

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13660 of 2019

Rohit Kumar Beura.

....

Petitioner

Ms. Deepali Mahapatra, Advocate

-versus-

State of Orissa & others.

....

Opposite Parties

For O.P Nos.1&2-State – Mr. H.M. Dhal, A.G.A.,
For O.P. No.3 – Mr. Dayananda Mohapatra, Advocate,
For O.P. No.4 – Mr. Debasis Nayak, Advocate,
For O.P.No.5 – Mr. Amit Patnaik, Advocate.

W.P.(C) No.28540 of 2020

Susanta Kumar Swain & others.

....

Petitioners

M/s. A.K. Pradhan, S.K. Swain, Advocates

-versus-

State of Orissa & others.

....

Opposite Parties

For O.P Nos.1&2-State – Mr. H.M. Dhal, A.G.A.,
For O.P. No.3 – Mr. Debasis Nayak, Advocate,
For O.P.Nos.5&6 – Ms. Deepali Mahapatra, Advocate.

CORAM: JUSTICE S. PUJAHARI

ORDER

05.07.2022

Order
No.

17. **1.** The questions involved in both these writ petitions being inter-related, they are taken up together for hearing and disposed of by this common order.

2. The petitioner in W.P.(C) No.13660 of 2019 seeks for issue of rule NISI to the opposite parties with a direction to them not to use force to disturb the possession of the petitioner over his private 'Rasta' (passage) pertaining to Plot No.310 under Khata No.526 measuring Ac.0.03 decimals in Mouza- Nuapada under Cuttack Sadar Tahasil and for quashing of the notice issued by the Cuttack Municipal Corporation vide Annexure-4 and take action against the opposite party no.5.

3. The petitioners in W.P.(C) No.28540 of 2020, on the other hand, have sought for a direction to the Collector, Cuttack and Commissioner, Cuttack Municipal Corporation (opposite party nos.2 and 3) for demolition / removal of the iron gate said to have been erected by the opposite party no.5 (petitioner in W.P.(C) No.13660 of 2019) on the public road pertaining to the plot no.310, and for a permanent injunction against the opposite party nos.5 and 6 restraining them from blocking the said road.

4. Heard the learned counsel appearing for the rival sides through Hybrid mode.

5. The case of the petitioner in W.P.(C) No.13660 of 2019 is that Plot No.310 under Khata No.526 measuring an area of Ac.0.03 decimals of Mouza-Nuapada under Cuttack Sadar Tahasil is recorded in favour of him and family members and they have been using the said land as their Private 'Rasta' for the egress and ingress of their family members from their respective houses to the road and on the end of the land a Gate was installed by them. However, on 02.08.2019 the Mayor of the Cuttack Municipal Corporation came with their employee to the spot and directed the petitioner and his other co-sharers to remove the Gate. Since the Gate is there in their own land and it is on a private road, they did not comply with the same. Thereafter, Ms. Ananya Das, who was in charge of the C.M.C. came with the Collector, the opposite party no.2, who was also in dual charge of the C.D.A. and issued notice under Section 91(1) of the O.D.A. Act to submit show-cause within three days for removal of the same.

From the aforesaid notice, it appears that the opposite party no.5 was vindictive towards the petitioner and his other co-sharers. Thereafter, the aforesaid officials damaged and dismantled the Gate without following any due process of law and thereby deprived the petitioner and his other co-sharers of enjoyment of the property guaranteed under Article 300-A of the Constitution of India. In all these aforesaid acts the opposite party no.5 behaved in a highhanded manner even though the land is a private land of the petitioner. Hence, this writ petition seeking for a direction to the opposite parties not to use force to disturb the possession of the petitioner over his own land, i.e., private rasta.

6. It is, however, the case of the petitioners in W.P.(C) No.28540 of 2010 who are stated to be the inhabitants of the same locality, that the land in question which has been shown as 'Gharoi Rasta' in the ROR has already been taken over by Cuttack Municipal Corporation, and the petitioners as well as all the local residents are using the same as 'Rasta' since the time of

their forefathers. They have further stated that the Municipal Corporation has spent lakhs of fund in providing water supply line, electric line, street light, sewerage line, drain, C.C. road etc. pertaining to the land in question, for the benefit of the residents of the locality at large. These petitioners have supported the action taken by the Collector, CDA and CMC, inasmuch as according to them, the petitioner in W.P.(C) No.13660 of 2019 has tried to block the passage of the local residents by installing the iron gate. These petitioners have also filed a Civil Suit bearing No.476 of 2020 in the court of the Civil Judge (Sr.Division), First Court, Cuttack seeking a decree for declaration of their easement right in respect of the road pertaining to the plot no.310 and permanent injunction. The petitioner in W.P.(C) No.13660 of 2019 has been arraigned as one of the defendants in the said suit.

