

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.19902 OF 2022

Chittaranjan Khuntia

....

Petitioner

Mr.A.Sahoo, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.Ghosh, AGA
Mr.A.K.Pradhan, O.P.4

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
22.8.2022**

Order No.

01. 1. On consent of the Parties and for the nature of allegation involved, the matter is taken for final hearing.
2. Heard learned counsel for the Parties.
3. The Writ Petition involves the following prayer :-
- “It is, therefore, most humbly and respectfully prayed that this Hon’ble Court may be graciously be pleased to consider the facts stated above, issue notice to the Opp.Parties and after hearing the parties pass the following orders :-
- i) Quash the second demarcation proceeding under Annexure-4 issued by the Opp.Party No.2.
- ii) And further this Hon’ble Court may graciously be pleased to pass any other order(s)/direction(s) as would be deemed fit and proper in the circumstances of the case..”

4. Learned counsel for the Petitioner taking this Court to the grounds stated in the Writ Petition contended that there has been previous round of litigation in this Court, vide W.P.(C) No.16075 of 2022, which is in clear suppression of fact that the earlier attempt of present O.P.4 involving a demarcation process had already failed. It is under the impression that moving this Court for the first time involving the demarcation direction was given for showing development to finality in Demarcation Case No.122/2022.

5. This Court under such bona fide impression disposed of the said Writ Petition by passing the following order :-

“...Considering the allegation made by the Petitioner, this Court finds, there is no requirement of any such order from the High Court for disposal for the Demarcation Case No.122 of 2022 and the Tahasildar, Tirtol is duty bound to take a lawful decision on the demarcation proceeding initiated under his jurisdiction. In the process, without interfering into any such controversies at this moment, this Court directs the Tahasildar, Tirtol to conclude the proceeding vide Demarcation Case No.122 of 2022 at least within a period of two months from the date of communication of an authenticated copy of this order by the Petitioner, but however involving all the parties concerned.

The Writ Petition stands disposed of with the above direction.”

6. It is in the above circumstance, learned counsel for the Petitioner in reference to Annexure-4 of the Writ Petition contended that for there is already earlier disposal of the Demarcation Proceeding, the Proceeding, vide Annexure-4 is not entertainable,

further also keeping in view the pendency of the Section 37(1) of the OCH & PFL Act Proceeding before the Competent Authority at the instance of the Petitioner, as any action in demarcation proceeding shall otherwise affect the Section 37(1) proceeding.

7. In the circumstance, learned counsel for the Petitioner sought for interference in the notice at Annexure-4 and setting aside the same.

8. In his opposition, Mr.A.K.Pradhan, learned counsel for O.P.4 while not disputing that there has already been disposal of a Demarcation proceeding contended that there is already completion of Demarcation proceeding since 16.8.2022. Mr.Pradhan however volunteers to produce a copy of the Writ Petition involving W.P.(C) No.16075/2022, which clearly establishes that petitioner therein did not disclose regarding previous disposal of the Demarcation case.

9. Mr.S.Ghosh, learned Additional Government Advocate for the State attempted to support the Petitioner but however did not dispute the claim made by the learned counsel for the Petitioner that for the earlier disposal of the Demarcation Proceeding, the subsequent proceeding remains not maintainable.

10. Considering the rival contentions of the Parties and on perusal of the pleadings in the previous round of litigation in

W.P.(C) No.16075 of 2022 and in whole reading of the Writ Petition, this Court nowhere finds, O.P.4, the Petitioner therein (O.P.4 herein) has brought to the notice of the Court regarding his failure attempt in the previous Demarcation Case No.122/2022. For the clear suppression of fact, under the bona fide impression of the Petitioner moving such a litigation for first time, this Court passed the order on 5.7.2022 in W.P.(C) No.16075 of 2022. This Court observes, had the Petitioner therein, O.P.4 herein brought to the notice of this Court regarding failure of his earlier attempt involving the similar Demarcation Proceeding, there would not have been any occasion to pass the order dated 5.7.2022. This Court further finds, the Petitioner has a case pending under Section 37(1) of the OCH & PFL Act. In the circumstance, this Court also observes, the follow up action pursuant to the Demarcation Proceeding being undertaken, the fate of the Petitioner in the 37(1) of the OCH & PFL Act Application shall be seriously prejudiced.

11. In the above background of the matter, this Court finds, the Proceeding, vide Annexure-4 is not maintainable. In the process, while declaring the notice at Annexure-4 bad, this Court declares, any further action pursuant to the notice also becomes bad. Considering the dispute involving Section 37(1) of the OCH & PFL

Act pending for the time being, this Court in disposal of the Writ Petition observes, it will be open to the Parties to undertake fresh Demarcation Proceeding but however dependent on the ultimate outcome of the 37(1) of the OCH & PFL Act proceeding.

12. The Writ Petition thus disposed of.

(Biswanath Rath)
Judge

M.K.Rout

