

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1157 OF 2022

Nimain Charan Dutta

....

Petitioner

Mr. Manoj Kumar Pati, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Baibaswata Panigrahi,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.11.2022

Order No.

- 01.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 13th October, 2022 (Annexure-4) passed by the learned District Judge, Balasore in I.A. No.49 of 2022 (arising out of F.A.O. No.66 of 2022), whereby an application under Order XXXIX Rule 3 C.P.C. has been rejected.
 3. Mr. Pati, learned counsel for the Petitioner submits that C.S. No.540 of 2022 is pending in the Court of learned Civil Judge (Junior Division), Jaleswar. The Petitioner also filed an application in I.A. No.64 of 2022 under Order XXXIX Rules 1 and 2 C.P.C. in the said suit. The said application was rejected on 13th September, 2022. Assailing the same, the Petitioner has filed F.A.O. No.86 of 2022, which is pending before the learned District Judge, Balasore. As the Opposite Parties, who are the Government officials have started demolishing the structure over the suit land, the Petitioner filed an application in I.A. No.49 of 2022 under Order XXXIX Rules 1 and 2 C.P.C.. In view of the urgency in the matter, the Petitioner also filed an application under Order XXXIX Rule 3 C.P.C. praying *inter alia* to dispense with service of notice on the Opposite Parties to take up I.A. for *ex parte* ad interim injunction.

The said application was rejected vide order dated 13th October, 2022 under Annexure-4. Hence, this CMP has been filed.

4. It is submitted by Mr. Pati, learned counsel for the Petitioner that taking advantage of dismissal of the petition under Order XXXIX Rule 3 C.P.C., the State functionaries have already demolished a major portion of the residential house of the Petitioner. Thus, finding no other alternative, the Petitioner has moved this Court to protect his property.

5. Mr. Panigrahi, learned Additional Standing Counsel submits that in view of the nature of dispute, the State functionaries should be given an opportunity of hearing before I.A. No.49 of 2022 is taken up for adjudication on merit.

6. Upon hearing learned counsel for the parties and on perusal of the record, it appears that the Respondents-Opposite Parties before learned District Judge, Balasore are the State functionaries. Hence, notice of I.A. can be served on them through learned Government Pleader/AGP attached to the said Court.

7. Accordingly, this CMP is disposed of with a direction that in the event, the Petitioner serves a copy of the F.A.O. along with I.A. on learned Government Pleader/AGP attached to the Court of learned District Judge, Balasore, the same shall be treated to be sufficiency of notice on the Opposite parties and the I.A. No.49 of 2022 shall be taken up on merit forthwith.

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

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

(K.R. Mohapatra)
Judge