7. In the counter affidavit filed by the opposite party no.4, the Commissioner, Cuttack Municipal Corporation it is stated that as per the direction of the Collector, Cuttack opposite party no.5 she along with the Collector

used to visit different parts of the City to mitigate the grievance of the people and during their such visit on 02.08.2019 they found that the Daraghapatna locality assembled and raised complaints about illegal installation of a Gate by the petitioner in W.P.(C) No.13660 of 2019 over the road in question though it was developed by the C.M.C. investing money of the Corporation. The aforesaid gave rise to an altercation between the inhabitants of the locality who used the said road and the owner of the land who had installed the Gate. Thereafter, the Collector convinced them to avoid untoward incident and requested the petitioner to dismantle the same, so as to allow the same to be used as a public road. As the road was used by the public, they assured the public to take legal action against which is also mentioned in their official record vide Annexure-A/4. Thereafter, on inspection of the spot by the Cuttack Development Authority, Tahasildar, Sadar, Cuttack along with the official of Tahasildar, a report was submitted that the aforesaid land is a Rasta / Gharabari. But, due to fixation of Iron Gate, the same

has affected the egress and ingress of the public and the public are facing lot of inconvenience. This Court vide order dated 25.02.2011 in OJC No.6721 of 1999 having directed that wherever roads have been constructed for approaching the houses situated by the side of private roads under Cuttack Municipal Corporation area, and holding tax being collected from such houses, the C.M.C. has to maintain such road by repairing and renovating the same. Accordingly, the C.M.C. is maintaining and developing the said road by investing the public funds, as stated earlier.

8. The opposite party no.5-Collector, Cuttack while echoing the aforesaid averments made by the C.M.C. denied the averment that on 03.08.2019 the Gate was dismantled. He further averred that the C.M.C. is entitled to redress the grievance of the public independently with regard to the same. Furthermore, in the capacity of the Vice Chairman, C.D.A., he also issued notice under Section 91(1) of the O.D.A. Act to redress the grievance of the public which was later on transferred to the C.M.C. for necessary adjudication.

Accordingly, the C.M.C. proceeded with the same and in the capacity of the Collector though he had visited the spot and issued notice, but he has nothing personal against the petitioner.

9. The opposite party no.3-C.D.A has also filed the counter affidavit indicating the fact that under Sections 91 and 92 of the ODA Act, after receipt of the field enquiry report notice has been issued and an U.C. Case has been initiated which has been transferred to the C.M.C. to be dealt with in accordance with law. The construction therein also being unauthorized and the petitioners having not responded to the show-cause notice, the filing of the writ petition is without any substance.

10. It is not disputed that the land in question has been recorded as private land and Gharabari in kissam, but a road is located there. However, materials are available to indicate that the aforesaid road has been developed by the C.M.C. and some amount of public fund has been invested. So also, a Gate is fitted there

by the petitioner, for which dispute arose. The alleged Gate was removed by the officials.

11. Section 2(64) of the Orissa Municipal Corporation Act (for short “the Act”) defines “private street” means any street, which is not a “public street” but does not include a pathway made by the owner of the premises on his own land to secure access to, or the convenient use of such premises. So also, Section 2(68) of the Act defines “public street” means any street, road, lane, gully, passage or riding path over which the public have a right of way, whether a thoroughfare or not and includes a broad way over or a footway attached to any public bridge or causeway and the drain attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property, whether that property is private or property belonging to the Government.

Section 397 of the Act empowers the Cuttack Municipal Corporation to develop such private street though the expenses is realizable from the owner. In this case, as it appears, pursuant to the direction of this Court, the land is stated to have been developed. Section 399 of the Act also empowers the Commissioner of Municipal Corporation to prohibit to erect, set up, add to or place against or in front of any premises any structure or fixture, which will overhang, jut or project into, or encroach upon, or obstruct in any way so as to effect the safe or convenient passage of the public along any street or jut or project into or encroach upon any drain or open channel in any street, so as in any way to interfere with the use of proper working of such drain or channel or to impede the inspection or cleaning thereof. Section 400 of Act empowers the Commissioner for removal of the erection, set-up etc. of the street. Therefore, it is very difficult to accept the submission of the learned counsel for the petitioner in W.P.(C) No.13660 of 2019 that since the aforesaid is a private

street, the Authorities have no manner of right to prohibit the erection made.

12. However, in the meanwhile, the grievance of the petitioner in W.P.(C) No.13660 of 2019 that his such erection was interfered with without any notice. It is urged by the petitioners in W.P.(C) No.28540 of 2020 that it is a public street and Municipal Corporation spent money, for which the petitioner in the foresaid writ petition be restrained not to make any obstruction. In the meanwhile by virtue of an interim order the property has been put to status-quo ante and nothing is there on record indicating that the opposite party-Collector had any personal vendetta to proceed against the petitioners. The Collector and the Vice-Chairman of the C.D.A. along with the C.M.C. Commissioner jointly visited to address the grievance of the public. This Court disposes of both the writ petitions filed with a direction to the opposite parties in W.P.(C) No.13660 of 2019 that if at all the aforesaid is a private street used by the public, and even if it is a private and any obstruction has been made by the petitioners, not to

disturb such erection without adhering to the due procedure of law by affording due opportunity of show-cause against the claim made by the public, by initiating appropriate proceeding in accordance with law.

13. However, since it is stated that a civil suit has also been filed for adjudication of the dispute, the same be decided in its own merit and in accordance with law.

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

(S.Pujahari)
Judge

PKS/MRS