

(2026) 02 OHC CK 1704
In the Orissa High Court
Case No : Writ Petition (C) No. 15857 Of 2025

Kshetra Mohan Rout

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 04-02-2026

Acts Referred:

Constitution Of India, 1950 — Article 21
Odisha Irrigation Act, 1959 — Section 12

Citation : (2026) 02 OHC CK 1704

Hon'ble Judges : B.P. Routray, J

Bench : Single Bench

Advocate : A.Mishra, T.K.Dash, S.K.Dalei, D.Kanungo

Final Decision : Disposed Of

Judgement

B.P. Routray, J

I.A.No.2424 of 2026

1. Heard Mr.Mishra, learned counsel for the Petitioner and Mr.Dash, learned Additional Government Advocate for the State, Mr.Dalai, learned counsel for Opposite Party No.8 and Mr.Kanungo, learned counsel for the Intervenors.

2. Upon hearing all the parties, the prayer for intervention is allowed.

3. The I.A. is disposed of.

W.P.(C) No.15857 of 2025

4. Though this matter is listed under heading 'Orders' for consideration of I.A.No.1013 of 2026 regarding modification of order dated 23rd June 2025, but on the request and consent of the learned counsels for all the parties, the matter is taken up for final disposal and the parties are heard accordingly.

5. Present writ petition has been filed by one of the resident of Lingipur mouza under Dahuli Police Station, Bhubaneswar praying to quash order 12th January

2024 (Annexure-2) of Water Resources Department, Government of Odisha relinquishing land measuring Ac.0.700 decimals of Kissam 'Canal' in Plot No.1313(p) under Khata No.757 of Mouza-Lingipur of Bhubaneswar Tahasil, in favour of Revenue and D.M. Department for subsequent alienation of the same in favour of P.R. & D.W. Department for construction of G.P. Office and Market Complex at Lingipur. The Petitioner has further prayed for a direction to protect and develop the canal existing on the said land and not to make any construction on it obstructing free flow of water.

6. As per the submission of the Petitioner, the land in question has been recorded as Kissam 'Canal' and permitting construction over a part of the same will obstruct free flow of water and further cause water logging in the locality. The Petitioner further contends that such alienation of land for the purpose of construction of G.P. building has been made in violation of the statutory provisions contained in Odisha Government Land Settlement Act and Rules, where the Lingipur Gram Panchayat is no more existing after inclusion of the same in Bhubaneswar Municipal Corporation as per draft notification dated 31st December 2025 inviting public objection in that respect.

7. The State has not filed any counter. On the other hand, Mr.Dash, learned Additional Government Advocate contends that such decision to relinquish the land and further alienation of the same for the purpose of construction of G.P. building and Market Complex has been done by following due procedure of law and there was a site selection committee constituted consisting of several Government Officers including the Sub-Collector, Khordha. As per their proceeding dated 11th April 2025, the land schedule is suitable for the purpose of construction of G.P. building and the exact extent of land identified for construction is measuring Ac.0.252 decimals vide Plot No.1313/5365/5405 and now the Kissam has been changed to 'Patita'. According to Mr.Dash, the construction beyond the allotted land to the extent of Ac.0.252 decimals is not permitted and said land is coming within the residential use zone as well as partly under water bodies zone. It is further stated by Mr.Dash, relying on such report of the Site Selection Committee, that no Sairat source is existing over said plot, which is feasible for the purpose of construction.

8. Opposite Party No.8, i.e. Sarpanch of Lingipur, has filed his counter. Mr.Dalai, learned counsel appearing for said Opposite Party No.8 submits that genuineness of cause of action as stated by the Petitioner is seriously doubtful because his house is not going to be affected in any way which situated far-away from site on the other side of National Highway running near the plot in question. Mr.Dalai further contends that the allegations of violation of statutory provisions as submitted by the Petitioner is not correct at all, since governing the provisions are under the Irrigation Act, 1959. Section 12 thereof authorizes construction, improvement or alteration of a water course. The land in question has been duly visited and verified by the Site Selection Committee and based on their report, the Government has taken conscious decision for alienation of such extent of

land in favour of Gram Panchayat for such purpose of construction and the situation at present at the ground level is that no more agricultural land is existing in the nearby area and the same has been converted to residential zone. The present status of Plot No.1313, more concerning part of the same as disputed in present writ petition, is not in the status of a water body any more. Therefore, the authorities have taken a conscious decision to convert the use of such land for construction of G.P. building and Market Complex.

9. Mr.Kanungo, learned counsel for the Intervenor, who are four Ward Members of Lingipur Gram Panchayat, supports the Petitioner to contend that such converted use of the land would result water logging in the area, since the natural flow of water would be obstructed.

10. As per the narrations and averments taken by the parties, it is not disputed that Plot No.1313 was of the nature (Kissam) of a canal, a water body. Plot No.1313 is entirely, along with other plots, a natural canal as marked in the revenue map. According to Opposite Parties including the State authorities, said plot has now lost its status as a natural canal, whereas it is submitted by the Petitioner that said natural canal is a sessional one and in rainy season natural water flows therein. So, in view of the contentions of the rival parties, the point in the dispute is that, whether by constructing a building converting the nature of the land, which stands as canal, would cause hindrance in natural flow of water, particularly in rainy season ?

11. Mr.Dalei, upon instructions, submits that while constructing the building, the plan itself takes care of the same so that natural flow of water will not be obstructed.

