

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMPNO. 930 OF 2019

Padmini Sahu

.... Petitioner

Mr. A.S. Nandy, Advocate

-versus-

Trilochan @ Lochan Sahu and others

.... Opp. Parties

Mr. J.R. Dash, Advocate

(For Opp. Party No.1)

Mr. S.K. Swain, Advocate on behalf

of Mr. U.C. Mohanty, Advocate

(For Opp. Party No.3)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

04.08.2022

Order No.

6.
 1. This matter is taken up through hybrid mode.
 2. Petitioner in this CMP seeks to assail the order dated 23rd July, 2018 (Annexure-8) passed by learned Additional District Judge, Athamallik in FAO No. 1 of 2018, whereby he confirmed the order dated 7th October, 2016 (Annexure-4) passed by learned Civil Judge (Senior Division), Athamallik in I.A. No.13 of 2016 (arising out of C.S. No. 44 of 2016) rejecting an application filed by the present Petitioner under Order XXXIX Rules 1 and 2 C.P.C.
 3. C.S. No. 44 of 2016 has been filed by Sesadeba Sahu and his daughter, namely, Padmini Sahu (present Petitioner) against Basudeba Sahu and others for declaration of right, title and interest in respect of Plot No. 211 to an extent of Ac.0.08 decimals under Khata No. 90 situated in mouza Kadalimunda in the district of Angul. Along with the plaint, said Padmini Sahu and Sesadeba Sahu filed I.A. No.13 of 2016 under Order XXXIX Rules 1 and 2 C.P.C. with a prayer to restrain the Land Acquisition Officer-cum-Competent Authority of N.H.55, Angul -Opposite Party No.3

under the National Highways Act, 1956 (for short 'the Act') from making payment of any compensation in respect of the suit land till disposal of the suit. The said I.A. was dismissed vide order dated 7th October, 2016. Assailing the same, only Sesadeba Sahu preferred FAO No.1 of 2018, which came to be dismissed by learned Additional District Judge, Athamallik vide order dated 23rd July, 2018.

4. Mr. Nandy, learned counsel for the Petitioner submits that the suit property was purchased from the father of Opposite Party No.1, namely, Lingaraj Sahu, by Sesadeba Sahu and Basudeba Sahu. They possessed the same having right, title and interest thereon. When the matter stood thus, the National Highways Authority acquired the land for expansion of road. As such, compensation amount has already been determined. After purchase, Basudeba Sahu and Sesadeba Sahu could not take step for mutation of the land in their name. Accordingly, R.O.R. continued to be in the name of father of Trilochan Sahoo, namely, Lingaraj Sahu. Taking advantage of the same, Opposite Party No.1 tried to receive the compensation. Hence, Sasadeba and her daughter, namely, Padmini were constrained to file the suit for the aforesaid relief. Both learned trial Court as well as appellate Court failed to appreciate that once the compensation amount is released in favour of Opposite Parties, who have no right, title and interest over the suit property, it would be difficult on the part of the legal heirs of Sesadeba and Basudeba to receive the compensation. It is further submitted that in the regard, they have also raised objection before the Land Acquisition Officer, but the same was rejected. Thus, finding no other alternative, they filed I.A. No. 13 of 2016

with a prayer to restrain the Land Acquisition Officer-Opposite Party No.3 from releasing the compensation amount. In view of the facts and circumstances of the case, the compensation amount should be deposited before learned trial Court to be released in favour of successful parties in the suit. He, therefore, prays for setting aside the impugned order and to direct the Land Acquisition Officer to deposit the compensation amount before learned trial Court.

5. Mr. Dash, learned counsel for the Opposite Party No.1 objecting to such submission contented that law is well-settled that a statutory authority cannot be enjoined from discharging its statutory duty. In support of his contention, he relies upon the decision in the case of ***Smt. Laxmipriya Sahoo and others –v- State of Odisha and others***, reported in 2005 (II) OLR 512, wherein it has been held that '*in consonance of Section 41 of the Specific Relief Act, 1993, injunction cannot be granted to restrain a statutory authority from discharging its statutory duty*'. He further submits that the Petitioner has a remedy under Section 3H(4) of the National Highways Act, 1956 (for short, 'the Act') before the concerned District Judge to raise grievance with regard to her entitlement to receive compensation. If the injunction order is not granted in favour of the Petitioner, she would not suffer any irreparable loss as it can be compensated in terms of money in the event she succeeds in the suit. In that view of the matter, he prays for dismissal of CMP.

6. Mr. S.K. Swain, learned counsel appearing on behalf of Mr. Umesh Chandra Mohanty, learned counsel for the National Highways Authority submits that due to the interim order passed

by this Court, the compensation amount could not be released in favour of the person entitled to receive the same. If the Petitioner has any grievance with regard to her entitlement to receive compensation amount, she can file an application under Section 3H(4) of the Act before learned District Judge to get her grievance redressed. In that view of the matter, he prays for dismissal of CMP.

7. Taking into consideration the rival contentions of the parties, this Court is of the considered opinion that an authority created under the statute cannot be restrained from discharging its statutory duty. Thus, the Land Acquisition Officer cannot be restrained from releasing the compensation amount in favour of the person so entitled. Since the Petitioner has a remedy under the National Highways Act for redressal of her grievances, no petition under Order XXXIX Rules 1 and 2 C.P.C. is maintainable. In the instant case, it appears that the Petitioner has not approached the statutory authority for redressal of her grievances. In that view of the matter, I find no infirmity in the impugned order.

8. Accordingly, the CMP being devoid any merit stands dismissed.

9. The interim order dated 11th September, 2019 passed in I.A. No.981 of 2019 stands vacated.

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

(K.R. Mohapatra)
Judge

bks