

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 548 OF 2022

Barada Prasanna Mohanty

Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

The State of Odisha and others

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

29.06.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 2nd June, 2022 (Annexure-1) passed in I.A. No.209 of 2022 (arising out of C.S. No.246 of 2022), whereby learned Senior Civil Judge, Kendrapara rejected an application under Order XXXIX Rule 3 C.P.C.
3. Mr. Bose, learned counsel for the Petitioner submits that C.S. No.246 of 2022 has been filed for an easementary right and other consequential relief over Schedule 'A' land of the plaint, i.e. Plot No.2109 to an extent of Ac.0.0375 decimals out of Ac.0.2500 decimals under Khata No.693 situated in mouza Tarapur under Kendrapara Tahasil in the district of Kendrapara (for convenience hereinafter called 'the suit land'). The suit has been filed after complying with the provisions under Section 80 C.P.C. Since the work order for construction of the building over Plot No.2109 has already been issued, the Plaintiff-Petitioner filed an application (I.A. No.209 of 2022) under Order XXXIX Rules 1 and 2 C.P.C. along with the plaint with a prayer to restrain the Defendants-Opposite Parties from making any construction over the suit land. He also

filed an application under Order XXXIX Rule 3 C.P.C. along with I.A. No.209 of 2022.

4. It is also submitted by Mr. Bose, learned counsel for the Petitioner that Plot No.2109 is the only access of the Petitioner to his residential house. The Government is proposing to construct a reservoir over the said plot. If the reservoir is constructed, access to the residence of the Petitioner will be completely obstructed. The Government in haste manner is proceeding ahead in digging earth from the said plot. In that view of the matter, unless the petition under Order XXXIX Rule 3 C.P.C. is entertained and ad-interim injunction is granted, the purpose for filing of the petition under Order XXXIX Rules 1 and 2 C.P.C. will be frustrated. Learned Senior Civil Judge, Kendrapara in a mechanical manner, without considering the averments made and documents filed by the Petitioner in support of his case, rejected the same for which the Petitioner is constrained to file this CMP.

5. Mr. Mishra, learned Additional Standing Counsel refuting such submission contended that the Government is proceeding to make construction over the land recorded in 'Sarbasadharan' Khata. Further, there is no material to show that Plot No.2109 is the only access to the residence of the Petitioner. It is further submitted that no injunction can be granted in respect of construction for developmental purpose. Considering the submission made by the Plaintiff-Petitioner, learned Senior Civil Judge, Kendrapara though rejected the petition under Order XXXIX Rule 3 C.P.C. directed for issuance of notice. Upon service of notice on the Opposite Parties, the matter can be taken into consideration. It is his submission that the allegation that the Court without considering the matter in proper

perspective rejected the petition under Order XXXIX Rule 3 C.P.C. is baseless. Hence, this CMP merits no consideration.

6. In view of the rival contentions of the parties and on perusal of the record, this Court finds that the contesting Opposite Parties in I.A. No.209 of 2022 are Government Officials and are represented through Government Pleader/Additional Government Pleader attached to the said Court. They can accept notice on behalf of Opposite Party Nos.1 to 5 in the said Interim Application. So far as Opposite Party No.6 is concerned, the Petitioner, if so advised, may also pray before learned Trial Court to take out notice on him through Special Messenger.

7. In view of the above, this Court disposes of this CMP with a direction that in the event the Petitioner serves adequate number of copies of the plaint as well as interim application on the learned Government Pleader/Additional Government Pleader attached to the Court of learned Senior Civil Judge, Kendrapara, he shall accept the same and defend the case of the Defendants-Opposite Party Nos.1 to 5. The Petitioner may also file an application to take out notice on Defendant-Opposite Party No.6 by Special Messenger and in that event, learned Trial Court shall do well to allow the same and take up the I.A. No.209 of 2022 as expeditiously as possible, preferably within a period of seven days from the date of service of notice on the Opposite Parties. Learned trial Court shall also make an endeavour to dispose of I.A. No.209 of 2022 as expeditiously as possible, preferably within a period of ten days therefrom giving opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge