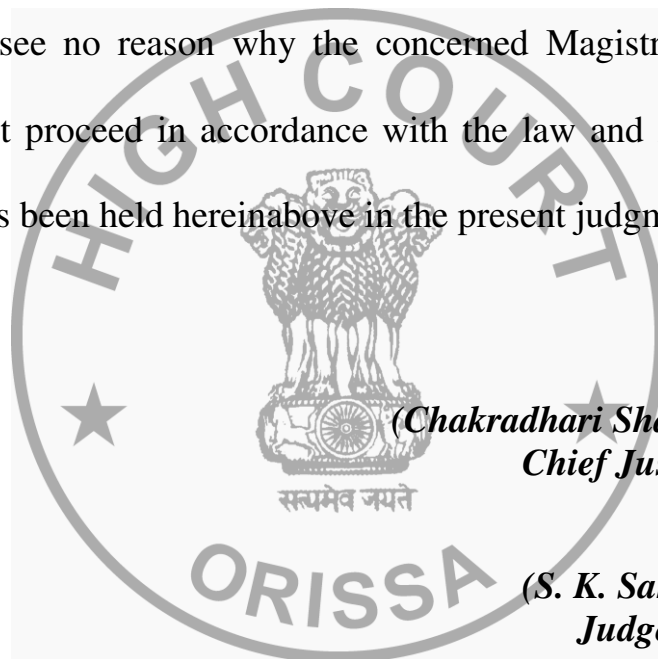
27. Before parting with the present order, we are tempted to quote the opinion of Justice V. Krishna Aiyer, J., in the case of ***Municipal Council, Ratlam*** (supra) expressed in his own inimitable style:-

***“All power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist.” (1) Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.”***

(Emphasis added)

These golden words need to be taken as the guiding principle for the authorities vested with statutory powers which cast corresponding duties.

28. In the result, we dispose of this writ petition with a liberty to the petitioner, who is an advocate by profession, to invoke the provisions embodied under the Code or the OPLE Act. If he does so, we see no reason why the concerned Magistrate/Tahasildar shall not proceed in accordance with the law and in the light of what has been held hereinabove in the present judgment.



**(Chakradhari Sharan Singh)**  
**Chief Justice**

**(S. K. Sahoo)**  
**Judge**

*M. Panda*