

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 35736 OF 2021

Sanjay Keshari Mohapatra and others* *Petitioners

Mr. Niranjana Panda, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

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

**ORDER
29.03.2022**

Order No.

- 5.
1. This matter is taken up through hybrid mode.
 2. The Petitioners in this writ petition seek for a direction to the Opposite Parties more particularly Opposite Party Nos. 2 and 3, namely, the Collector, Puri and Tahasildar, Nimapara respectively to provide adequate compensation to them in respect of the land in Plot No.1303 under Khata No.576 measuring Ac.0.53 decimals situated in mouza Bhagabandha under Nimapara Tahasil in the district of Puri (for short 'the case land').
 3. Mr. Panda, learned counsel for the Petitioners submits that the aforesaid case land stands recorded in the name of the Petitioners under kissam '*Jalasaya*'. Dhanua Drainage System lies adjacent to the case land. While renovating Dhanua Drainage System, the Opposite Parties have encroached upon the case land of the Petitioner and have constructed the drain. No proceeding whatsoever for acquisition of the case land of the Petitioner was ever initiated and compensation to that effect was neither assessed nor paid to the Petitioners. Hence, this writ petition has been filed for the aforesaid relief.

4. Counter affidavit and reply affidavit have been filed by the parties at different points of time.

5. Taking into consideration the rival contentions of the parties, this Court vide order dated 17th February, 2022 directed that an affidavit along with map (both prior and after renovation) of Dhanua Drainage System shall be filed indicating as to whether Dhanua Drainage System was existing prior to its alleged renovation or not. If Dhanua Drainage System so existed, whether Plot No. 1303 was being affected by such drainage system.

6. In response to the same, the Assistant Executive Engineer, Drainage Sub-Division No.III, Nimapara under Drainage Division, Puri filed an affidavit on 7th March, 2022 indicating that the alignment of Dhanua Drainage System is far away from the case land, which is around 100 meters. In support of such averments, a map is also annexed to the said affidavit as Annexure-B/5. It is further stated that Dhanua Drainage System was existing and only its renovation work was undertaken during December, 2016. No decision whatsoever was ever taken by the Opposite Party Nos. 4 and 5 for construction of any drain over the case land.

7. It is submitted by Mr. Mishra, learned Additional Government Advocate that execution of the drainage work (renovation) was limited to the Government land only and private land of the Petitioners was never encroached upon or utilized for the drainage work.

8. In response to the said affidavit, the Petitioners filed a rejoinder affidavit on 25th March, 2022 enclosing the Amin report at Annexure-3. It discloses that there is no Government land surrounding Plot No.1303 to an extent of Ac.0.53 decimals recorded in the name of the Petitioners.

9. Mr. Panda, learned counsel for the Petitioners seriously disputes the map filed by the Opposite Parties, which has been annexed

to the affidavit dated 7th March, 2022 as Annexure-B/5. He emphatically submits that for renovation of Dhanua Drainage System, a portion of the case land (Plot No. 1303) has been encroached upon and insisted for deputation of an independent Commissioner to demarcate the land.

10. Mr. Mishra, learned Additional Standing counsel vehemently objects to the same. It is his submission that Amin report submitted by the Petitioners at Annexure-3 to the rejoinder affidavit clearly shows that there is no Government land surrounding the case land. In that view of the matter, no further deputation of Commissioner is required, as contended. He, therefore, prays for dismissal of the writ petition.

11. Taking into consideration the rival contentions of the parties and on perusal of the record, it appears that the sole allegation of the Petitioners is with regard to encroachment of the case land by the authorities while renovating the pre-existed Dhanua Drainage System. Summarizing the contentions of learned counsel for the parties, this Court vide order dated 17th February, 2022 directed learned State Counsel to file a further affidavit containing information as detailed in para-3 of the said order. Although no clear statement has been made as to how the rain water was being discharged before renovation of the aforesaid Dhanua Drainage System, but the contents of the affidavit dated 7th March, 2022 amply makes it clear that the rain water was being discharged through Dhanua Drainage System before its renovation during December, 2016. It also transpires from the map annexed to the said affidavit that there are several private plots in between Dhanua Drainage System and the case land. The report of the Amin filed by the Petitioners, which has been annexed to the rejoinder affidavit dated 25th March, 2022 as Annexure-3, also discloses that there is no Government land surrounding Plot No. 1303. However, during enquiry, some gentlemen of the village informed that the rain

water was being discharged over Plot Nos. 1289, 1303 and 1304 and passes to the main canal over Plot No.1394, but the said observation of the Revenue Inspector is of no help to the Petitioners as it does not disclose that there is encroachment over the case land for renovation work of Dhanua Drainage System.

12. In view of the above, the contentions raised by Mr. Panda, learned counsel for the Petitioners for further demarcation and measurement of the case land is not necessary.

13. In view of the discussions made above, this Court is of the firm opinion that the case land of the Petitioners is not encroached upon or utilized for renovation of Dhanua Drainage System. Thus, this writ petition merits no consideration and the same is accordingly dismissed.

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

(K.R. Mohapatra)
Judge

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