

**(2022) 09 OHC CK 0215**

**In the Orissa High Court**

**Case No :** Writ Petition (C) Nos. 33436 Of 2011, 5802 Of 2006

Gandharba Swain And Another

APPELLANT

Vs

State Of Odisha

RESPONDENT

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**Date of Decision :** 27-09-2022

**Acts Referred:**

**Citation :** (2022) 09 OHC CK 0215

**Hon'ble Judges :** Dr. S. Muralidhar, CJ;Chittaranjan Dash, J

**Bench :** Division Bench

**Advocate :** Manoj Mishra, Debakanta Mohanty, Rahul Mohanty, Dayananda Mohapatra

**Final Decision :** Disposed Of

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## **Judgement**

1. On 25th October 2017, the following order was passed in the present two writ petitions:

"Heard Mr. Manoj Mishra, learned Senior Advocate for the petitioners in WP(C) No 33436 of 2011. Mr. Mohanty, learned counsel of the petitioners in WP(C) No. 5802 of 2006 and Mr. Amit Kumar Patnaik, learned Additional Government Advocate for the State.

2. Some land of the petitioners in WP(C) No. 33436 of 2011 was taken by the Government and in exchange, an area of Ac.0.107 ½ decimals was allotted in their favour by the Government in G.A. Department from Plot Nos. 480 and 483. The allotted land had Bidyut Marg on one side and had a proposed 20' wide road on the opposite side. Two counter affidavits have been filed by the State Government giving conflicting statements. In the first affidavit dated 11.09.2012, it was stated that as per the report of the R.I. dated 14.03.2007 (Annexure-B) the spot land has been reduced to some extent and there is no existence of the 20' wide road as proposed in the drawing. In the recent counter affidavit dated 15.09.2017, it was stated at paragraph-3 that a team of officials of G.A. and P.G. Department along with Supervisor and Amins re-measured the case land on

12.07.2017 in the field and found that land measuring Ac.0.107 ½ decimals is very much available at the spot which is lying vacant. It is also stated that the proposed 20' wide road situated to the west of the case land is encroached by the neighbours-private plot owners, which is not at all relevant to the present case as the petitioners have proper access to the case land directly from Bidyut Marg. However, the Government is taking steps to evict the encroachment of 20' wide proposed road by initiating proceeding under OPP (EUO) Act, 1972.

3. In the connected writ petition bearing WP(C) No.5802 of 2006, the owners of Plot Nos.1265 and 1266 have prayed for directing the State Authorities to provide the 20' wide road as proposed, which is part of Plot No. 480 and lying vacant and the owners of Plot No.1265 and 1266 have never encroached any portion of the same.

4. In view of the inconsistencies in the pleas of the different parties in the writ petitions, it is essential that the petitioners' land and the 20' wide proposed road be re-measured and demarcated on 18.11.2017 in presence of the parties and Government Officials.

5. In the circumstances, it is directed that the re-measurement shall be conducted jointly by the G.A. Department Amins and private Amins of the petitioners in both the writ petitions in presence of the parties and the Officials of G.A. Department, as may be deputed by the State, and also two Advocate Commissioners of this Court.

6. For the above purpose, we appoint Mr. Sidharth Mishra and Mr. Dayananda Mohapatra, Advocates of this Court as Commissioners, who shall remain present at the spot on 18.11.2017 at the time of re-measurement.

7. A joint report by the Amins, who will conduct re-measurement and a separate report of the Advocate Commissioners shall be submitted to this Court by 23.11.2017.

8. The petitioners in both the writ petitions shall bear the cost of the Advocate Commissioners equally, which is assessed at Rs.10,000/- (Rupees Ten Thousand Only) and the same shall be deposited before this Court by day-after-tomorrow (27.10.2017).

List this matter on 28.11.2017.

A free copy of this order be supplied to the learned Additional Government Advocate and the learned Advocate Commissioners."

2. Subsequently, reports have been submitted both by the Advocate Commissioners, Mr. Dayananda Mohapatra and Mr. Sidharth Mishra as well as the Amins.

3. This Court has heard the submissions of Mr. Manoj Mishra, learned Senior Advocate appearing for the Petitioners in W.P.(C) No.33436 of 2011, Mr. Rahul Mohanty on behalf of Mr. D.P. Mohanty, learned counsel for the Petitioners in W.P.

(C) No.5802 of 2006 and Mr. Debakanta Mohanty, learned Additional Government Advocate for the State.

4. Mr. Mishra submits that both the reports indicate that there are obstructions in the form of electrical sub-stations/transformers and there are some private encroachers also. His submission is that if the plots are unable to be delivered to the Petitioners free of all encumbrances, encroachments and obstructions, then the General Administration Department (GA Department), Government of Odisha should consider allotting alternative plots as far as Petitioner Nos.1 and 2 in W.P. (C) No.33436 of 2011 are concerned. In the accompanying writ petition i.e., W.P. (C) No.5802 of 2006, learned counsel appearing for the Petitioners states that if the report of the Commissioners is implemented, there grievance would be met.

5. In view of the above submissions, the following directions are issued:

(i) The G.A. Department will examine the reports of both the Amins as well as the Advocate Commissioners and explore the possibility of handing over possession of the plot of land as far as Petitioner Nos.1 and 2 in W.P.(C) No.33436 of 2011 are concerned free of such obstructions within a period of six months from today and in any event, not later than 4th April, 2023;

(ii) If the plots are unable to be delivered in the above manner within the date indicated, the G.A. Department will provide alternative plots of the same size to Petitioner Nos.1 and 2 in W.P.(C) No.33436 of 2011 within a period of four months thereafter;

(iii) As far as W.P.(C) No.5802 of 2006 is concerned, acting on the reports of the Amins and Advocate Commissioners, steps will be taken to provide the pathways for access to the plots in question as suggested in those reports. This again be done on or before 3rd April, 2023.

6. It will be open to the parties, if there are any difficulties in carrying out the above directions, to apply to the Court for further directions. The fees of the Advocate Commissioners which have been deposited in this Court, now be disbursed to them by the Registry forthwith.

7. The writ petitions are disposed of in the above terms. Issue urgent certified copy of this order as per rules.

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