

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 4003 of 2022

Kashinath Behera @ Kasinath Behera &
Others

Petitioners

Mr. Pravash Chandra Jena, Advocate

-Versus-

State of Odisha and Others

....

Opposite Parties

Mr. Sitikanta Mishra, ASC, OP Nos.1 & 3

None for OP No.2

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

21.12.2022

Order No.

- 01.
1. Heard learned counsel for the petitioner and learned counsel for the State. None appears for opposite party No.2.
 2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner praying for quashing of the order dated 6th December, 2022 passed by the learned ADCP-cum-Executive Magistrate, UPD, Cuttack in Criminal Misc. Case No.1321 of 2022 under Section 144 Cr.P.C. on the grounds stated therein.
 3. The impugned order as at Annexure-2 is perused by this Court.
 4. Mr. Jena, learned counsel for the petitioner submits that in view of the impugned order under Annexure-2, petitioner No.1 is in financial difficulty and hardship since he is not able to take up any construction work over the case land as status quo has been directed

by learned Executive Magistrate. It is further submitted that petitioner No.1 is the recorded owner of the case land but then opposite party No.2, who is the son has moved before the court of learned Executive Magistrate and initiated the proceeding under Section 144 Cr.P.C. as a result of which the impugned order under Annexure-2 came to be passed, consequent upon which, the construction work has been held up.

5. Mr. Jena, learned counsel for the petitioner submits that same is not justified, hence, to be interfered with by this Court and set aside.

6. Mr. Mohapatra, learned Additional Standing Counsel for the State opposed the contention of Mr. Jena, learned counsel for the petitioner and justifies the impugned order under Annexure-2.

7. By the impugned order under Annexure-2, the learned Executive Magistrate directed the parties not to change the nature and character of the land in question. The Court finds that the same is a preliminary order passed by the learned Executive Magistrate in a proceeding under Section 144 Cr.P.C. wherein the petitioners have been directed to appear and file their show-cause. The said proceeding is now stated to be posted to 29th December, 2022. It is claimed that on 20th December, 2022, opposite party No.2 sought for an adjournment which was allowed and now it is fixed to 29th December, 2022 and unless a specific direction is issued to the learned Executive Magistrate, there may be further delay which is likely to cause immense hardship to petitioner No.1 towards construction over the case land.

8. Considering the nature of dispute and the fact that the impugned decision under Annexure-2 is a preliminary order, the Court is of the view that the petitioners should participate as in the meantime they have filed the show-cause in compliance of such order for a final decision in the matter.

9. At this juncture, Mr. Jena, learned counsel for the petitioner submits that learned Executive Magistrate may be directed to expedite hearing of the proceeding under Section 144 Cr.P.C., which would serve the purpose or else petitioner No.1 would continue to suffer on account of preliminary order as the nature of the case property is directed not to be changed.

10. Considering the limited prayer, the CRLMC stands disposed of with a direction to the learned ADCP-cum-Executive Magistrate, UPD, Cuttack to expedite the hearing in Criminal Misc. Case No.1321 of 2022 and ensure its completion by passing a final order preferably within a fortnight from 29th December, 2022. Furthermore, the petitioner is at liberty to move the learned Executive Magistrate for appropriate orders pending disposal of the proceeding vis-à-vis the subject matter in question in case of urgency shown and proved and in the event so pleaded, the court below shall pass necessary orders thereon as per and in accordance with law.

11. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge