

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5073 of 2015

***Sikhar Ch.Naik @ Shikhar Chandra
Naik and others***

Petitioners

Mr.P.K.Mishra, Advocate

-versus-

State of Odisha & others

Opp.Parties

Mr. I. Mohanty, ASC

**CORAM:
JUSTICE CHITTARANJAN DASH**

**ORDER
26.08.2022**

Order No.

- 08.
1. In spite of valid service of notice and appearance through learned counsel, none is present for Opposite Parties 2 to 5 today.
 2. Learned counsel for the Petitioners is present and submits that Hal Plot No.2593 under holding No.308 pertaining to village Mahulpal is a private and not a "PublicRasta" which is the subject matter of the issue wherein the alleged obstruction said to have been raised and directed for removal. He too referred to the ROR showing the kissam of land its nomenclature.
 3. The impugned order dated 31st July, 2015 passed in CrI. Misc. Case No.36 of 2015 by the learned S.D.M., Kamakhyanagar reveals that the order of removal has been passed with assuming the road in question under obstruction to be a private road allegedly on the admission of the O.P. in the proceeding U/s.133 Cr.P.C. Prudent demand that before passing of any order as to the removal of the obstruction in a public road, it is incumbent upon

the court to be satisfied that the road in question is a “public road or Place”. A subjective satisfaction is also imperative that the same is in use by the Public. Absence of any such conclusion makes the whole exercise of the authority us.

4. In the facts and circumstances, the impugned order dated 31st July, 2015 suffers from illegality and deserves to be set aside. However, the authority is not precluded from examining the above aspect strictly in adherence to the mandate of relevant law and take appropriate action, if so required in the interest of public to avoid nuisance.

5. The CRLMC is disposed of accordingly.

(Chittaranjan Dash)
Judge

B.C.Mohanty

