IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No. 2281 of 2023

Lokanath Dash .... ***Petitioner***
Mr. R.K. Mahapatra, Advocate

-versus-

State of Odisha & others .... ***Opp. Parties***
Mr. M.K. Mohanty, ASC

P R E S E N T:

HONOURALE SHRI JUSTICE CHITTARANJAN DASH

DATE OF ORDER: 06.02.2024

Chittaranjan Dash, J.

1. Heard learned counsel for the Petitioner and the State.

2. By means of this application the Petitioner seeks the indulgence of this Court for issuance of a direction to the Opposite Party No.2 to register written complaint of the Petitioner dated 03.11.2023 and investigate into the matter as per law.

3. The background facts of the case are that the Petitioner claims to be the owner in respect to the Plot No.471 in MS. Khata No.191 for an area measuring 0.09 decimal. According to the Petitioner, the total land measuring Ac. 0.12 decimal belongs to Mohanta Kanhu Charan Ramanuja Das. The said land was not an endowment property and it did not belong to the deity. Out of Ac. 0.12 decimal, Ac. 0.03 decimal has been recorded in the name of Rama Charan, Son of Khasi Ram Braja Basi Jayprakash Gupta as "Stitiban" and

Ac. 0.09 decimal of land out of Act. 0.12 decimal was recorded in the name of Mohanta Kanhu Charan Ramanuja Das under "Bebondobasta" status. The Petitioner had a shop over the said land where it deals with the book and it was a bookstore. The present Petitioner has been running the said business over the said land for the last thirty-five years and before him, his father was also running the shop over the said land. As such, the present Petitioner, and his ancestors were/are in continuous possession of the said land for the last seventy years. Pursuant to an announcement made on behalf of the Executive Officer, Bhadrak Municipality on 18.08.2023, directing the Petitioner to vacate the shop immediately, the Petitioner moved before this Court in W.P.(C) No. 27440 of 2023. This Court while dismissing the Writ Petition based on the statement of the learned counsel appearing for the Opposite Party No. 4 i.e. the Executive Officer, Bhadrak Municipality, the preliminary counter affidavit filed to the effect that no such notice has been issued by Opp. No.4 this Court observed, inter alia, that –

> "A copy of the plaint in C.S. No. 519 of 2020 is at Annexure-A/4 to the counter affidavit filed by opposite party No.4 and the same is perused. It does appear from Annexure-A/4 that the petitioner is one among others to have knocked the doors of the local civil court and the matter is stated to be still subjudice, the fact which is not denied by the learned counsel for petitioner. That apart, when there is complete denial as to the issuance of eviction notice under Annexure-4 and instead, fraud is alleged by Mr. Rath, the learned

Senior Advocate appearing for Opposite Party No. 4, the Court is of the view that the writ petition should not be entertained and accordingly, it is dismissed. The interim order passed earlier by this Court earlier stands vacated as a result."

4. After disposal of the aforesaid writ petition, on 27.10.2023, the Executive Officer, Bhadrak Municipality willfully and deliberately misinterpreted the Order dated 12.10.2023 passed in W.P.(C) No. 27440 of 2023 and issued one coercive notice dated 27.10.2023, directing the Petitioner to vacate the shop room within 07 days after receipt of the said notice with a mala fide and vengeful intent. The Petitioner once again moved to this Court in W.P.(C) No. 35567 of 2023, wherein this Court vide order 02.11.2023, observed as follows–

"***In the result, the writ petition stands allowed. Consequently, the impugned notice under Annexure-3 issued by opposite party No.4 is hereby set aside, however, in view of the observation as above, opposite party No.4 is allowed the liberty to act upon and proceed against the petitioner according to the provisions of Odisha Municipal Act***."

5. It is then on 03.11.2023, right after the order dated 02.11.2023 under Annexure-1, the erring officer i.e. accused persons deliberately and whimsically rushed to the Plot Nos. 471, 472 & 473, under Khata No. 113/294 and out of which petitioner's shop was functioning on Plot No.471, demolished the shops by using JCB

Machines and Police Force without respecting the orders dtd. 02/11/2023 passed by this court so also without adhering to provisions of the Municipal Act as directed. The Petitioner therefore filed a complaint before the Opposite Party No.2 besides a CONTC Case bearing No. 8474 of 2023.

6. It is submitted by the learned counsel for the Petitioner that the police did not come into action despite the complaint lodged on 06.11.2023.

7. The learned counsel for the State on the other hand vehemently opposed the contentions raised by the learned counsel for the Petitioner.

8. Perusal of the case record reveals that there is a civil proceeding pending in connection with the suit property under Annexure-A/4. Any omission or commission in respect to the said land being the subject matter of the suit, in absence of any criminal act having been committed by the Executive Officer, Bhadrak Municipality, if any, undertaken by the police would be not in consonance with law. The sole ground on which the Petitioner moved the Opposite Party in lodging a written complaint on 03.11.2023 is with respect to the demolition of his shop without adhering to the order dated 02.11.2023 passed by this Court in W.P.(C) No. 35567 of 2023. The Petitioner has also resorted to one application for contempt registered vide CONTC No. 8474 of 2023. In that view of the matter, it is not necessary for this Court to pass any direction for registration of the FIR and the CRLMP stands disposed of.

9. As far as the Contempt Petition is concerned, it is submitted that the Opposite Party No.4 has violated the order of this Court passed in W.P.(C) No.35567 of 2023.

10. Perusal of the order passed by this Court in the said Writ Petition reveals that the Court had directed to Opposite Party No. 4 with a liberty to act upon and proceed against the Petitioner under the provisions of the Odisha Municipal Act, 1950. Admittedly, there is a deviation in the action of the Opposite Party No. 4 according to the direction though he is not estopped to proceed against the Petitioner but admittedly only in accordance with Odisha Municipal Act, 1950. The Opposite Party has sworn an affidavit with unconditional apology. From the affidavit, it is borne out that the Petitioner has joined the place of posting as Executive Officer only in the afternoon of 02.11.2023 and as such he was not aware of the order passed by this Court. In any case, it is submitted that as soon as the Opposite Party No. 4 came to know about the order, he stopped further demolition. In view of the above, none of the action of the Opposite No.4 can be taken as deliberate and intentional and this Court refrain from issuing any contempt against the Opposite Party. This is becoming the action if any, performed by the Opposite Party No. 4 in demolishing the portion of land, is not a deliberate act but being unaware of the direction passed through the order is very specific that the action against the Petitioner can be contemplated but only in accordance with the Odisha Municipal Act, 1950. Consequently, the proceeding against the Petitioner might be irregular but there is nothing preventing the Opposite Party No. 4 to proceed with against the Petitioner.

11. It is however, made clear that the claim, if any, accrue in favour of the Petitioner in exercise of his civil right, stands not abrogated. In any case, the unconditional apology submitted by the Opposite Party is accepted.

12. In view of the above, it is not necessary for this Court to pass any direction for registration of the FIR and the CRLMP being disposed of, CONTC No. 8474 of 2023 stands disposed of too.

(Chittaranjan Dash)
Judge

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Signature Not Verified
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Signed by: BIJAY KETAN SAHOO
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 07-Jul-2025 18:03:18