

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 28792 of 2020

Nityananda Bala and others

.....

Petitioners

Mr. R.K. Mohanty, Sr. Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. H.M. Dhal, AGA

Mr. B.K. Dash, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

28.09.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. R.K. Mohanty, learned Sr. Counsel appearing along with Ms. S. Mohanty, learned counsel for the petitioners; Mr. H.M. Dhal, learned Addl. Government Advocate; and Mr. B.K. Dash, learned counsel for opposite party no.4.

3. The petitioners have filed this writ petition seeking direction to the opposite parties to confine their decision to establish Physical Education College only within the four corners of Plot No.358/988 and further prohibit them from interfering with the possession and/or attempt to demolish any structure on the private lands of the petitioners as per details given in paragraph-7 of the writ petition.

4. Mr. R.K. Mohanty, learned Sr. Counsel appearing along with Ms. S. Mohanty, learned counsel for the petitioners contended that the petitioners are the recorded owner of the plot and in possession of the scheduled land as per the Record of Right issued in their favour, which has been given in paragraph-7 of the writ petition. It is contended that if the opposite parties will construct the Physical Education College within four corners of Plot No.358/988, the petitioners may not have any objection to the same. But if the opposite parties interfere with the possession adjacent private land owners or make attempt to demolish the

structure of the said private land, as mentioned in paragraph-7 of the writ petition, then the petitioners may have some grievance to that extent.

5. Mr. H.M. Dhal, learned Addl. Government Advocate contended that the opposite parties are confining their construction for the college to only Plot No.358/988 and, as such, there is no chance of acquisition of private land of the petitioners. Therefore, the apprehension of the petitioners is misconceived one.

6. Mr. B.K. Dash, learned counsel for opposite party no.4 contended that since the State-opposite parties are constructing the Physical Education College in the government land, in that case, the petitioners may not have any grievance.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner claims that opposite parties should confine their decision to establish Physical Education College only within the four corners of Plot No.358/988 and also prohibiting them from interfering with the possession and/or to attempt to demolish any structure standing over the private lands of the petitioners as detailed in paragraph-7 of the writ petition.

8. Pursuant to notice issued, opposite party no.3 has filed additional affidavit on 15.03.2021, paragraphs-5, 6 and 7 whereof read thus:-

“5) That it is humbly submitted that the land in question in Plot No-358/988 arising out of Khata no.179 in Village-Tamando, Bhubaneswar is consisting of Ac. 33.00 Dec. in total. By the previous vendrers of petitioner and other person had managed to obtain fraudulent lease of some areas out of the total area of Ac.33.00 Dec. in Plot No. 358/988 arising out of Khata No.179 in Village-tamando under Bhubaneswar Tahasil. In the meantime the present deponent as per requirement for establishment of Govt. College of Physical Education over an area of Ac.10.00 Dec, out of the total area of the said plot of 358/988 arising out of

Khata No.179 dereserved and handed over to the Sports and Youth Services Department with advance possession in their favour, which was made free from all encroachment dated 12.10.2020 following due procedure of law. Now in view of this the Govt. College of Physical Education is going to be established by the Sports & Youth Services Department only over Plot No.358/988 arising out of Khata No. 179 in Village – Tamando and there is no proposal with the deponent regarding further acquisition of land s either from the petitioners or any from other persons for the time being.

6) That so far further prayer of the petitioner is concerned with regard to not to interfere with the possession and or schedule of land as per RORs as detailed in Paragraph-7 of the Writ Petition it is humbly submitted by the deponent that the petitioners are the recorded owners of the lease hold property as specified in Paragraph-7 of the writ Petition with having the mentioned area over the Plot no-358 in Khata No.179 of Mouza Tamando under Bhubaneswar Tahasil which has been subsequently found to be illegal and for which so motu revision case has been instituted against the petitioner s and others before the Court of learned Additional District Magistrate, Bhubaneswar under Section-7 (A) 3 of OGLS Act-1962 vide lease Revision case No.05/2021.

7) That it is further submitted that during course of handing over Ac.10.00 Dec. of land to the Sports & Youth Services Department it was found that through the aforesaid land mentioned in the aforesaid paragraph-7 of the writ petition has been recorded in the name of the present petitioner but no actual acquisition or possession of the said persons are found over the said lands. As such the possession of the petitioner over the said land as mentioned in Paragraph-7 of the writ petition has not in existence and only with regard to the recording of the land is concerned in the name of the petitioners the same are under subjudice before the learned Addl. District Magistrate, Bhubaneswar. AS such the action of the Opp. Parties for vacation or demolition of the construction of the petitioners over the aforesaid lands as mentioned in Paragraph-7 of the Writ Petition does not arise . It further submitted that since suo moto revision cases are pending before the learned Court of Addl. District Magistrate, Bhubaneswar they can approach the said learned court below cause of action if any arises in the matter. AS such the aforesaid writ petition is premature and hence the same is liable to

be dismissed.

The sketch map with regard to the total area of Plot No. 358 in Khata No.179 of Village- Tamando, Under Bhubaneswar Tahasil and list of cases filed before the learned Court of Additional District Magistrate, Bhubaneswar are annexed herewith and marked as ANNEXURE-A/3 & ANNEXURE-B/3 to this additional counter Affidavit."

9. A perusal of aforementioned paragraphs would evident that there is candid admission from the side of the State that Government College of Physical Education is going to be established by the Youth Services Department only over Plot No.358/988 arising out of Khata No.179 in village-Tamando and, as such, there is no proposal for further acquisition of lands either from the petitioners or from any other persons for the time being. It is also stated that the possession of the petitioners over the land, as mentioned in paragraph-7 of the writ petition, is not in existence, therefore the action of the opposite parties for vacation or demolition of the construction of the petitioners over the aforesaid lands, does not arise. Thereby, there is no apprehension on the part of the petitioners to face any vacation or demolition of their houses, where they are in possession. In such view of the matter, since Government has decided to have construction of Physical Education College over Plot No.358/988, there is no cause of action survives for the petitioners to approach this Court. However, if any cause of action arises, it is open to them to approach the appropriate forum in accordance with law.

10. The writ petition is accordingly disposed of.

11. Interim order passed earlier stands vacated.

Issue urgent certified copy as per rules.