

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.7191 Of 2022
(Through hybrid mode)**

Dhamra Port Company Ltd., BBSR Petitioner

Mr. Pitambar Acharya, Senior Advocate

-versus-

***Collector and District Magistrate, Opposite Parties
Bhadrak and others***

Mr. A.K. Sharma, AGA

Mr. P.K. Das, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
18.05.2022**

**Order
No.**

2. 1. Mr. Acharya, learned senior advocate appears on behalf of petitioner and had on 12th April, 2022 moved the petition. He had submitted, impugned is order dated 24th December, 2021, whereby there was direction for payment of compensation, allegedly based on report dated 15th July, 2021 of Tahasildar, Bhadrak. Inter alia, following from the report is reproduced below.

“During construction of Railway Corridor there was heavy rain and in order to save the railway corridor the port authority had cut down the dike of the pond for free passage of rain water. The port authority constructing railway corridor had to compensate the loss after proper assessment of the damage. But Sri Das stated that till date the authority has not given

compensation to him.”

2. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and submits, he has instruction that, when pursuant to order dated 9th June, 2021 made by coordinate Bench in W.P.(C) no.8365 of 2021, the Collector and District Magistrate, Bhadrak took up the matter, petitioner was not represented. Ample opportunity was granted to petitioner but it stayed away from the hearing. The order was made and petitioner had not complied with the same in paying the compensation of Rs.50,000/- to opposite party no.4.

3. Mr. Das, learned advocate appears on behalf of opposite party no.4 and submits, his client was doing pisciculture in his pond and had made a dyke to prevent rain water being drained into it. Petitioner made a breach in the dyke. It did so to save its under construction railway corridor. As a result rain water drained into his pond and destroyed the fish. Mr. Acharya submits in reply, no opportunity was given to his client to represent itself. Impugned order should be set aside on that ground alone.

4. A paragraph extracted from impugned order is reproduced below.

“In this connection perused the letter of Associate Manager (land) DPCL (Adani) wherein it has been

stated that the land of petitioner was not acquired, hence the petitioner is not eligible for compensation under Land Acquisition Act. Further, it has been stated that the DPCL has never agreed to the suggestion for payment of any ex-gratia payment and Sri Das has to take necessary precaution like construction of embankment. It is also stated that the company is no way responsible for construction of embankment of his tank as DPCL has properly made necessary channel for passing of drain water and accordingly company is not responsible for damage of pisciculture of the petitioner.”

On query from Court Mr. Acharya submits, Associate Manager (land) DPCL (Adani) is his client's officer. He draws attention to annexure-4 being letter dated 7th July, 2021 written by said officer to Special Land Acquisition Officer, Dhamara Port Project, Bhadrak.

5. Grievance of petitioner is that impugned order was made without giving petitioner opportunity to present its case. The inspection made by the Revenue Inspector was without notice to his client. In the circumstances, direction for payment for compensation was clearly made in violation of principles of natural justice. There should be interference.

6. Relied upon letter dated 7th July, 2021 written by petitioner's officer was with reference to Special Land Acquisition Officer's letter

dated 2nd July, 2021 on subject quoted below.

“W.P.(C) No.8365 of 2021 filed by Anam Charan Das Vrs. State of Odisha and others (Misc. Case No.50/2021)”

Paragraph-3 in said letter is reproduced below.

“3) That, the DPCL has never agreed or proposed for payment of any ex-gratia payment. Sri Anam Charan Das has to take necessary precaution like construction of embankment and the company is no way responsible for construction of embankment of his tank. The DPCL has properly made the necessary channel for passing of drain water. Excess rain or excessive rain water is not within the clutch of our company hence DPCL cannot be held responsible for the same. It is reiterated that the company cannot be held responsible for damage of pisciculture due to heavy rain and thus our company cannot be directed to pay any ex-gratia compensation to Sri Anam Charan Das.”

Contents of above paragraph were reproduced and relied upon in impugned order, as earlier quoted above. Hence, contention that impugned order was made without notice to petitioner cannot be accepted. Petitioner's contention was made in writing and dealt with by impugned order.

7. On merits of claim made by opposite party no.4, for compensation and petitioner's dispute regarding responsibility as

could be attached to it, following facts appear from perusal of said letter dated 7th July, 2021, of petitioner and impugned order. The pond stood on land of opposite party no.4, as not acquired. It appears, there was a dyke to prevent drainage of rain water into the pond. It also appears that petitioner's contention by said letter dated 7th July, 2021 was opposite party no.4 had to take necessary precaution like construction of embankment and the company is in no way responsible for construction of embankment of his tank. Petitioner went on to say it properly made necessary channel for passing of drain water.

8. Petitioner cannot deny having been on notice of claim of opposite party no.4 alleging breach in the dyke. By paragraph-8 petitioner introduced said letter dated 7th July, 2021. By paragraph-12 petitioner introduced impugned order. Petitioner did not say how or where it had properly made necessary channel for passing of drain water, neither in paragraph-6 of the petition nor in said letter dated 7th July, 2021. As aforesaid, petitioner's contention was reproduced in impugned order and dealt with thereby. Court has no reason to disbelieve the inquiry report of the Revenue Inspector saying that to save the railway corridor, petitioner caused breach of the embankment/dyke on pond of opposite party no.4. What is also important is, petitioner's contention being that opposite party no.4 had pond in land not acquired leads to conclusion that the breach was

made by petitioner without permission or informing opposite party no.4 in making drainage of rain water into his pond possible so as to not destroy construction of railway corridor.

9. There is no merit in the writ petition. The interim order is vacated and the writ petition, dismissed.

(Arindam Sinha)
Judge

Sks

