

IN THE HIGH COURT OF ORISSA AT CUTTACK

CONTC NO.556 OF 2014

Sri Malay Mishra & another **Petitioners**

Mr. Dayanidhi Mishra, Advocate

-versus-

Sri Dhiren Ku. Pattnaik & **Opp. Parties**
another

Mr. L. Samantaray, Addl. Govt. Advocate.

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO

ORDER
06.01.2022

Order No.

- 13.** **1.** This matter is taken up through hybrid mode.
- 2.** The petitioners have filed the contempt petition alleging the non compliance of the order dated 08.08.2013 passed in W.P.(C) No.7658 of 2013, subsequently modified by the order dated 19.08.2013.
- 3.** The writ petition, i.e., W.P.(C) No.7658 of 2013 was disposed of by the order dated 08.08.2013 as quoted herein :

“4. Learned counsel appearing for the petitioners submits that in the meanwhile Civil Suit No.305 of 2008 has been disposed of and the opposite parties may be directed to implement the order dated 12.11.2010 passed by the Revenue Divisional Commissioner, Central Division, Cuttack in O.G.L.S. Appeal No.3 of 2009 within a stipulated period.

5. *In view of the limited prayer of the petitioners, without expressing any opinion with regard to merits of the case, this Court disposes of this Writ Petition with a direction to opposite party nos.2 and 3 to comply the order dated 12.11.2010 passed by the Revenue Divisional Commissioner, Central Division, Cuttack in O.G.L.S. Appeal No.3 of 2009 in accordance with law, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order.”*

Subsequently, certain typographical errors were corrected in the order dated 08.08.2013 by order dated 19.08.2013, which is quoted herein :

“... .. In view of the above submission, the expression “O.G.L.S. Appeal No.3 of 2009” occurring in 5th & 6th lines in paragraphs 4 & 5 of the order dated 08.08.2013 be corrected and read as “O.G.L.S. Appeal No.2 of 2009”. The rest part of the order shall remain unaltered.”

4. Show cause affidavit has been filed by opposite party no.2-Tahasildar, Puri on 11.05.2017. Paragraphs-6 and 7 of the said affidavit indicating compliance of this Court's orders dated 08.08.2013 and 19.08.2013 is quoted herein :

6. *That it is pertinent to mention her that, one Malaya Mishra, Dolamandap Sahi of Puri filed an application before the Collector, Puri dated 28.01.2009 for renewal of the lease pursuant to the observation of the Hon'ble High Court in W.P.(C) No.18009 of 2008. The Hon'ble Court in the said order had directed the Collector and District Magistrate, Puri to look into the grievance of the petitioner and take necessary steps in accordance with the rules. The Collector, Puri perused all the documents filed by the party and keeping in view the provisions contained in the O.G.L.S Act & Rules and the orders passed by the Civil Judge (Senior Division), Puri passed orders to keep the matter in abeyance till disposal of the Civil*

Suit. Being aggrieved by the said order of the Collector dated 04.09.2009, the party filed appeal before the RDC (CD), Cuttack. The RDC(CD), Cuttack vide his order dated 19.10.2012 arising out of OGLS appeal No.2/2009 has observed as follows :-

“On this, I sought for opinion of the Government Pleader, Cuttack. He opines that Civil Court is competent Court to adjudicate any matter, Civil in nature as per provisions of Section 9 of the CPC when the suit is subjudice before the Competent Court of law, i.e., Civil Court, this Court (Appellate Court) should not interfere into the same, in case State is party to the suit.”

7. That it is humbly submitted that the Puri Municipality had filed a Civil Suit bearing No.305/2005 before Civil Judge (SD) Puri and the said Court had also rejected the case in its order dated 20.07.2013. Again being aggrieved by the said order dated 20.07.2013 of the Civil Judge (Senior Division), Puri the Puri Municipality filed one appeal bearing RFA No.129/2013 before the learned District Judge, Puri which is sub-judiced.”

