

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 310 of 2022

Sudarshan @ Batua Behera ***Petitioner***
Mr. Sudhansu Sekhar Jena, Advocate

-versus-

Secretary, G.A. & P.G. Department, ***Opp. Parties***
Bhubaneswar, Khordha and another
Mr. Suvashis Pattanaik,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
10.11.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The CMP is restored to its original number pursuant to order of the even date passed in CMAPL No.350 of 2022.
3. As requested by Mr. Jena, learned counsel for the Petitioner, the CMP is taken up for disposal on merit.
4. Petitioner in this CMP seeks to assail the order dated 28th March, 2022 (Annexure-1) passed by learned Civil Judge (Senior Division), Bhubaneswar in IA No.1 of 2022 (arising out of CS No.578 of 2022), whereby an application filed by the Petitioner under Order XXXIX Rule 3 CPC was rejected.
5. Mr. Jena, learned counsel for the Petitioner submits that taking advantage of the situation that the land in question is recorded in the name of General Administration and Public Grievance Department, Opposite Parties are constantly trying to evict the Petitioner from the land in question and recently they are successful in demolishing some part of the boundary of the house of the Petitioner. Provision of Order XXXIX Rule 3 CPC is to protect the interest of the Plaintiff keeping in mind the

urgency and to avoid a situation where the party seeking injunction cannot wait adjudication of application under Order XXXIX Rules 1 and 2 CPC after service of notice to Opposite Parties. Learned trial Court without appreciating the same, rejected the petition without assigning any reason thereto. Hence, this CMP has been filed.

6. Upon hearing learned counsel for the Petitioner and on perusal of record, it appears that Defendants/Opposite Parties are none other than the State functionaries and have been represented by learned Government Pleaders/Additional Government Pleaders attached to the said Court. Hence, notice of the said petition can be served on learned GP/AGP to avoid delay in disposal of IA No.1 of 2022 filed under Order XXXIX Rules 1 and 2 CPC.

7. In view of the above, the CMP is disposed of with a direction that in the event, the Petitioner serves a copy of the IA along with plaint on learned Government Pleader/Additional Government Pleader attached to learned Civil Judge (Junior Division), Bhubaneswar he shall accept the same and defend the case of the Opposite Parties in IA No.1 of 2022. After service of notice on the Opposite Parties through their counsel, learned trial Court shall proceed with the matter and see that IA No.1 of 2022 is disposed of at an early date in accordance with law. Petitioner is also at liberty to move the learned trial Court to fix an early date of hearing of the IA after service of notice on the Defendants/Opposite Parties.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge