

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.2991 of 2022

*An application under Articles 226 & 227 of
the Constitution of India, 1950*

Dilip Kumar Parida

: Petitioner

-Versus-

State of Odisha & Ors.

: Opposite Parties

For Petitioner

: Mr. L.K. Maharana,
Advocate

For Opposite Parties

: Mr. R.P. Mahapatra,
Addl. Govt. Adv.

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 09.03.2022

1. This writ petition involves the following prayer:

“It is therefore, prayed that your Lordships may graciously be pleased to admit the writ petition, Rule Nisi calling upon the Opposite Party to show cause as to why;

A. the order dated 06/01/2022 passed by the Opp. Party No.3 vide Annexure-11 shall not be quashed / set aside; and/or

B. the Opp. Party authorities shall not be directed to allow **twenty days (20)** time to the Petitioner to catch fish from Sanasantara pond, under Srirampur Gram Panchayat for which, he has invested money during his tenure of lease i.e. from 01/07/2017 to 30/06/2020;

And if the Opposite Party failed to show cause or show insufficient cause, this Hon'ble Court be pleased to make the Rule absolute,

A. the order dated 06/01/2022 passed by the Opp. Party No.3 vide Annexure – 11 be quashed / set aside; and/or

B. the Opp. Party authorities be directed to allow **twenty days (20)** time to the Petitioner to catch fish from Sanasantara pond, under Srirampur Gram Panchayat for which, he has invested money during his tenure of lease i.e. from 01/07/2017 to 30/06/2020;”

2. In entertaining the writ petition by way of interim order this Court passed the following order :

ORDER

01.02.2022

1. Issue notice as above. Accept one set of process fee.
2. As an interim measure, it is directed that if there is no auction as on date, auction, if any, may be proceed but there shall be no handing over the Tank involved subject to however petitioner depositing a sum of Rs.25,000/- (Rupees twenty five thousand) before this Court within a period of two weeks hence.”

3. This matter is taken up for final hearing. In course of hearing from the submission of the parties, this Court finds, the Petitioner has already exhausted the first round of litigation involving a claim for extension of lease period on the premises of pond under lease with the Petitioner has

been infected by applying poison by some miscreants. Considering the same, this Court in the first round of litigation vide W.P. (C) No.32507 of 2021 at page 62 of the brief disposed of the same ultimately providing opportunity of redressal of the grievance, granted liberty to the Petitioner to file a petition before the Sub-Collector within two weeks from the date of order by way of registered post. It was also further observed therein that in the event of filing of such petition along with certified copy of the order of the Court, the Sub-Collector was to take a decision on the same in accordance with law within four weeks from the date of receipt of such petition. It is, depending on such order at Annexure-9 it appears, the Petitioner made an application vide Annexure-10 on 9.11.2021 and on submission of such application following the direction of this Court the Sub-Collector vide Annexure-11 disposed of the G.P. Misc. Case No.3 of 2021 thereby declining the relief claimed involving extension of lease period on the premises that the ground seeking extension of lease period is yet to be ascertained and confirmed by the competent authority. This writ petition involves a challenge to this order at Annexure-1 along with other prayers as indicated hereinabove.

4. In course of hearing Mr. Maharana, learned counsel for the Petitioner brings to the notice of this Court a complaint of the Petitioner involving poisoning of the pond and thereby requesting for appropriate relief also involving a request for passing appropriate order on realization of the mischief played against the Petitioner. Drawing attention of this Court to the document at Annexure-5 and the communication of copy of the same to the respective parties as appearing at page 31 of the brief, Mr. Maharana, learned counsel for the Petitioner brought to the notice of this Court that the complaint involved herein has been forwarded to all

concerned parties including the concerned Collector. Taking this Court to the document at Annexure-6 (series) Mr. Maharana, learned counsel for the Petitioner again submitted this Court that on receipt of complaint of the Petitioner by the Office of the Hon'ble Governor, the Office of the Hon'ble Governor appears to have already directed the concerned Collector to consider the grievance of the Petitioner and passing appropriate order. It is here alleged that though the Petitioner's fate hinges on the ultimate outcome on his grievance vide Annexure-5, unfortunately the Collector-cum-District Magistrate is not taking any decision on the complaint of the Petitioner even in spite of forwarding of the case of the Petitioner by the Office of the Hon'ble Governor.

