

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.682 of 2019

Pratap Chandra Singhsamanta *Appellant*

Mr. Samir Kumar Mishra, Advocate

-versus-

State of Odisha & others *Respondents*

Mr. Debakanta Mohanty, AGA

Mr. R.K. Sahoo, Advocate for Respondent No.7

**CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN**

**ORDER
23.11.2022**

Order No.

06. 1. On 29th September, 2020, the following order was passed:-

“This matter is taken up through video conferencing.

Heard learned counsel for the appellant and learned Additional Government Advocate.

Issue notice.

Learned Additional Government Advocate accepts notice on behalf of respondents 1 to 6.

Requisites for issuance of notice to respondent No.7 by registered post with A.D. shall be filed by 01.10.2020.

Accept one set of process fee.

This writ appeal has been filed challenging the order dated 19.09.2019 passed by this Court in W.P.(C) No. 12943 of 2019. In the writ application, the stand of the appellant was that Civil Suit No. 106 of 2006 is pending before the learned Additional Civil Judge (Junior Division), Khandapada to declare right, title, interest and possession over the suit land including the source (water tank) in question. Since the source in question was subjudice before the Civil Court, rightly the Sub Collector, Nayagarh in Sairat Appeal No. 2 of 2010 vide

order dated 01.07.2011 came to a conclusion that the order passed by the Tahasildar, Khandapada in Sairat Case No. 88/08-09 is set aside as the lease deed made by the auction holder is void and also directed not to take any step for auction of the source. Learned Additional Government Advocate also admitted aforesaid fact and submitted that the source has not been put to auction from 2011 to 2018. The records also reveal that in the Joint inquiry report of Tahasildar Khandapada and BDO, Khandapada dated 12.10.2018 it was observed that since the matter is being sub-judice before the Civil Court, the earlier order dated 01.07.2011 passed by the Sub Collector, Nayagarh in Sairat Appeal No. 02 of 2010 be considered while putting the source for auction. However, without considering the above facts and circumstances and also the pendency of the Civil Suit, Respondent No.3-Collector, Nayagarh has put the source to auction in the year 2018 without any materials on record regarding the possession of the source. The said fact has not been considered while putting the said water tank to auction in the year 2018 for a period of five years in favour of Respondent No.7 which on the face of it appears to be a paper transaction only.

Since the respondents have not filed any counter affidavit in the writ petition and the writ petition was disposed of at the time of admission, this Court is passing the interim order to avoid disturbance and scramble of possession to the effect that the order dated 19.09.2019 passed in W.P.(C) No. 12943 of 2019 shall remain stayed and the auction which was held by the Collector Nuapada in respect of the source (water tank) in question, shall not be given effect to, till next listing.

Put up this matter on 04.11.2020. Counter be filed in the meantime.

The petitioner may utilize the soft copy of this order available in the High Court's website or print out thereof at par with the certified copy in the manner prescribed, vide Court's notice No.4587, dated 25.03.2020. ”

2. Learned counsel for the Respondent No.7 agrees that the impugned order of the learned Single Judge dated 19th September, 2019, which was passed on the very first date without notice to anyone, can be set aside and W.P.(C) No.12943 of 2019 can be restored to file of the learned Single Judge for a fresh disposal on merits in accordance with law.

3. In that view of the matter, the impugned order dated 19th September, 2019 is set aside and W.P.(C) No.12943 of 2019 is restored to file of the learned Single Judge in the Roster Bench where it will be listed for directions on 1st February, 2023. The present Appellant and the State will file their respective replies on or before 2nd January, 2023 and rejoinder thereto if any shall be filed by the writ petitioner before the next date before the learned Single Judge. No further time will be granted for that purpose. The learned Single Judge is requested to dispose of the writ petition as expeditiously as possible thereafter. Till the disposal of the writ petition, status-quo, as on date, should be maintained by the parties.

4. The writ appeal is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/Laxmikant