

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 971 OF 2022

Suraj Kumar Das

....

Petitioner

Mr. K.M. Dhal, Advocate

-versus-

State of Odisha and another

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party No.1)

Mr. Debasis Nayak, Advocate
(For Opposite Party No.2)

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

**ORDER
06.12.2022**

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 23rd June, 2022 (Annexure-10) passed by learned 3rd Additional District Judge, Cuttack, in FAO No. 52 of 2019, whereby learned Appellate Court confirmed the order dated 1st May, 2019 (Annexure-9) passed by learned 5th Additional Senior Civil Judge in I.A. No.1 of 2016 [arising out of Civil Suit (I) No.1222 of 2016] with certain modification.
3. Mr. Dhal, learned counsel for the Petitioner submits that Civil Suit No.1222 of 2016 has been filed for a decree of natural right of passage over Plot No. 1508/2205 to an extent of Ac.0.028 decimals and Plot No.1508/2504 to an extent of Ac.0.009 decimals under Khata No. 1237 of Mouza Cuttack town Unit 18, Buxibazar (Schedule-A property) from every point of their house. It is submitted

that father of the Petitioner had purchased Plot No.1508/3469 from one Gopal Chakrabarty, who was the recorded owner in respect of the land. At the time of purchase, a building was standing thereon. After death of the father, the property has been recorded and mutated in the name of the Petitioner. From the time of the Gopal Chakrabarty, the aforesaid two plots are being used as access to the public road from the residence of the Petitioner. Since the Opposite Parties, namely, Cuttack Municipal Corporation as well as the State of Odisha tried to encroach upon the said land, the Petitioner filed a suit for the aforesaid relief to have an access to his residential house. Along with the plaint, the Petitioner also filed I.A. No. 1 of 2016 under Order XXXIX Rules 1 and 2 C.P.C. to restrain the Opposite Parties from entering upon the suit schedule 'A' property and raising any construction thereon.

3.1 It is submitted that the aforesaid two plots are the only access to the house of the Petitioner. If any construction is made thereon, the Petitioner will not have any access to his house from public road. Learned trial Court did not at all consider this aspect while adjudicating the Petition for injunction. Learned appellate Court, while adjudicating the appeal, although took note of the submission made by learned counsel for the Petitioner, but, refused to restrain the Opposite Parties from entering upon and raising construction thereon recording the finding that the Petitioner is using the northern side for access to the ring road. The said observation is unsustainable, inasmuch as,

the road is at a height of 10 feet from the ground floor of the house of the Petitioner. Thus, the same cannot be used as an access to the plot of the Petitioner.

4. Mr. Dhal, learned counsel also relied upon the decision in the case of ***Girish Chandra Sahu and others vs. Nagendranath Mitra and others***, reported in AIR 1978 Orissa 211 and ***Lalbihari Basa vs. Bijaya Kumar Mahotam***, reported in 2010 (I) OLR 578 and contended that the Plaintiff-Petitioner has a right to approach the public road from every point of his recorded land and he can enforce such right in a court of law. In that view of the matter, the impugned orders under Annexures-9 and 10 are not sustainable. He further submits that learned trial Court has taken note of an order passed by this Court in a PIL, which was not produced before it. Thus, the Petitioner had no occasion to make any submission to such objection raised by the Opposite Parties. It is his submission that if construction is made over the suit land, then nothing will be left for adjudication in the suit itself. He, therefore, prays for setting aside the impugned orders and to direct the parties to maintain *status quo* with regard to possession over the suit property till disposal of the suit, which is otherwise ready for hearing.

5. Mr. Mishra, learned Additional Standing Counsel vehemently objects to the same and submits that the contention raised by learned counsel for the Petitioner, if accepted, will amount to violation of the direction of this Court, as it has been directed in the PIL to clear the

enforcement over the aforesaid two plots. Regarding observations made by learned appellate Court, Mr. Mishra, learned Additional Standing Counsel submits that the land is required for construction of drain, community centre and Anganwadi centre, which are for the general public, who will be benefitted. To the contrary, if submission of the Petitioner is accepted, then it will be beneficial to an individual only. The Petitioner has alternate passage to approach the public road, i.e., ring road, which is admitted by the learned counsel appearing before the learned appellate Court. He also stressed upon the following observation made by the learned appellate Court while disposing of the appeal.

*“.....In such view of the matter, the appellant may be allowed to use the specific portion of Plot No. 1508/2205 as passage to approach the public road not the entire 37 decimals of land. Hence, taking the above facts and circumstances into consideration, I am of the view that as the plot No.1508/2205 and 1508/2504 **belong** to the Government **and** the appellant is having the alternative right of passage to approach the ring road from the concerned building standing over his plot, it cannot be safely concluded that the prima facie case lies with the appellant and the balance of convenience leans in his favour and if the respondents are permitted to construct the community centre, drain and Anganwadi centre over the disputed plot, the appellant will not suffer any irreparable loss.....”*

Therefore, the contention made by the learned counsel for the Petitioner is not sustainable. As such, the impugned orders warrant no interference.

6. Mr. Nayak, learned counsel appearing for the CMC submits that allowing the prayer of the Petitioner would amount to violation of the direction of this Court in OJC No. 3007 of 2000, and in the said disposed of PIL, a direction has been issued to clear the encroachment. A proposal has been made for infrastructural development over the aforesaid Government land. He also submits that when learned appellate Court has made an arrangement keeping in mind the interest of the Petitioner, the impugned orders warrant no interference.

7. Taking into consideration the submissions of learned counsel for the parties and on perusal of the record, it is apparent that Plot Nos.1508/2205 and 1508/2204 are recorded as 'Anabadi'. Both the aforesaid plots are recorded under Khata No.1237 and the Kisam of the land is 'Patita' and 'Puratana Patita' respectively. It further appears that learned Appellate Court, while discussing the matter taking into consideration the aforesaid two case laws ***Lalbihari Bas (supra)*** and ***Girish Chandra Sahu (supra)*** cited by the learned counsel for the Petitioner, has directed that the Petitioner should be allowed to use a specific portion of the suit Plot No.1508/2205 as passage to the public road. Section 41 (ha) of the Specific Relief Act, 1963 (for short "the Act") reads as under:-

"An injunction cannot be granted—

(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project."

In that view of the matter, the learned appellate Court has dealt with the matter in its proper perspective which warrants no interference.

8. Accordingly, the CMP being devoid and stands dismissed.

Issue urgent certified copy of this order on proper application.

(K.R. Mohapatra)
Judge

