

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO.39008 OF 2021

Nita Dubey and another *Petitioner*
Mr. Vivaswat Mohapatra, Advocate

-versus-

State of Odisha and others *Opp. Parties*
Mr. Suvashish Pattnaik,
Additional Government Advocate
(For Opp. Party Nos.1 and 4 to 6)
Mr. Subrat Satpathy, Advocate
(For Shree Jagannath Temple Administration)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
24.08.2022

Order No.

9. 1. This matter is taken up through hybrid mode.
2. Perused the kind minutes of Hon'ble the Chief Justice at Flag-K.
3. The Petitioner in this writ petition seeks to assail the notice dated 5th November, 2021 (Annexure-1) issued by the Superintendent of Police, Puri to the O.I.C., Balanga P.S. requesting him to stop unauthorized construction over temple land alleging that one Akrura Senapati, son of Braja Senapati of Nua Budhakera, P.S. Balanga, Puri is making unauthorized construction of Chicken Farm over Plot No.1108(P), 1101(P) to the extent of area of Ac.0.22 decimals under Hal Khata No.8 of the said mouza (for short 'the case land').
4. Mr. Mohapatra, learned counsel submits that the Petitioner No.1, namely, Smt. Nita Dubey, was a bhag tenant under the erstwhile Endowment Board and was paying rent to the Landlord, which is apparent from the rent receipts annexed to the writ

petition as Annexure-3 series. The Petitioner No.2, namely, Akrura Senapati, is working under the Petitioner No.1 and is looking after the Chicken Farm constructed over the case land. Due to FANNI, the Chicken Farm is completely destroyed for which the Petitioner No.2 on instruction of Petitioner No.1 started renovating the said structure. At this juncture, the Superintendent of Police, Puri issued a letter to the I.I.C., Balanga P.S. to stop construction. Neither the Superintendent of Police, Puri nor the I.I.C., Balanga P.S. has any competence to issue such notice. If the land stands recorded in the name of Shree Jagannath Temple Managing Committee, the police authorities have no *locus standi* to issue such notice. He, therefore, prays for setting aside the impugned notice and to permit the Petitioner No.2 to make construction of Chicken Farm over the case land.

5. Mr. Satapathy, learned counsel for Shree Jagannath Temple Administration vehemently objected to the same. Referring to the counter affidavit, he submits that the case land was recorded in the name of erstwhile Endowment Board of Dakhinaparswa Math. After abolition of the estate, it vested in the State. After vesting, the case land was recorded in the name of Shree Jagannath Temple Managing Committee. Assailing the same, the Endowment Board of Dakhinaparswa Math preferred OJC No.5563 of 2002, which was disposed of on 18th November, 2003 quashing the order passed in O.E.A. Case No.02 of 2001 and observing that the case is covered by the ratio decided in the case of *Sidha Math and others –v- Shree Jagannath Temple Managing Committee*, reported in 108 (2009) CLT 508. The said order was challenged before the Hon'ble Supreme Court in

Civil Appeal No. 3415 of 2010. Similar such civil appeals were also filed by different Mathas before the Hon'ble Supreme Court. All the civil appeals were heard analogously and in the case of ***Shree Jagannath Temple Managing Committee –v- Sidha Matha and others***, reported in 2016 (I) OLR (SC) 209, the Hon'ble Supreme Court held that recording of the land in favour of Shree Jagannath Temple Administration is legal and justified. Accordingly, the case land was recorded in the name of Shree Jagannath Temple Administration. Any right of the Petitioner No.1 subsisting prior to the order passed in OJC No.5563 of 2002 gets merged with the judgment passed by the Hon'ble Supreme Court and the Petitioner No.1 has no subsisting right over the case land, which is a barren land and there is no construction over the case land. There is no material on record to show that Akrura Senapati is the agent/servant of Petitioner No.1. When the Petitioner No.2 made an attempt to make construction over the case land, the authorities of Shree Jagannath Temple Administration requested the Tahasildar, Nimapara to initiate appropriate proceeding as per Section 16(A)(i) of Shree Jagannath Temple Act, 1964 read with the provisions of O.P.L.E. Act. At this juncture, in spite of request of authorities of Shree Jagannath Temple Administration, when the Petitioner No.2 did not stop construction over the case land, they had to approach the Superintendent of Police, Puri to take steps to protect their interest and accordingly, the impugned notice has been issued. In that view of the matter, this writ petition is misconceived and is liable to be dismissed.

6. Taking into consideration the submissions made by learned counsel for the parties, it is apparent that the case land stands recorded in the name of Shree Jagannath Temple Managing Committee. The Petitioners claim to be in possession over the case land, which is seriously disputed by the authorities of Shree Jagannath Temple Administration. However, it is submitted by Mr. Mohapatra, learned counsel for the Petitioners that the Petitioner No.1 had a chicken shop over the case land, which was destroyed during cyclone of FANNI and she had instructed the Petitioner No.2 to renovate/repair the said chicken farm/shop. There is no material on record to show that there was, in fact, a chicken farm over the case land constructed by Petitioner No.1. It is also not clear that in what capacity, such a chicken farm is being attempted to be constructed over the case land by the Petitioner No.1. In order to make any construction over the case land, the Petitioners have to take permission from the true owner, namely, Shree Jagannath Temple Managing Committee, Puri. No such permission is apparently taken from the true owner to make such construction. It also appears from the counter affidavit that the authorities of Shree Jagannath Temple Administration have requested the Tahasildar, Nimapara to take steps for eviction of unauthorized occupant, namely, the Petitioner No.2, from the case land by initiating proceeding under Section 16 (A) of the Act read with the provisions of OPLE Act.

7. When an unauthorized construction is being attempted to be made over the case land, the true owner, namely, Shree Jagannath Temple Administration, has to take steps to protect their land. Thus, the authorities of Shree Jagannath Temple

Administration have requested the Superintendent of Police, Puri to instruct the I.I.C., Balanga P.S. to stop construction over the case land. As such, I find no infirmity in the impugned notice. Accordingly, this writ petition being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

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