5. Mr. Mahapatra, learned Additional Government Advocate did not dispute that the fate of the Petitioner in the given circumstance ultimately hinges on the outcome on the allegation involving Annexure-5. Mr. Mahapatra, learned Additional Government Advocate therefore submitted that basing on the order of the Sub-Collector even assuming that the Sub-Collector has already disposed of the claim of the Petitioner but for the nature of disposal in absence of a finding in favour of the Petitioner on the allegation being raised, the fate of the Petitioner is still open and ultimately a final adjudication is to be made on the claim of the Petitioner, but however dependent on the observation of the Collector. Mr. Mahapatra, learned Additional Government Advocate brings to the notice of this Court that he has not received any information as to whether the suit tank/pond has been leased out in the meantime time or not and thus requests this Court to consider this aspect while disposing of the writ petition.

Mr. Maharana, learned counsel for the Petitioner here submits that there is no leasing out of the pond as of now. However looking to the growth in the fish existing in the pond, Mr. Maharana, learned counsel for the Petitioner also made a prayer for permitting the Petitioner to rear the fish existing as on date involving the disputed tank/pond. It is also submitted that right of the Petitioner has been protected by the interim order dated 1.02.2022 and pursuant to which the Petitioner has already made a deposit of Rs.25,000/- pending with the Registry of this Court.

6. Considering the rival contentions of the parties this Court finds, in the first round of litigation a writ petition was brought some time in October, 2021 and got disposed of on 3.11.2021. Coming back to the complaint of the Petitioner at Annexure-5, this Court finds, this complaint was made by the Petitioner with copy to all concerned on 12.05.2021. Entire reading of the order in the previous round of litigation this Court nowhere finds any discussion regarding pendency of the representation with the Collector at the instance of the Petitioner at the relevant point of time; may be the order at page 62 is an outcome of not bringing the aspect of pendency of the complaint of the competent authority. Be that as it may, for the grievance being recommended for consideration of the Collector by the Office of the Hon'ble Governor pending consideration at the same time, the grievance of the Petitioner following the direction of this Court in the disposed of writ petition was taken up in the proceeding vide Annexure-11, but by some other authority. Reading through the order at Annexure-11 this Court finds, there is no reference of any complaint pending before the Collector; may be this aspect has not been brought to the notice of the High Court in disposal of the 1st round of litigation. This Court is of the opinion that had the aspect of pendency of the grievance of the Petitioner been brought to the notice of the Sub-

Collector, it would have been possible on the part of the Sub-Collector to keep such application pending and to decide the grievance therein depending on the decision of the Collector involving Annexure-5. However for non-disclosure of such development, it appears, the Sub-Collector appears to have disposed of the claim of the Petitioner with rejection order with a finding that there is no possibility in accepting the request of the Petitioner without ascertainment of complaint of the Petitioner by the competent authority. Keeping in view the nature of order passed by the Sub-Collector, this Court here observes, the Petitioner's claim for appropriate relief still hinges on the ultimate decision to be taken by the Collector involving Annexure-5. This Court here takes serious note on the complaint through the writ petition that in spite of repeated direction from the Office of the Hon'ble Governor, the Collector is not deciding the representation and simply sitting over the matter. This Court hopes and expects, upon receipt of a copy of this order, the Collector shall do well in taking up the application of the Petitioner at Annexure-5 and thereby disposing of the same by passing a lawful order thereon after entering into inquiry also involving the Petitioner and the persons in the locality on the issue of poisoning of the pond, by completing the entire exercise within a period of one month from the date of receipt of an authenticated copy of this order by the Petitioner. Since the Sub-Collector declined to extend the period of lease in absence of any finding on the complaint of the Petitioner, the Sub-Collector is directed to take a fresh decision on the representation of the Petitioner, but however dependent on the observation of the Collector, also by completing such exercise, if necessary, within a further period of fifteen days after disposal of the issue by the Collector. Further considering that there has been some growth in the fish, this Court directs, the fish available in the disputed

tank/pond may be reared and the fish so reared shall be auctioned. The amount to be earned in the process shall be kept in deposit to be utilized depending on the final outcome by the Collector and also the Sub-Collector. Since the Petitioner has made deposit of Rs.25,000/- the same may be returned to the Petitioner with interest, if any, thereon upon submission of proper application.

7. The writ petition stands disposed of.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 09th day of March, 2022//
Ayaskanta Jena,
Senior Stenographer

