



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.16110 of 2024

and

batch of Writ Petitions

(In the matters of applications under Articles 226 and 227 of the Constitution of India, 1950).

(In W.P.(C) No.16110 of 2024)

Lagan Agrawal

....

Petitioner(s)

-versus-

State of Odisha & Ors.

....

Opp. Parties

Advocates appeared in the case through Hybrid Mode:

For Petitioner (s)

:

Mr. S.P. Mishra, Sr. Adv.

Along with associates

Mr. Bidesh Ranjan Behera, Adv.

Mr. Amit Prasad Bose, Adv.

Mr. Alok Kumar Panda, Adv.

Mr. Soumya Mishra, Adv.

Mr. Subhasish Das, Adv.

-versus-

For Opp. Party(s)

:

Mr. D. Mund, AGA

Mr. Debasis Mohapatra, ASC

Mr. Jugal Kishore Panda, Adv.

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATES OF HEARING:-11.09.2024, 17.09.2024 and 19.09.2024

DATE OF JUDGMENT:-29.10.2024

W.P.(C) No.16110 of 2024

along with

W.P.(C) Nos.15958, 15960, 15965, 15968, 15972, 15976, 16083, 16087, 16089, 16153, 16159, 16163, 16165, 16174, 16178, 16183, 16187, 16201,



16406, 16410, 16412, 16415, 16428, 16429, 16432, 16436, 16501, 16527, 16550, 16656, 16661, 16663, 16703, 16755, 16761, 17241, 17242, 17243, 17244, 17249, 17251, 17255, 17262 of 2024

Along with

W.P.(C) No.17253 of 2024 and W.P.(C) No.17256 of 2024

Along with

W.P.(C) No.22953 of 2024

Dr. S.K. Panigrahi, J.

1. Since common question of facts and law are involved in all the above-mentioned Writ Petitions, the same were heard together and are being disposed of by this common judgment. However, this Court felt it apposite to deal the W.P.(C) No.16110 of 2024 as the leading case for proper adjudication of all these cases.
2. The Petitioner, in W.P.(C) No.16110 of 2024, has made a prayer to quash the order dated 05.04.2024 passed by the Opposite Party No.3/ Executive Officer, Bargarh Municipality, Bargarh in Encroachment Case No.01 of 2024 rejecting his claim petition. The Petitioner further seeks a direction from this Court to the Opposite Parties not to evict him and/or demolish the residential building and boundary wall or any portion thereof standing over Plot No.6668 under Khata No.2414/4123 measuring an area of Ac.0.0200 decimals in Mouza/Tahsil/Dist.- Bargarh.

I. FACTUAL MATRIX OF THE CASE:

3. The case land pertains to an area of Ac.0.02 decimals in Plot No.6668 of Current Settlement Khata No.2414/4123, Mouza— Bargarh, Tahasil—



Bargarh, Dist.-Bargarh, which stands recorded in the name of the petitioner.

4. The father of the petitioner, namely, Rampratap Agrawal, purchased the case land, with building from one, Abdul Wahab Khan through RSD No.6154 dated 12.07.1963 and since the date of purchase, the petitioner and his family are continuing in peaceful and exclusive possession of the case land by constructing a three storied building over the same.
5. After the death of the father of the petitioner, the case land has been exclusively recorded in the name of the petitioner in the current settlement record of rights and patta has been published in his name.
6. The petitioner has been paying rent regularly to the State Government and obtaining rent receipts thereof and also depositing holding tax to Bargarh Municipality.
7. While the petitioner's father was in possession of the case land as its absolute owner, a dispute arose regarding his possession. Consequently, an application was submitted to Opposite Party No. 4, the Tahasildar of Bargarh, seeking demarcation of the disputed land, which was subsequently registered as Demarcation Case No. 11/2-209 of 1975. Pursuant to directions from Opposite Party No. 4, the Tahasildar of Bargarh, the Revenue Inspector (R.I.) demarcated the land in question and submitted a report, accompanied by a sketch map, to the Tahasildar. Based on the R.I.'s report, the Tahasildar of Bargarh, through an order dated 20.01.1976, formally closed the Demarcation



Case, concluding that further action was unnecessary since the land had been properly demarcated.