The Collector, Puri-opposite party no.1, has also filed a show cause affidavit taking a similar stand as that of opposite party no.2.

5. Mr. Mishra, learned counsel for the petitioners was heard at length. It is submitted by Mr.Mishra that the petitioners in the present contempt petition was not a party in the Civil Suit, i.e., C.S. No.305 of 2005 before the Civil Judge (Senior Division), Puri, which was dismissed vide order dated 20.07.2013 and is also not a party in the appeal pending before the District Judge, Puri in RFA No.129 of 2013.

6. In our considered opinion, even if the contentions raised by Mr. Mishra could be correct to the extent that the petitioners are not party in the suit or RFA, the said fact does not obliterate the effect of the determination by the Civil Court.

7. The petitioners have also filed a reply dated 25.05.2012 in response to the show cause affidavit of opposite party no.2 which does not dispute the filing of the civil suit, its disposal and pendency of the appeal. The petitioners rely on Section 7-B of the Odisha Government Land Settlement Act,1962(in short, 'the OGLS Act') which is reproduced herein :

“7-B. Bar of jurisdiction of civil Courts-No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any officer or authority is empowered by or under this Act to determine and no injunction shall be granted by any Civil Court in respect of any action taken or to be taken in exercise of any power conferred by or under this Act.”

It is contended by Mr. Mishra, learned counsel for the petitioners that in view of the direction of this Court, read with Section 7-B of the OGLS Act,1962, the determination by the Civil Court or the pendency of the appeal is barred by Section 7-B of the OGLS Act.

8. From the pleadings of the parties, it is apparent that while proceeding in the writ petition, this Court has observed that the Civil Suit No.305 of 2005 was disposed of and in that context, a direction was issued to implement the order dated 12.11.2010 passed in OGLS Appeal No.2 of 2009. By order dated 12.11.2010, the petitioner did not

disclose before this Court that the petitioner had approached the Revenue Divisional Commissioner, Central Division, Cuttack by filing an application in O.G.L.S. Appeal No.2 of 2009 and the RDC had passed the order dated 19.10.2012 in the said Misc. Case, which is quoted herein:

“.... ... On this, I sought for opinion of the Government Pleader, Cuttack. He opines that Civil Court is competent court to adjudicate any matter, Civil in nature as per provisions of Section 9 of the C.P.C. when the suit is subjudice before the competent court of law, i.e., Civil Court, this court (appellate court) should not interfere into the same, in case State is a party to the suit.

In view of the opinion of the Government Pleader, I do not want to proceed further. Thereby, the case of the petitioners in this Misc. Case is dropped.”

Further, the petitioners had not apprised this Court in the writ petition that though Civil Suit No.305 of 2005 was disposed of, RFA No.129 of 2013 was filed challenging the said order.

9. Having gone through Section 7-B of the OGLS Act, the contention raised by learned counsel for the petitioner, Mr. Mishra has to be rejected. Section 7-B, cannot be interpreted to the extent that the determination by a civil court of jurisdiction, shall be effaced, i.e., the order dated 20.07.2013 (in C.S. No.305 of 2005 before the learned Civil Judge (Senior Division)), Puri would have no bearing, once a proceeding under OGLS Act is initiated, i.e., OGLS Appeal No.2 of 2009 before the Revenue Divisional Commissioner, Central Division, Cuttack.

10. The other important aspect of the matter is that while exercising the jurisdiction under the Contempt of Courts Act, 1971, this Court has to consider whether there has been deliberate violation of the direction/or any of its orders or not, by the alleged contemnors. In the present case, it cannot be held that the order of this Court dated 08.08.2013 passed in W.P.(C) No.7658 of 2013, has been violated by the opposite parties.

11. Therefore, in the facts and circumstances of the case, the contempt petition is dropped being devoid of merits.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

January 6th 2022
Cuttack

Gs/Radha

