

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A No.431 of 2017

Paramananda Pati

.... Appellant

Mr. B.Mohanty, Advocate

-versus-

Prasanta Kumar Haldar and others

Respondents.

Mr. Goutam Mishra, Sr. Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**ORDER
17.10.2022**

Order No.

09. 1. The short question that arises in the present appeal is whether the learned Single Judge was justified in rejecting the plea of the present Appellant to be permitted to intervene in W.P (Civil) No. 24 of 2017?
2. Admittedly, it is on the complaint of the Appellant that proceedings for removal of unauthorized construction was initiated against Respondent No.1 by the Jajpur Municipality. A notice of demolition dated 14th December 2016 was issued by it to Respondent No.1. Aggrieved by demolition notice, Respondent No.1 filed Writ petition (Civil) No.24 of 2017 in which the learned Single Judge passed an interim order on 3rd January, 2017 staying the demolition notice. The grievance of the present Appellant is that since the unauthorized construction raised by Respondent No.1 directly affects the Appellant, he is

both a necessary and a proper party to the proceedings in the writ petition.

3. Mr. Goutam Mishra, learned Senior Counsel appearing for Respondent No.1 has relied upon the decision in ***Smt. Khirodini Sahoo v. State of Orissa 1996 (I) OLR-387*** to urge that the prayer of the present Appellant is not tenable in law.

4. This Court notes that the facts in ***Smt. Khirodini Sahoo v. State of Orissa (supra)*** are more or less similar to the facts in the present case. There the Petitioner was aggrieved by an order of the Commissioner-cum-Secretary to Government, Housing and Urban Development Department in an appeal under Section 91(2) of the Orissa Development Authorities Act, 1982 permitting the complainant at whose behest demolition notice was issued to be impleaded as party. In the said judgment, it was *inter alia* observed as under:

“Action is to be taken by the concerned authority for removal of unauthorized development and the action may be initiated on the basis of information given by any functionary or employee of the Development Authority (in short, “the Authority”) or on the basis of complaint received from any person about commencement or continuance or completion of any unauthorized development. After initiation of the proceeding, the dispute becomes one between the Authority and the noticee i.e., the person allegedly making unauthorized development. Thereafter person making the complaint has no right to participate in the proceeding. The proceeding is a statutory one and can only involve the Authority and person making unauthorized development. In such

proceeding the original complainant is neither a necessary nor proper party. Where presence of a person before a Court, Tribunal or Authority is necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions in the dispute, such a person should be added as a party. This finding is a condition precedent for exercise of the jurisdiction by the forum for addition of a party. Two sets for determining the question who is a necessary party to a proceeding are: firstly, there must be a right to some relief against such party in respect of the matter involved in the proceedings in question; and secondly, it should not be possible to make an effective adjudication in the absence of such a party.

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6. The dispute involved in the case at hand is whether there has been any unauthorized development and whether there has been any deviation from the approved plan. It is for the CDA authorities to adjudicate that aspect and come to a finding. The applicant for intervention has no role to play in the adjudication, and therefore, was neither a necessary or a proper party in the proceeding. Both the Secretary and the Commissioner have lost sight of this aspect and illegally accepted prayer for intervention., Prayer for intervention in the writ application is rejected.”

5. Learned counsel for the Appellant stated that Respondent No.1 has filed a suit impleading the present Appellant as party. Be that as it may, the fact remains that on nearly identical facts this Court has in *Smt. Khirodini Sahoo v. State of Orissa* (*supra*) has rejected a similar prayer. Accordingly, this Court is not inclined to interfere with the impugned Order of the learned Single Judge.

6. The W.P.(C) No. 24 of 2017 will now be placed before the roster Bench of the learned Single Judge for directions on 6th December,2022.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge



B.C.Mohanty