8. Subsequently, due to public concerns regarding traffic congestion along the road connecting the Zeera River Bridge to the Gandhi Chhak area in Bargarh District, reportedly caused by alleged encroachments, the Collector and District Magistrate of Bargarh, designated as Opposite Party No. 2, established an Inquiry Committee. This Committee, chaired by the Additional District Magistrate (A.D.M.), convened on 27.07.2023 and determined that eviction action was warranted for 58 land parcels listed on the Record of Rights (ROR). Of these parcels, 39 are registered under the Public Works Department, 3 are recorded under the Municipality, and 16 are under Government Khata. These properties were subsequently transferred to Opposite Party No. 3, the Executive Officer of Bargarh Municipality. In the same meeting, it was resolved that Opposite Party No. 3 would proceed under the Orissa Municipal Act, 1950, to demarcate and evict unauthorized structures along the specified roadway, facilitating the road's expansion from Lengu Mishra Chowk to Zeera River.
9. Though the petitioner's land is not included in the list of 58 numbers of ROR as discussed under Annexure-4 (the proceeding of the Inquiry Committee), still the officers/agents of the Opposite Party Nos.2 to 4, without issuing any notice, took steps for eviction and demolition. Therefore, the petitioner preferred W.P.(C) No.24810 of 2023 before this Court along with batch of other Writ Petitions concerning the aforesaid eviction and demolition drive by the Opposite Party No.3. All the



aforesaid Writ Petitions including the Writ Petition filed by the petitioner were disposed of vide common judgment dated 01.02.2024 wherein this Court while concluding that due process is required to be followed by the Municipality in order to remove the encroachment from the Government land giving reasonable time to the petitioners to respond, directed that –

- (i) despite earlier notice, the Municipality shall issue a fresh one in the manner prescribed under law leaving all the petitioners a clear 15 days time to respond,
- (ii) within the above stipulated period, the petitioners shall avail all such remedy available under law in order to safeguard individual interest and may even approach the authority issuing the notice with a presentable and satisfactory explanation to avoid eviction and demolition,
- (iii) the Municipality on expiry of the notice period proceed in accordance with law keeping in view the spirit of the law discussed and observations made.

10. Pursuant to above judgment dated 01.02.2024 passed by this Court, the Opposite Party No.3 issued notice dated 20.02.2024 asking the petitioner to vacate the public road over Khata No.2414/4123, Plot No.6668 within 15 days alleging that the petitioner has encroached the same causing inconvenience to general public. In response to said notice dated 20.02.2024 under Annexure-6, the petitioner filed objection on 22.02.2024 stating therein that the Plot No.6668 under Khata No.2414/4123 is not a “road” far less a “public road”, which is recorded



in the name of the petitioner with rayati status having Kissam "Gharabari-II".

11. The petitioner has constructed his building over his Ac.0.0200 decimals of land as per demarcation with sketch map of the Opposite Party No.4. Further, since the status of the petitioner's land is not "road", the proposed eviction and demolition action of the Opposite Party No.3 purportedly taken under Section 254 of the Orissa Municipal Act, 1950 is without authority of law.

12. Thereafter, by notice dated 16.03.2024 the Opposite Party No.3 informed the petitioner regarding fixing of the date of personal hearing to 20.03.2024. When the petitioner appeared before the Opposite Party No.3 and reiterated his plea taken in the objection surprisingly enough, on 27.06.2024 petitioner was communicated with extract of an order dated 05.04.2024 passed by the Opposite Party No.3 in Encroachment Case No.01 of 2024 observing that after going through the reply and documents filed by the petitioner, it is found that the land is recorded in the name of P.W.D. as Kissam "Sadak", which is meant for general public and, accordingly, it is concluded therein that the Opposite Party No.3 cannot accept the petition of the petitioner as genuine. Hence, this Writ Petition.

II. PETITIONERS' SUBMISSIONS:

13. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions.

- (i) From the order dated 05.04.2024 under Annexure-9, for the first time, the petitioner came to learnt that Encroachment Case No.01



of 2024 has been registered by the Opposite Party No.3 against him. During the course of personal hearing on 20.03.2024 no such document/records could be brought by the Opposite Party No.3 to the notice of the petitioner to show that his Plot No.6668 under Khata No.2414/4123 is a “road” and in spite of sufficient documentary evidence as under Annexure-1, 2 and 3 Series filed by the petitioner, the Opposite Party No.3, vide the impugned order, has held that the said land is recorded in the name of P.W.D. as Kissam “Sadak”.

