IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 29828 of 2024 &
W.P.(C) No. 29911 of 2024

(Applications under Articles 226 and 227 of Constitution of India)

AFR **Krushna Chandra Mohapatra (dead). represented through L.Rs & Others** ..... Petitioners

-Versus-

State of Odisha & Others ..... Opposite Parties

For Petitioners : Ms. D. Mahapatra, Advocate

For Opp. Parties: Ms. J. Sahoo,
Addl. Standing Counsel

Mr. D. Mohapatra, Sr. Advocate
With Mr. M.R. Pradhan, Advocate
(For O.P Nos. 2 to 4)
Mr. N.P. Parija, Advocate
(For O.P Nos. 5 to 9)

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
7th April, 2026

SASHIKANTA MISHRA, J. The petitioners seek to challenge the inaction of Opposite Party Nos.2 to 4, namely, Cuttack Development Authority (C.D.A.), Planning Member/Secretary, CDA and Enforcement Officer, CDA respectively in the matter of removal of encroachment allegedly made by the private opposite

parties over Plot Nos.602 and 606 under Mouza–Nuapada in Cuttack despite fresh measurement conducted pursuant to the directions of this Court in W.P.(C) No.33429 of 2020 and W.P.(C) No.21106 of 2023.

2. Since both the writ petitions involve common facts, they were heard analogously and are being disposed of by this common judgment. For the sake of convenience, the facts of W.P.(C) No.29828 of 2024 are referred to.

3. The case of the petitioners, in brief, is that Opposite Party Nos.5 to 9 made unauthorized constructions over Plot Nos.602 and 606, which according to the them are public road, thereby obstructing to easy ingress and egress of the petitioners and other inhabitants of the locality. It is stated that in U.C. Case No.174 of 2015, Cuttack Development Authority (Opp. Party no.2) upon enquiry found such encroachment and directed removal of the unauthorized constructions by order dtd 28.08.2016 which was affirmed in Appeal No.27 of 2016 by order dtd. 23.09.2017. Said appellate order was challenged before this Court in W.P.(C) No.22558 of 2017, wherein this Court directed joint measurement of the land taking into account both existing and non-existing maps. Pursuant

thereto, joint measurement was conducted in 2019, wherein the encroachment was confirmed.

It is also stated that that despite such findings, no steps were taken by the authorities, compelling the petitioners to approach this Court in W.P.(C) No.33429 of 2020, which was disposed of on 06.05.2024 with a direction to conduct fresh measurement and to take consequential action within a stipulated period. In compliance thereof, fresh joint measurement was conducted on 10.07.2024, by which encroachment was again found over the said plots and notices dated 23.08.2024 were issued to Opposite Party Nos.5 to 9 for removal of the unauthorized constructions. As no further action was taken by the authorities (O.P no. 2 to 4), the petitioner has approached this Court in the present writ petition.

4. Opposite Party Nos.5 to 9, on the other hand, have filed a counter affidavit claiming that Plot No.602 is a private passage jointly owned by them and their co-sharers, and Plot No.606 is a private homestead land belonging to third parties. The petitioners have no right over the said land and have falsely projected a private passage as a public road.

It is also stated that the dispute involves questions relating to title, possession and nature of land, which are matters for adjudication by the Civil Court and in fact, civil suits are already pending between the parties in C.S no. 1015 of 2024 before Civil Judge, Sr. division, Cuttack. The correctness of the measurement reports is also disputed in C.S. no. 995 of 2024 before the same Court.

5. Heard Ms. D. Mahapatra, learned counsel for the petitioners, Mr. Dayanand Mohapatra, learned Senior Counsel with Mr. M.R. Pradhan, learned counsel for the CDA, Mr. N.P. Parija, learned counsel for the private Opp. Party nos. 5 to 9 and Ms. J. Sahoo, learned ASC for the State.

6. Ms. D. Mahapatra would argue that the issue of encroachment over Plot Nos.602 and 606 has already been determined in earlier proceedings under the provisions of the ODA Act, wherein, upon due enquiry, the CDA directed demolition of the unauthorized constructions and the same was affirmed in appeal. Said order was challenged before this Court but did not result in setting aside of the same rather directions were issued for joint measurement. She submits that pursuant to such directions, joint measurements were conducted on

more than one occasion, including the latest measurement on 10.07.2024, wherein encroachment was found to have been made again. Despite issuance of notice on 23.08.2024 by Opposite Party no. 2, no fruitful action ensued.

She further argues that the plea taken by Opposite Party Nos.5 to 9 that the land in question is a private passage is not correct as once it is confirmed as public road by the Opposite party no. 2 and confirmed in appeal, the authorities are under obligation to enforce such order and remove the encroachment.

7. Per Contra, Mr. Parija would argue that the writ petitions are based on disputed questions of fact. He submits that Plot No.602 is a private passage jointly owned by Opposite Party Nos.5 to 9 along with their co-sharers as per ROR and Plot No.606 is a private homestead land belonging to third parties as per ROR, and as such, the petitioners have no manner of right, title or interest over the same.

He further argues that civil suits have already been instituted by the parties and are pending adjudication, wherein all these issues can be effectively decided on the basis of evidence.

He further argues that the earlier order issued by this Court was to cause measurement considering both existing and non-existing maps but it has not been done properly so no reliance can be placed upon.

8. Mr. Dayanand Mohapatra would argue that the authorities have acted in compliance with the directions issued by this Court from time to time. He submits that pursuant to the order dated 06.05.2024 passed in earlier writ petitions, fresh joint measurement was conducted on 10.07.2024 in presence of the concerned parties. Thereafter, notice dated 23.08.2024 was issued to the private opposite parties directing removal of the unauthorized constructions within the stipulated time.

He further submits that subsequent action could not be taken in view of the order passed by this Court in W.P.(C) No.23535 of 2024, wherein the parties were relegated to approach the Civil Court for adjudication of their disputes and to seek appropriate interim relief. He therefore, submits that in view of the pendency of civil proceedings and interim orders being passed therein, the authorities have refrained from taking steps so as to avoid any conflict with judicial orders.

9. Ms. J. Sahoo, ASC supports the submissions of Mr. Mohapatra and makes similar arguments.

10. Upon hearing learned counsel for the parties at length and on careful perusal of the pleadings and materials on record, this Court finds that the dispute essentially relates to the nature and character of Plot Nos.602 and 606, i.e., whether the same are public road or private land. While the petitioners rely upon orders passed under the ODA Act and subsequent measurement reports to allege otherwise as to their nature as also encroachment, the private opposite parties have disputed the same by claiming private ownership and right of passage.

11. It is also not in dispute that civil suits relating to the disputed land are pending. As can be seen from the order dated 06.01.2025 passed in I.A. No.1 of 2024 arising out of C.S. No.1015 of 2024, the Civil Court, upon consideration of the documents on record including RORs, measurement report and demolition notice, has directed the parties to maintain *status quo* over the schedule property and has further restrained the CDA from acting upon the measurement report dated 19.07.2024. The said order clearly indicates that the Civil Court has taken cognizance of the dispute relating to right of passage,

nature of land and correctness of the measurement and has thought it fit to grant interim protection pending adjudication of the rights of the parties. It is common ground that the said order of order of restraint still subsists.

12. Significantly, the correctness of the measurement reports and the manner in which such measurements were conducted, particularly with reference to the direction of this Court in W.P.(C) No.22558 of 2017 to take into account both existing and non-existing maps has also been the main question in the suit filed by the private opposite parties in C.S no.995 of 2024. Such dispute cannot be resolved without appreciation of evidence, including examination of revenue records, maps and other documents by this Court exercising writ jurisdiction.

13. Thus, from a conspectus of the analysis of facts, law, the contentions raised and the discussion made, this Court is of the considered view that issuance of a writ of mandamus directing demolition or removal of alleged encroachment would necessarily require this Court to determine disputed questions of fact. It is well settled that where disputed questions of fact are involved and the parties are already before the Civil Court,

the writ court should refrain from exercising its extraordinary jurisdiction. Therefore, this Court is not inclined to interfere in the matter or issue any direction for removal of the alleged encroachment, leaving it open to be adjudicated by the Civil Court in accordance with law. The petitioner, if so advised may approach the Civil Court in the pending suit(s) seeking appropriate relief. In such event, it shall be for the Civil Court to consider the prayer on the basis of materials and evidence placed before it.

14. The writ petitions are disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 6th April, 2026/ A.K. Rana, P.A.

Signature Not Verified
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Signed by: AJAYA KUMAR RANA
Designation: P.A.
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 07-Apr-2026 14:21:17