

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 4160 OF 2019

Laxmidhar Khatua

.... ***Petitioners***

Mr. H.K. Mohanta, Advocate

-versus-

Tahasildar, Nimapara

.... ***Opp. Parties***

Mr. Arun Kumar Mishra,

Additional Government Advocate

Mr. Manoranjan Mishra, Advocate

(for Opposite Party Nos. 2 to 5)

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
23.02.2022

- 7.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks to assail the initiation of Demarcation Case No. 30 of 2019 by the Tahasildar, Nimapara.
 3. It is submitted by Mr. Mohanta, learned counsel for the Petitioner submits that initiation of Demarcation Case No. 30 of 2019 by the Tahasildar, Nimapara is without jurisdiction as RFA No. 159 of 2013 in respect of self-same property is pending before learned District Judge, Puri. Thus, the Tahasildar, Nimapara is incompetent to initiate a proceeding in respect of Hal Plot No. 2487 to an extent of Ac. 0.02 dec. (Hal Khata No. 888) and Hal Plot No. 2488 to an extent of Ac. 0.06 dec. under Hal Khata No. 888.
 4. He, therefore, submits that the demarcation proceeding is not maintainable and is liable to be quashed.
 5. Mr. Mishra, learned counsel for the Opposite Party Nos. 2 to 5 submits that the said opposite parties had earlier filed Demarcation Case No. 4 of 2014 before the Tahasildar, Nimapara. Assailing the

order of demarcation passed by the Tahasildar, Nimapara, the Petitioner had preferred Misc. Case No. 8 of 2014 before the Sub-Collector, Puri and raised the issue of maintainability of the demarcation proceeding in view of pendency of the aforesaid first appeal before learned District Judge, Puri.

6. Considering the rival contentions of the parties, the Sub-Collector, Puri, vide order dated 29th March, 2018 (under Annexure D/2 to the counter affidavit), refused to interfere with the order of demarcation. The said order has not been challenged and attained its finality. Thus, the Petitioner has not come to the Court in clean hand. As such this writ petition is not maintainable.

7. Taking into consideration, the rival contentions of the parties, this Court is of the considered opinion that the order referred to by Mr. Mishra, learned counsel for the Opposite Party Nos. 2 to 5 was in respect of Demarcation Case No. 4 of 2014. But the Demarcation Case which is under challenge in this writ petition is registered as Demarcation Case No. 30 of 2019. Thus, the order under Annexure D/2 has no application to the case at hand.

8. However, it appears that the Petitioner has not filed any objection raising the maintainability of instant demarcation case before the Tahasildar, Nimapara. Hence, they should file the objection and raise the issue of maintainability before the Tahasildar, Nimapara which can be considered in accordance with law.

9. In view of the discussion made above, this writ petition is disposed of with a direction that in the event, the Petitioner files an objection to the Demarcation Case No. 30 of 2019 within a period of three weeks hence, along with certified copy of this order, the Tahasildar, Nimapara-Opposite Party No. 1 shall consider the same in

accordance with law and pass a reasoned order thereof before proceeding further with the Demarcation Case No. 30 of 2019.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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