- (ii) The impugned order under Annexure-9 rejecting the claim of the petitioner regarding his lawful possession over the case land in absence of any contrary materials on record, is a glaring example of highhandedness of the Opposite Party No.3, which is otherwise arbitrary, unjustified and illegal amounting to abuse of the powers.
- (iii) Since the records pertaining to the case land filed under Annexure-1 to 3 Series unerringly suggest that it belongs to the petitioner having Kissam “Gharabari-II”, the exercise of power under Section 254 of the Orissa Municipal Act against the petitioner vide Encroachment Case No.01 of 2024 in order to pass the impugned order under Annexure-9, is wholly without jurisdiction and without authority of law.
- (iv) Since the case land is recorded in the name of the petitioner and petitioner's residential building stands over the case land, any unlawful and forcible eviction and demolition by the State



authorities/instrumentalities will be in violation of Article 300-A of the Constitution of India. Article 300-A provides that no person shall be deprived of his property save by authority of law. As such, the State cannot dispossess a citizen of his property except in accordance with the procedure established by law. However, the Opposite Parties/ Officers without complying with requirement of law are trying to evict the petitioner and demolish the residential building and boundary wall through their agents forcibly, thereby affecting the rights of the petitioner under Articles 14 and 21 of the Constitution of India.

- (v) Moreover, the Opposite Parties did not file any response either refuting the pleadings in the Writ Petition or disputing the stand taken by the petitioner regarding non-application of mind in dealing with the show cause.
- (vi) The cryptic consideration of show cause and its effect in the eye of law has been resonated in *Asst. Commissioner Vs. M/s Shukla & Brothers*¹, *M/s Kranti Assa Pvt. Ltd & another Vs. Masood Ahmed Khan & others*², *Rashmi Metaliks ltd & another Vs. Kolkata Merip. Dev. Auth & others*³, *M/s. Steel Authority of India Vrs. Sales Tax Officer, Rourkela-1*⁴, *Divya Capital One Pvt. Ltd (Earlier known as Divya Portfolio Pvt. Ltd.), Asst.*

¹ in Civil Appeal No. of 2010 @ SLP (C) No. 16466/2009 decided on 15.04.2010

² in Civil Appeal No. of 2010 Arising out of SLP(Civil) No.20428/2007 & other decided on 08-09-2010.

³ In Civil Appeal No.6772/2013, decided on 11-09-2013.

⁴ In SLP (C) No. 16781/2006.



Commissioner of Income Tax Circle 7 (1), Delhi & another.⁵, Sakuntala Garabadu & others Vs. State of Orissa & others⁶ and Ram Bhual Vs. Ambika Singh⁷.

In the above mentioned judgments, the Court has dealt with the fact that the original authority or the appellate authority is duty bound to deal with the grounds and the averments taken in the show cause/appeal memo meticulously, evasive rejection of the same is without dealing with the matter narrated in the show cause is quite illegal.

- (vii) In the instant case when a detailed show cause under Annexure-7 was submitted pursuant to Annexure-6, a bare perusal of Annexure-9 would clearly go to show that not a single line of show cause under Annexure-7 was dealt in the rejection order. The case numbers were changed and a common cryptic order was passed. Moreover, though the documents and show cause reply were filed, not a single averment of the reply to show cause or not a single document was dealt by the Executive Officer, Bargarh Municipality while passing the impugned order.
- (viii) Interestingly the order was passed on 05.04.2024 but the same was served on 27.06.2024 and such averment was not denied by the Opposite Parties by filing counter affidavit. Moreover, the averments of the petitioner that the order under annexure-9 is a

⁵ WP(C) No.7406 of 2022

⁶ (1986 (1)OLR631).

⁷ 2005 (JT)(12) SC 49



cryptic and non-speaking one has not been denied by the Opposite Parties by filing counter.

