

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No19355 of 2020**

*Dibakar Prasad Harichandan*

....

***Petitioner(s)***  
**Mr.P.K.Rath.Adv.**

*-versus-*

*State of Orissa & Ors.*

....

***Opp.Party(s)***  
***Mr.S.Mishra, ASC.***  
***Mr.D.Mohapatra, Adv.***  
***Mr.N.Panda, Adv.***

**CORAM:**

**JUSTICE BISWANATH RATH**

**ORDER**

**06.12.2022**

**Order**  
**No.**

10

1. Heard learned counsel appearing for the parties.
2. This matter involves the following prayer:

“The petitioner, therefore, prays that your Lordships would be graciously pleased to admit this writ petition, call for the records and after hearing the parties allow the same, issue writ/writs in the nature of certiorari/ mandamus and/ or any other further writ/direction, quash the order passed by the Addl. Land Officer, General Administration & Public Grievance Department under Annexure-1 & direct the Opposite Parties to allot a piece of alternate land in favour of the petitioner matching extent of Ac.0.529 decimals of land of the petitioner or pass an order De-reserving the land from the C.D.P, within a stipulated period;

And for this act of kindness, the petitioner shall as in duty bound ever pray.”

3. This matter was extensively heard and a order has been passed in giving the clear picture and position of the case by order dated 23.11.2022.From the argument of learned counsel appearing for the parties, this Court already fixing a point to find for the acquisition of a portion of land of the petitioner, if in fact, the balance land will remain unused and it is accordingly in the said order this Court directed the Municipal Corporation to file a detail report indicating the extent of land from the land belonging to petitioner they are going to acquire and the land not going to be acquired remain unutilized. To which there has been filing of

an affidavit by the Municipal Corporation. Paragraph-6 and 7 of the affidavit of the Municipal Corporation reads as follows:

“6. That admittedly the situation of land in question varies from time to time in 1982, 2004, 2006-07. After purchase of natural stream by the Petitioner and after conversion of entire Plot No- 289/1664 to gharabari Kisam in 2009 by order of Tahasildar, it changed the nature and character of land without looking to the permission granted by BDA dated 28.07.2004 as per Annexure-5. The land being low lying, natural passage of water was obstructed for the free flow of rain water. It is a natural phenomenon in city of Bhubaneswar for artificial flood due to obstruction of natural flow of water in low-lying area. For free flow of rain water in view, the condition in the permission was imposed by BDA u/Section 16(3) of ODA Act at Annexure-5 to the Writ Petition. The BDA in CDP 1982 restricted such private land as the water was flowing in the natural valley. At that time the city area was not developed to that extent and drain was not also streamlined. But change of kisam of Plot No. 289/1664/6796 to gharabari in 2009 was beyond the control of Commissioner, BMC.

As a matter of fact the total area was Ac. 1.00 dec out of which Ac. 0.529 dec of land was purchased by the petitioner on dtd. 10.03.2006 knowing fully well that the same is low land where water is flowing in natural manner but it was his own decision and sweet will which is causing stagnation of water after development of land in the garb that the same has been converted to gharabari Kisam. Thus is obviously beyond the control of Commissioner, BMC. During sub-division of land on 28.07.2004 permission was made by BDA Authority with restriction.

It is observed that as per final CDP, an Ac. 0.225 dec. will be required for construction of drain and thus remaining area of plot can be used by the plot owner after drain is streamlined and RCC drain is constructed, the side land will not be affected.

7. That in reply to Para- 9 to 13 it is humbly submitted that the natural nallah flowing over the patch of land is not damaging the total property. The petitioner's representation under Annexure-10 made to the Special Secretary to Govt. GA Dept. claiming for substitute land or acquisition of land or claiming compensation in monetary form at prevailing Govt. rate by acquiring the land or allot a substitute Govt. land in the same Mouza in exchange of the land of the petitioner and the said representation under Annexure-9, 10, 11 Series has ultimately been disposed of under Annexure-1 dtd. 20.12.2019 by the G.A. Dept. Govt. of Odisha. The prayer of petitioner has been rejected against which the petitioner has preferred this writ petition.”

4. During the further hearing of the matter, keeping in view the clarification given by the Municipal Corporation, Mr. Rath, learned counsel for the petitioner even though has no objection to the acquisition of extent of land measuring Ac.0.225 decimals out of total area of ac.0.554 decimals, the balance area therein, taking this Court to the drawing available at page- 34 of the brief Mr.Rath attempted to submit that the balance area may be deprived of getting an access for the intention behind the

acquisition of land involved herring. This Court here reading through the further plea of Municipal Corporation through paragraph-7, finds there is clear observation by the Superintending Engineer, Drainage Division, Bhubaneswar Municipal Corporation indicating that there is access over the left out land of the petitioner from the side of Government plot. For there is further development in the matter of acquisition, for the clarity in the response of the Bhubaneswar Municipal Corporation that balance land of the petitioner is not going to be affected for access to the main road, this Court in disposal of the writ petition observes it becomes requirement of the Municipal Corporation to see that the balance land of the petitioner is not affected by loss of access to the main road.

5. Since a acquisition process if already undertaken, let accusation process be completed at least within a period of three months to find convenience for all the parties involved herein and to see the petitioner is out of problem faced by him over three decades. In the acquisition process, this Court hopes and trusts that all parties shall cooperate the public authority involved herein.

The writ petition stand indisposed of.

**(Biswanath Rath)**  
**Judge**

*Sks*