

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.452 OF 2022

Bikal Barik and others

Petitioners

Mr. Ashok Kumar Dash, Advocate

-versus-

State of Odisha and others

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

Mr. Suvashish Pattnaik,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
08.07.2022

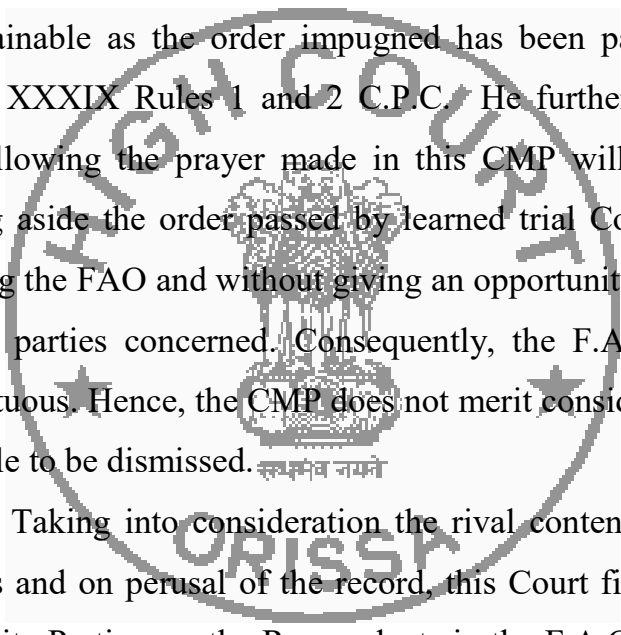
Order No.

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 1. This matter is taken up through hybrid mode.
 2. The Petitioners in this CMP seek to assail the order dated 26th November, 2021 (Annexure-9) passed in I.A. No.1 of 2021 (arising out of F.A.O. No.36 of 2021), whereby learned 1st Additional District Judge, Cuttack refused to entertain an application under Order XXXIX Rules 1 and 2 C.P.C. during pendency of the F.A.O.
 3. Mr. Dash, learned counsel for the Petitioners submits that C.S. No.441 of 2013 has been filed for declaration of right, title and interest and for permanent injunction, which is pending for adjudication in the Court of 2nd Additional Civil Judge (Senior Division), Cuttack. It is the case of the Plaintiffs-Petitioners that the suit land was originally belonged to one Mahindra Beura. The Petitioner No.1 purchased the said property in the year, 1955 and is in possession of the same since then by paying rent in respect of the said land. The Petitioner No.1 has also received compensation for acquisition

of Ac.0.55 decimals of land for construction of Mundumuhan Embankment. As the Petitioner No.1 was serving outside, he could not take step during the settlement operation to record the land in his name. As such, the suit land was erroneously recorded in the name of the Government. As the State Government is forcibly trying to make construction over the land of the Petitioners by dispossessing them, the Petitioners filed C.S. No.441 of 2013 for declaration of right, title and interest as well as permanent injunction and for other consequential relief. Along with the plaint, the Petitioner filed I.A. No.2 of 2020 under Order XXXIX Rules 1 and 2 C.P.C. to restrain the State Opposite Parties from interfering with the possession of the Plaintiffs-Petitioners and making construction thereon. The I.A. was dismissed on contest on 22nd April, 2021 against which the Petitioners filed F.A.O. No.36 of 2021. After dismissal of the interim application by learned trial Court, the State Officials are proceeding ahead to make construction over the suit land in a haste manner. In that view of the matter, the Petitioners filed also I.A. No.1 of 2021 under Order XXXIX Rules 1 and 2 C.P.C. Learned appellate Court, upon hearing learned counsel for the parties, dismissed the said application. Thus, the Petitioners finding no other alternative has filed this CMP for the aforesaid relief.

4. It is submitted that the State Authorities are trying to dispossess the Petitioners taking advantage of wrong recording of the land in their name. The Petitioners are in possession over the said land since 1955 by exercising their right, title and interest thereon. Unless the nature and

character of the property is maintained during pendency of the proceeding, the Plaintiffs-Petitioners may not enjoy the fruit of the decree even if they succeed in the suit. In that view of the matter, he prays for setting aside the impugned order under Annexure-9 and to restrain the Opposite Parties from interfering with the possession of the Petitioners-Plaintiffs and making construction over the said land.

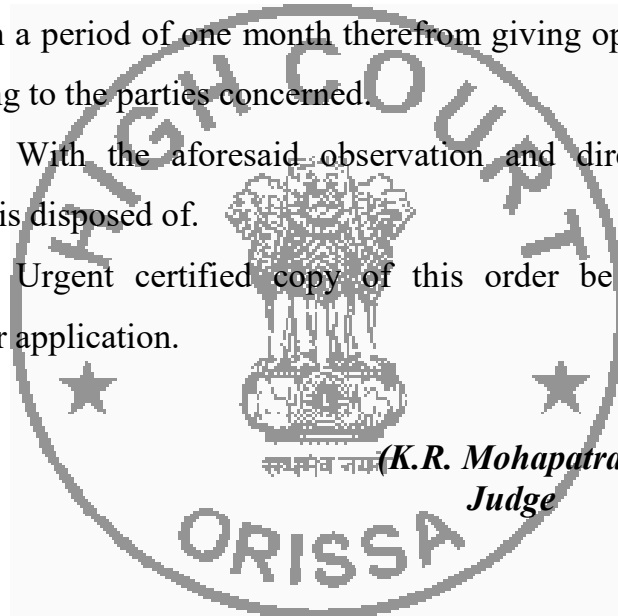
5. Mr. Pattnaik, learned Additional Government Advocate, on the other hand, submits that the CMP is not maintainable as the order impugned has been passed under Order XXXIX Rules 1 and 2 C.P.C. He further contended that allowing the prayer made in this CMP will amount to setting aside the order passed by learned trial Court without hearing the FAO and without giving an opportunity of hearing to the parties concerned. Consequently, the F.A.O. will be infructuous. Hence, the CMP does not merit consideration and is liable to be dismissed. 

6. Taking into consideration the rival contentions of the parties and on perusal of the record, this Court finds that the Opposite Parties are the Respondents in the F.A.O. No. 36 of 2021 pending before learned First Addl. District Judge, Cuttack. All the Respondents are the Government Officials and are being represented by Government Pleader. In that view of the matter, interest of justice will be best served, if the Petitioners serve the copy of F.A.O. No. 36 of 2021 on the learned Government Pleader, who can represent the State-Respondents in the said F.A.O. pending before learned 1st Additional District Judge, Cuttack.

7. It is, therefore, directed that in the event the Petitioners serve adequate number of copies of F.A.O. No. 36 of 2021 on the learned Government Pleader/Additional Government Pleader attached to the Court of learned 1st Additional District Judge, Cuttack, he can accept the notice of F.A.O. No. 36 of 2021 pending before him and contest the appeal. On acceptance of the copies by the Government Pleader/ learned Additional Government Pleader, learned appellate Court shall make an endeavour for early disposal of the appeal preferably within a period of one month therefrom giving opportunity of hearing to the parties concerned.

8. With the aforesaid observation and directions, this CMP is disposed of.

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



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