- (ix) Law is well settled that if the averment made by the petitioner is not controverted then the same is deemed to have been admitted by the Opposite Party by applying the principle of “doctrine of non-traverse” which has been aptly resonated in *M/s. Omsairam Steels & Alloys Pvt. Ltd Vs. Director of Mines & Geology, Bhubaneswar & others*⁸, *M. Venkataramana Hubbar (D) By Lrs Vs. M. Rajagopal Hubbar & others*⁹, *Lohia Properties (P) Ltd Tiroukia Vs. Atmaram Kumar*¹⁰ and *Asha Kapoor Vs. Shri Hari Cm Sharda*¹¹.
- (x) Order-8, Rules-3 and Order 8, Rule 5 of the C.P.C. state that the denial as to be specific and unless there is a specific denial the averments taken by the petitioner are not refuted specifically are deemed to be accepted. The instant case, the Opposite Parties having not chosen to file counter affidavit in spite of asking by the Court, the averments and grounds taken in the Writ Petition are deemed to have been accepted.
- (xi) In such circumstances, learned counsel for the Petitioners submitted that the prayer of the Petitioner may be allowed.

⁸ SLP (Civil) No.6920/2023.

⁹ Appeal (Civil) No.7061/2000.

¹⁰ AIR Online 1993 SC 562.

¹¹ CM(M) No.885/2010 & CM No. 12169/2000



III. SUBMISSIONS OF THE OPPOSITE PARTIES:

14. *Per contra*, learned counsel for the Opposite Parties earnestly made the submissions in support of his contentions contending that adequate measures with proper planning, demolition drive was declared for removal of the encroachments and such an exercise is by virtue of the authority conferred to the Municipality under Section 254 of the Odisha Municipal Act. Accordingly, it was submitted that the prayer made by the Petitioner is not sustainable in law and, hence, this Writ Petition is liable to be dismissed.

IV. CONCLUSION:

15. Heard the learned counsel for the Parties and perused the materials placed on record.

16. It is apparent from the record that the present Petitioner and others had earlier approached this Court assailing the action of the Executive Officer, Bargarh Municipality declaring their eviction as arbitrary, unreasonable and unfair. They had also sought for a direction from this Court to the authority concerned to provide them an opportunity of hearing before proceeding with eviction and demolition with such other reliefs. This Court, vide common judgment dated 01.02.2024 passed in W.P.(C) No.24066 of 2023 and batch of cases, considering the pleadings on records and submissions made by the learned counsel for the respective parties and taking into account the stand of the Municipality with the counter affidavit filed therein, felt it just and expedient to issue the following directions:



“(i) despite earlier notice, the Municipality shall issue a fresh one in the manner prescribed under law leaving all the petitioners a clear 15 days time to respond;

(ii) within the above stipulated period, the petitioners shall avail all such remedy available under law in order to safeguard individual interest and may even approach the authority issuing the notice with a presentable and satisfactory explanation to avoid eviction and demolition; and

(iii) the Municipality on expiry of the notice period proceed in accordance with law keeping in view the spirit of the law discussed and observations made.”

17. Pursuant to aforesaid common judgment dated 01.02.2024 passed by this Court, the Opposite Party No.3 issued notice dated 20.02.2024 asking the petitioner to vacate the public road over Khata No.2414/4123, Plot No.6668 within 15 days alleging that the petitioner has encroached the same causing inconvenience to general public. In response to the said notice dated 20.02.2024 under Annexure-6, the petitioner filed objection on 22.02.2024 stating therein that the Plot No.6668 under Khata No.2414/4123 is not a “road” far less a “public road”, which is recorded in the name of the petitioner with “Rayati” status having Kissam “Gharabari-II”.

18. Thereafter, vide notice dated 16.03.2024 the Opposite Party No.3 informed the petitioner regarding fixing of the date of personal hearing to 20.03.2024. Accordingly, the petitioner appeared before the Opposite Party No.3 and reiterated his plea taken in the objection. However, on 27.06.2024, petitioner was communicated with extract of an order dated 05.04.2024 passed by the Opposite Party No.3 in Encroachment Case No.01 of 2024 observing that after going through the reply and



documents filed by the petitioner, it is found that the land is recorded in the name of P.W.D. as Kissam "Sadak", which is meant for general public and, accordingly, it was concluded therein that the Opposite Party No.3 could not accept the petition of the petitioner as genuine.

