

(2023) 10 OHC CK 0072

In the Orissa High Court

Case No : Writ Appeal No. 2230 Of 2023

Ramesh Chandra Rout

APPELLANT

Vs

State Of Odisha & Ors

RESPONDENT

Date of Decision : 11-10-2023

Acts Referred:

Citation : (2023) 10 OHC CK 0072

Hon'ble Judges : Dr. B.R. Sarangi, J; Murahari Sri Raman, J

Bench : Division Bench

Advocate : M.K. Mohanty, D. Mohanty

Final Decision : Dismissed

Judgement

1. This matter is taken up through hybrid mode.
2. Heard Mr. M.K. Mohanty, learned counsel appearing for the appellant and Mr. D. Mohanty, learned Additional Government Advocate appearing for the State-respondents.
3. The appellant has filed this writ appeal seeking to set aside the order dated 14.08.2023 passed in W.P.(C) No.25034 of 2023, by which learned Single Judge, while declining to entertain the writ petition, has observed that if the appellant advised, he may find out the other mechanism available for the purpose.
4. Mr. M.K. Mohanty, learned counsel appearing for the appellant contended that Jagannath Bidyapitha, Balijhari has been included in 5T Scheme for development. Respondents no.3 to 6 have taken steps for constructing the School Gate and road on the land of the appellant bearing Hal Plat No.314 measuring an area of Ac.0.04 decimals and Ac.0.06 decimals out of the adjoining Plot No.315. Therefore, the appellant made a protest before the authorities not to make any construction on his land, but the authorities replied that the same is a Government land and the record of right of the said plot does not stand in his name. It is further contended that in view of judgment of the

apex Court in *Vidya Devi v. State of Himachal Pradesh & Ors.*, (2020) 2 SCC 569, this Court has jurisdiction under Articles-300-A and 21 of the Constitution of India to interfere with the right to property of a person instead of granting liberty to approach the civil Court. Thereby, learned Single Judge has committed gross error apparent on the face of the record so as to cause interference of this Court at this stage.

5. Mr. D. Mohanty, learned Additional Government Advocate appearing for the State-respondents contended that the land in question is recorded in the name of the State. Though the Commissioner, Land Records and Settlement, Odisha, Cuttack passed order and the same has been implemented, the appellant disputes such fact contending that the same has not been correctly implemented. Now, the road is going to be constructed on the Government land and the appellant has no right, title and interest over the property, because the ROR is in the name of the Government. If the appellant has any right over the said property, he may pursue his remedy before the civil court. Since disputed question of fact is involved in this case, learned Single Judge has rightly passed the order dated 14.08.2023 in W.P.(C) No.25034 of 2023 directing the appellant to approach the appropriate forum.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, this Court finds that the appellant claims to be the owner of Plot No.314 measuring an area of Ac.0.04 decimals and part of Hal Plot No.315 under Hal Khata No.100 measuring Ac.0.06 decimals out of Ac.0.64 decimals. Pursuant to order passed by the Commissioner, Land Records and Settlement, Odisha, Cuttack, the land was to be included in the plot of the petitioner and, as such, the same has not been done. Learned Additional Government Advocate contended that the order passed by the Commissioner, Land Records and Settlement, Odisha, Cuttack has been implemented and learned counsel appearing for the appellant contended that the said order has been implemented erroneously. More so, the ratio decided in *Vidya Devi* (supra) on which reliance has been placed on behalf of the appellant is absolutely distinguishable because in the said case the petitioner therein had got absolute right over the property. Therefore, the apex Court, while considering the grievance of the petitioner therein, came to a definite conclusion that the right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. There is no dispute with regard to the ratio decided by the apex Court, but in the present case, ownership of the land is in dispute because in one hand the appellant claims that the land belongs to him and on the other hand, the State Counsel states that land is in the name of the Government.

7. Since disputed question of fact is involved, learned Single Judge has rightly passed the order dated 14.08.2023 in W.P.(C) No.25034 of 2023. Therefore, this Court is not inclined to interfere with the said order. However, liberty is granted to the appellant to pursue his remedy before the appropriate forum.

8. Accordingly, the writ appeal merits no consideration and the same stands dismissed.

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