

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CMP No. 845 OF 2022**

***Dillip Kumar Mohanty*** ..... ***Petitioner***  
Mr. Abhilash Mishra, Advocate

-versus-

***State of Odisha and others*** ..... ***Opp. Parties***  
Mr. Suvashish Pattnaik,  
Additional Government Advocate

**CORAM:**  
**JUSTICE K.R. MOHAPATRA**

**ORDER**  
**19.09.2022**

**Order No.**

2. 1. This matter is taken up through hybrid mode.
2. 2. The Petitioner in this CMP seeks to assail the order dated 9<sup>th</sup> May, 2022 (Annexure-8) passed by learned Additional District Judge, Bhadrak in F.A.O. No.17 of 2021, whereby he confirmed the order dated 22<sup>nd</sup> January, 2021 (Annexure-6) passed by learned Civil Judge (Senior Division), Bhadrak in I.A. No.430 of 2020 (arising out of C.S. No.398 of 2020) rejecting an application under Order XXXIX Rules 1 and 2 C.P.C. filed by the Petitioner.
3. 3. Mr. Mishra, learned counsel for the Petitioner submits that the suit has been filed for declaration of Lot No.1 as joint family property of the Plaintiff, which is a part of Lot No.2 and for permanent injunction in the suit. Along with the plaint, the Plaintiff-Petitioner filed I.A. No.430 of 2020 under Order XXXIX Rules 1 and 2 C.P.C., which was dismissed vide order dated 22<sup>nd</sup> January, 2021 holding that the land in question has been recorded in the name of the State Government and is being

used for developmental purpose. Assailing the same, the Plaintiff-Petitioner preferred F.A.O No.17 of 2021, which was also dismissed holding that none of the ingredients for interim injunction is in favour of the Plaintiff-Petitioner. Hence, this CMP has been filed for the aforesaid relief.

4. It is submitted by Mr. Mishra, learned counsel for the Petitioner that the land was recorded jointly in the name of Plaintiff-Petitioner and his co-sharers and R.O.R. was published on 20<sup>th</sup> June, 2013. However, some of the villagers filed a revision in R.P. Case No.604 of 2016 under Section 15(b) of the Odisha Survey and Settlement Act, 1958 (for short 'the Act'). The Commissioner without issuing notice to the present Petitioner and other recorded tenants directed to correct the R.O.R. in name of the State Government. Assailing the same, the Petitioner filed W.P.(C) No.19814 of 2020, which was disposed of on 2<sup>nd</sup> November, 2020 with a direction that in the event, the Petitioner files an application before the Additional Commissioner to recall the order passed in R.P. Case No.604 of 2016, the same shall be considered in accordance with law. Pursuant to the said direction, the Petitioner filed a petition to recall the order passed in R.P. Case No.604 of 2016, which is pending for consideration. In the meantime, the Opposite Parties-State Government are proceeding with construction of a park over the land in question for which the Petitioner is constrained to file the aforesaid suit.

5. It is his contention that R.O.R. under Annexure-1 has been published under the provisions of Odisha Consolidation of

Holdings and Prevention of Fragmentation of Land Act, 1972. Hence, the Authorities under the Act have no jurisdiction to sit over the same. Further, the Petitioner has his residential house over the land in question. If the construction is allowed to continue, residential house of the Petitioner might be demolished. These material aspects were not considered by learned trial Court as well as learned appellate Court. Hence, the impugned orders under Annexures-6 and 8 are not sustainable in the eyes of law and are liable to be set aside.

6. Mr. Pattnaik, learned Additional Government Advocate submits that the Petitioner claimed title over the land by virtue of a Hatapata. The land was erroneously recorded in the name of the Petitioner and his co-sharers in the R.O.R. under Annexure-1, which was subsequently corrected in R.P. Case No.604 of 2016. After correction of the R.O.R. in the name of the State Government, a park has been constructed over the suit land and a statute of late Harekrushna Mahatab has been established over the same. Development of the park is going on under the MGNREGS Scheme. If development at this stage is stalled, the beneficiaries in particular and the local public in general will suffer irreparable loss. He further submits that in view of Sections 20-A and 41 (ha) of the Specific Relief Act, 1963, no injunction can be granted in respect of infrastructural project and developmental work. Hence, learned Courts have committed no error in refusing the orders of injunction. As such, he prays for dismissal of the CMP.

7. Taking into consideration the rival contentions of the parties and on perusal of the record, it appears that R.O.R. under Annexure-1 was published under the provisions of the Act. Hence, a revision petition under Section 15 (b) of the said Act is maintainable. However, it is alleged by the Petitioner that pursuant to the direction of this Court in W.P.(C) No.19814 of 2020, a recall petition has been filed before the revisional Court, which is pending for consideration.

8. Admittedly, the land stands recorded in the name of the State Government since 2013. As such, it is presumed that the State Government is in possession over the suit land. It is also not disputed that a park has already been constructed over the suit land and a statue of late Harekrushna Mahatab has been established thereon. The land is a ridge of the pond and further developmental work is being undertaken under the MGNREGS Scheme.

9. In view of the facts and circumstances of the case, balance of convenience leans in favour of the Opposite Parties-State Government, more particularly, in view of the provisions under Section 41 (ha) of the Specific Relief Act, 1963. It further appears that the development work is being undertaken under the MGNREGS Scheme. Hence, obstruction in the ongoing project will definitely put to the beneficiaries at irreparable loss. Development work under the MGNREGS Scheme being undertaken in a time bound manner, the State Government will also suffer irreparable loss, if the project for development of a park is obstructed.

10. In view of the discussion made above, I find no infirmity in the impugned orders under Annexures-6 and 8 passed by learned trial Court as well as learned appellate Court.

11. Hence, this CMP being devoid of any merit stands dismissed.

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

**(K.R. Mohapatra)**  
**Judge**



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