19.The Petitioner's position in the present case asserts that, despite submitting a comprehensive reply to show cause, the impugned order dated 05.04.2024, issued by Opposite Party No. 3, the Executive Officer of Bargarh Municipality, Bargarh, in Encroachment Case No. 01 of 2024, summarily dismissed the Petitioner's claim petition without addressing any content of the reply to show cause. The Petitioner contends that case numbers were altered and a generalized, opaque order was issued which depict a complete copy paste job. Furthermore, although documents and the show cause reply were duly filed, the Executive Officer failed to consider or address a single assertion or piece of evidence within the show cause while rendering the impugned order. It is further asserted that, although the impugned order was passed on 05.04.2024, it was only served upon the Petitioner on 27.06.2024.

20.It is apparent from the records that the petitioner had filed objection on 22.02.2024 annexing the ROR with regard to the land in question which shows that the Plot No.6668 under Khata No.2414/4123 is not a "road" much less a "public road", which is recorded in the name of the petitioner with rayati status having Kissam "Gharabari-II". But, the impugned order shows that the Executive Officer, Bargarh Municipality has only mentioned in the impugned order that "Gone



through the reply and annexed documents submitted by the claimant Lagan Agrawal in response to Office Notice. It is found that the land is recorded in the name of P.W.D. as Kissam "Sadak. Xx xx".

21. Upon reviewing the submissions and records, it is evident that the petitioner submitted a detailed objection on 22.02.2024, including a Record of Rights (ROR) that designates the disputed land as Plot No. 6668 under Khata No. 2414/4123, held with rayati status and classified as "Gharabari-II." This classification contradicts the characterization by the Executive Officer, Bargarh Municipality, who, in the impugned order dated 05.04.2024, stated that the land is recorded as "Sadak" under the Public Works Department, implying its use as a road. The order's cursory reference to having "gone through the reply and annexed documents" submitted by the petitioner is insufficient in light of the specific documentary evidence provided, which appears to substantiate the petitioner's claim that the land is private, residential property rather than a public road.
22. Given these circumstances, this Court finds that the impugned order was issued without an adequate and impartial review of the relevant evidence. The Executive Officer's omission to meaningfully address the ROR document annexed by the petitioner raises concerns regarding the procedural fairness of the decision-making process. The failure to reconcile the differing classifications of the land's status necessitates a reconsideration of the case with due regard for the petitioner's documentation.



23. In light of the foregoing, the impugned order dated 05.04.2024 issued by Opposite Party No. 3, the Executive Officer of Bargarh Municipality, Bargarh, in Encroachment Case No. 01 of 2024, is deemed legally unsustainable and, accordingly, is liable to be quashed. The case necessitates remand to the Executive Officer of Bargarh Municipality for a thorough reconsideration and the issuance of a new, reasoned order with reference to the documents filed by the Petitioners and averments taken in the reply to the show cause.
24. Accordingly, W.P.(C) No.16110 of 2024 is allowed.
25. The impugned order dated 05.04.2024 passed by the Opposite Party No.3/ Executive Officer, Bargarh Municipality, Bargarh in Encroachment Case No.01 of 2024 is quashed. The matter is remitted back to the Opposite Party No.3/ Executive Officer, Bargarh Municipality, Bargarh to reconsider and pass order afresh considering the reply to the show cause along with the documents filed by the Petitioner meticulously.
26. Consequently, all the connected Writ Petitions are also allowed in terms of the aforesaid judgment/ order passed in W.P.(C) No.16110 of 2024.
27. It is hereby clarified that until a fresh order is issued, as directed above, the Petitioners in all referenced Writ Petitions shall remain protected from eviction. The stay on eviction shall remain in effect to ensure that the Petitioners' right to due process is fully honoured and that they are not prejudiced by any administrative action taken before the resolution of the reconsidered order. Accordingly, the Opposite



Parties are directed to refrain from any further eviction-related actions concerning the Petitioners' occupancy of the disputed property until fresh and reasoned orders are issued. It is further made clear that the Petitioners should be allowed to produce the documents related to the alleged encroached plots/ housing and they shall be given personal hearing before passing a reasoned order by the Bargarh Municipality. Any deviation to this direction should be treated as a case for contempt.

28. Accordingly, all the Writ Petitions are disposed of.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 29th October, 2024/B. Jhankar