It is true that Section 12 of the Odisha Irrigation Act, 1959 authorizes the owner of the land with permission of the concerned Irrigation Officer to make construction, extension or alteration of a water course and Sub-section 3 thereof postulates that the Collector has the power to acquire any land for said purpose. The perusal of revenue map appended to the counter affidavit of Opposite Party No.8 gives a picture that Plot No.1313 is in 'L' shape and the extended portion of the land (horizontal portion) has now been converted as Plot No.1313/5365/5405 measuring Ac.0.252 decimals. It needs to be mentioned here that, as per the land schedule furnished in the writ petition, the land in question is covering Plot No.1313/5365/5405 (area Ac.0.252 decimals) and Plot No.1313/5365 (area Ac.0.448 decimals) carved out of the original Plot No.1313.

12. It is admitted by the parties that in present days Lingipur mouza has been urbanized and several people have constructed their residential houses around Plot No.1313. It is further seen from the report of the Site Selection Committee dated 11th April 2025 under Annexure A/8 that the land in question i.e. Plot No.1313/5365/5405 and 1313/5365 has been brought under a new Khata i.e. AJA Khata No.758/1 carved out from original Plot No.1313 under Khata 757. Original Plot No.1313 was measuring Ac.1.510 decimals of Kissam Canal and was

recorded in the name of Irrigation Department.

13. It is true that the State has duty to protect water bodies intact in the wake of growing urbanization. The Hon'ble Supreme Court in the case of Hinch Lal Tiwari vrs. Kamala Devi and others, (2001) 6 SCC 496 have observed that natural forests, tanks, ponds etc. are required to be maintained to prevail the ecological balance. It is observed as follows:-

"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites."

14. As stated above, the question to be decided in the present dispute is whether such alienation of land for the purpose of construction of building and Market Complex would obstruct the natural flow of water particularly in rainy season to cause water logging in the area. Here, one thing may also be added that the nature and character of a water body should be protected from the clutches of urbanization in larger public interest to maintain sanctity of nature. As seen from the chronological decision taken from Government level to the local authority, the basis for consideration for change of status of the land to the extent of Ac.0.252 decimals, originally a part of Plot No.1313 recorded as Kissam Canal, from Canal Kissam to Patita Kissam to enable making of such construction for the purpose stated above, is that the land has lost its character at present to be a water body. The report of the Site Selection Committee, inter alia consisting of Sub-Collector of Bhubaneswar, D.F.O. of City Forest Division and the Tahasildar of Bhubaneswar, does not reveal any reason in their report dated 11th April 2025 to form such opinion on their part. It is though stated that no forest/tree growth is found over the plot and no Sairat source is existing there, but nothing has been mentioned regarding natural flow of water in rainy season. The site was unanimously selected by all the members of the committee headed by the Chief District Medical and Public Health Officer, Khordha.

15. It is further seen that after notification dated 12th January 2024 under Annexure-2 issued by the Government in the Department of Water Resources, the writ petition was filed on 4th June 2025 and the subsequent actions pursuant to such decision of relinquishment and alienation taken under Annexure-2, have been effected after filing of the writ petition. Plot No.1313 as marked in the revenue map is commonly called as Lingipur canal and it is true that after the draft notification dated 31st December 2025 has been issued to include Lingipur

mouza in Bhubaneswar Municipal Corporation, the status of Lingipur Gram Panchayat would be at stake because once it is included in the municipality, there would not be any Grama Panchayat or Grama Sabha. However, it is admitted by the Petitioner as well as Opposite Party No.8 that Lingipur area has now been a hotspot of urbanization for extended Bhubaneswar area and many people have now constructed their residential houses in the nearby land of Plot No.1313. But regardless of such development happened in the area or to be happened in future, the duty of the State to protect its water bodies in-tact cannot be frustrated. What is contended by the State-Opposite Parties including Opposite Party No.8 that the status and nature of land as the canal is no more existing presently, needs to be verified by the authorities concerned scrupulously. Since the site selection report does not contain any reason for their recommendation to convert a water body for construction of building and the Government has actively acted upon consideration of the report of the Site Selection Committee without further detailing into the status of the land in question whether the same is truly existing as a water body in rainy season or would cause any kind of water logging by converting the nature of the land, it is required to be reconsidered by the Government afresh. Such reconsideration should be free from bias or should not be swayed away by any other consideration without taking note of true nature and use of the land as a canal, particularly in rainy season.

16. In the result, the order of relinquishment dated 12th January 2024 under Annexure-2 for alienation of the case land for construction of G.P. Office and Market Complex is set aside and needs to be considered afresh. Here, the Government may also reconsider the very requirement of construction of Lingipur G.P. Office in view of issuance of draft notification dated 31st December 2025 by the concerned department to include Lingipur mouza in Bhubaneswar Municipal Corporation. The Government i.e. O.P.No.2 is directed to take a fresh decision in the matter within a period of two months from the date of receipt of certified copy of this order and till such a decision is taken by Opposite Party No.2, no further construction should be made over the case land, i.e. Plot No.1313/5365/5405 and 1313/5365. While taking decision, Opposite Party No.2 is also required to consider the need of growing urbanization, the importance of preserving water bodies and to maintain suitable flow of water in rainy season and any other considerable factor.

17. With the aforesaid direction, the writ petition is disposed of.

18. At this stage, it is submitted by Opposite Party No.8 that the contract of construction has been granted in favour of private opposite party and the construction work has been started. It is left open for Opposite Party No.8 to vary the decision on contract.