

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 943 OF 2022

Jiban Pramanik and others *Petitioners*
Mr. P.C. Dash, Advocate
-versus-
The Collector, Balasore and others *Opp. Parties*

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
10.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 8th August, 2022 (Annexure-5) passed by learned Civil Judge (Junior Division), Jaleswar in I.A. No.58 of 2022 (arising out of C.S. No.58 of 2022), whereby he rejected an application under Order XXXIX Rule 3 C.P.C.
3. Mr. Dash, learned counsel for the Petitioners submits that in view of the urgency in the matter, the suit was filed along with an application under Section 80 (2) C.P.C. After the application under Section 80(2) C.P.C. was allowed, the suit was admitted and I.A. No.58 of 2022 filed under Order XXXIX Rules 1 and 2 C.P.C. was taken up. In view of the urgency, the Plaintiffs-Petitioners had also filed an application under Order XXXIX Rule 3 C.P.C. with a prayer to dispense with service of notice on the Defendants-Opposite Parties and to entertain the application. The said petition has been rejected vide order dated

8th August, 2022 under Annexure-5. Assailing the same, this CMP has been filed.

4. It is his contention that the Opposite Parties are bent upon to construct an additional class room in Sadhu Charan U.P. School, Mahulia under Sikharpur G.P. over the existing structure, which may endanger the life and limb of the students of the school. Learned trial Court without considering the same, rejected the same taking into consideration the provisions of Section 80 (2) C.P.C. stating that no interim relief can be granted in the suit, if the State Government or Public Officer is not given an opportunity of hearing. It is his submission that the impugned order under Annexure-5 is not sustainable in as much as the relief sought for in the petition under Order XXXIX Rules 1 and 2 C.P.C. will be frustrated, if no *ad interim ex parte* order of injunction is granted. This material aspect was not considered by learned trial Court. Hence, the impugned order under Annexure-5 is not sustainable.

5. In order to consider the prayer of learned counsel for the Petitioners, it would be profitable to go through the provision under Section 80(2) C.P.C., which reads as under:

“80. Notice:-

XXX

XXX

XXX

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to

the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).”

6. The provision under Section 80(2) C.P.C. clearly envisages that once the power under Section 80(2) C.P.C. is exercised, no interim relief can be granted without giving an opportunity of hearing to the Government and Public Officers as the case may be. In the instant case, the relief claimed by the Petitioners is against the Government Officers, namely, the Collector, Balasore, the Block Development Officer, Jaleswar as well as the P.E.O., Sikharpur G.P. Hence, learned trial Court has committed no error in rejecting the application under Order XXXIX Rule 3 C.P.C.

7. It is, however, observed that since the Defendants-Opposite Parties are Public Officers, the Petitioners are at liberty to move the interim application filed under Order XXXIX Rules 1 and 2 C.P.C. after serving notice on them.

8. With the aforesaid observation, this CMP is accordingly disposed of.

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

(K.R. Mohapatra)
Judge