

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1996 of 2015

Kedarnath Swain and another

....

Petitioners

Mr. Jaydeep Pal, Advocate

-Versus-

State of Odisha and others

....

Opposite Parties

Mr. Manoranjan Mishra, ASC-O.P. Nos.1 and 2

Mr. A.R Dash, Advocate for O.P. Nos.3 to 10

Mr. P.K. Routray, Advocate for O.P. Nos.12, 14, 16 and 17

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

16.08.2022

Order No.

- 09.
1. Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the opposite parties.
 2. This petition under section 482 Cr.P.C. is filed at the behest of the petitioners questioning the legality and judicial propriety of the impugned order dated 26th February, 2015 (Annexure-15) passed in Criminal Misc. Case No.905 of 2014 by the Executive Magistrate, U.P.D., Cuttack and also prayed for a direction that the proceeding under Section 133 Cr.P.C. be kept in abeyance till pendency of R.F.A. No.230 of 2010 and pass such other orders as deemed just and proper.
 3. Learned counsel for the petitioners submits that the learned Executive Magistrate without properly appreciating the facts on

record and any material has initiated the proceeding under Section 133 Cr.P.C. against the petitioners and vide order dated 9th September, 2014 directed them to appear on the date fixed i.e. 24th September, 2014 and to show-cause as to why the preliminary order shall not be made absolute against the petitioners and therefore, the consequential order dated 26th February, 2015 should be set aside with a direction for receiving evidence in that regard.

4. Learned counsel for opposite party Nos.12, 14, 16 and 17 contended that there is no illegality committed by the learned court below since illegal construction has been raised for which after receipt of show-cause from the other side, order dated 9th September, 2014 was passed with a direction to remove it from over Hal Plot No.1445, Khata No.355 measuring an area of Ac0.23 decimal situated in Mouza-Bidyadharpur of Cuttack district in order to enable them for using the same as a passage. It is thus submitted that the impugned order under Annexure-15 is absolutely justified and in accordance with law and therefore not to be interfered with.

5. The proceeding under Section 133 Cr.P.C. was initiated by the Executive Magistrate, U.P.D., Cuttack for removal of the alleged obstruction from the case land. The learned court below initially passed an order dated 9th September, 2014 directing the petitioners to appear and to file show-cause and thereafter passed the order dated 26th February, 2015 for removal of construction.

6. At this juncture, the Court is not inclined to interfere with the impugned order under Annexure-15 considering the nature of the proceeding. This Court by order dated 29th April, 2015 ordered stay of the further proceeding pending before the court below. Considering the fact that order dated 26th February, 2015 directing removal of the construction standing over the case land having not

been given effect as informed by the learned counsel for the petitioners as well as the intervenors and in order to ensure proper and effective adjudication of the matter and a final decision thereon at the earliest on receipt of evidence from the parties, this Court is of the view that the parties may be directed to maintain status quo over the land in dispute which would rather serve the purpose for the present.

7. Accordingly, it is ordered.

8. In the result, petition under Section 482 Cr.P.C. stands dismissed. Consequently, the order of the Executive Magistrate dated 26th February, 2015 besides the initial order dated 26th February, 2015 is affirmed. However, the parties are directed to maintain status quo over the case land till finality of the proceeding in CMC No.905 of 2014 pending before the Executive Magistrate, who shall ensure its disposal preferably within a period of six months from the date of receipt of a copy of the above order.

9. CRLMC is accordingly disposed of.

(R.K. Pattanaik)
Judge