

I.A No. 786/2008
(Arising out of C.S No. 1147/2008)

Sri Maguni Behera, aged about 72 years
S/o late gurubari Behera
Vill-Rangamatia, Samilu-Gadakana
P.S-Mancheswar, Dist-Khurda.

..... Petitioner

- Versus -

1. State of Odisha, represented through its Principal Secretary to Government, General Administration Department Orissa Secretariat, Bhubaneswar, Khurda.
2. The Collector, At/Po/Ps/Dist-Khurda.
3. The Tahasildar, Po-BJB Nagar, PS-Badagada, Bhubaneswar, Dist-Khurda.
4. Major Settlement Officer, Jobra Cuttack, Po/PS-Malgodam, Dist-Cuttack.
5. Vice-Chariman, Bhubaneswar Development Authority Sachivalaya Marg, Bhubaneswar, Po/Ps-Kharavelanagar, Dist-Khurda.

..... O.Ps

19.09.2014

This is an application filed U/o.39 Rule-1 & 2 read with Section 151 of C.P Code by the petitioner for passing an order of injunction thereby restraining the O.Ps, their agents, contractors, police agency from entering into the suit land thereby creating any interference there over till disposal of the suit.

2. The case of the petitioner in brief is that the suit schedule land was originally stands in the name of Patia Estate which was later settled with the Raja of Kanika and his name found place in the sabik ROR. As per the application of the father of the petitioner, the Raja of Kanika Estate granted a hata patta in favour of the petitioner in respect of the suit schedule land. Thereafter, the father of the petitioner along with the petitioner have been in possession of the suit schedule land from the time of abolition of estate till date and cultivating the green fruits thereon by constructing green fence around the same. After death of the father of the petitioner, the petitioner has been in possession of the suit land and on the strength of the hata patta and rent receipts in respect of the same, his name entered in the tenants ledger and rent has been accepted by the Revenue Officer from the petitioner.

Though the petitioner with all the rights along with his occupancy and tenancy right has filed all the documents along with the tenancy ledger to settle the land in his favour, but the O.Ps being the officers of the State Government, have forcibly tried to dispossess the petitioner with the help of the local police and threatened to demolish the structures standing over the suit land. Hence, finding no alternative, the petitioner is forced to file the present suit and I.A for temporary injunction.

3. Though the O.P No.1 & 5 have appeared and filed objections separately, but none participated during the hearing of the I.A. The O.P No.1 filed his objection stating interalia that the suit land as per the ROR finally published in the year 1931 stood recorded in the name of ex-intermediary Madhusudan Dev which is a anabadi land has already vested in the State Government. Being a communal forest land, the suit land can not be alienated in favour of the petitioner as the said alienation is prohibited under Section-3 & 4 of the Orissa Communal Forest and Pvt. Land Act. It is the averment of the O.P that the petitioner was never inducted as a tenant and he was never in possession of the suit land on or before the date of vesting. Also no rent was collected neither the ex-intermediary nor the Revenue Officer in respect of the suit land. After vesting of estate, the State Government is all along in peaceful possession of the suit land being the true owner thereof and a true owner can not be enjoined at the instance of a stranger. Only to grab a valuable piece of Govt. land, the petitioner has filed the present suit and I.A and hence, the I.A may be dismissed.

The O.P No.5 appeared and filed objection stating interalia that the present suit and I.A should not be entertained as the petitioner has not served any statutory notice provided U/s.97 of ODA Act. The petitioner nowhere either in the plaint or petition mentioned that the O.P No.5 has started any unauthorised proceeding against the schedule property. The O.P No.5 has every right to execute his statutory responsibility in respect of the suit land and if he will be prevented from his responsibility, the aims and purpose of the statute will be at stake. As such the petitioner has no prima-facie case and balance of convenience does not lean in his favour and he will not suffer any irreparable loss if any prohibitory order will pass not pass against him.

The O.P No.2,3 and 4 have been set exparte.

4. In order to succeed in a petition U/o.39 Rule-1 & 2, the petitioner has to establish his prima-facie case so also the balance of convenience in his favour. Moreover, it is also to be seen whether the petitioner will suffer any irreparable loss, if the prayer is denied.
5. Heard the learned counsel for the parties who submitted in support of their respective pleadings. The learned counsel for the petitioner submitted that since the petitioner was in khas possession over the suit land on the strength of the hata patta by the ex-intermediary, after vesting of estate with State Government, the petitioner continuing as an occupancy rayat over the suit land. Since the petitioner is a occupancy tenant in respect of the suit land, his interest over the suit land is no way affected by the vesting. Accordingly, the petitioner has a prima-facie case and the balance of convenience leans in his favour. As the O.Ps are threatening to create disturbance in his smooth possession over the suit land, he is constrained to file the suit for declaration of title and this I.A for interim injunction restraining the O.Ps. If the O.Ps will interfere in his smooth possession, he will suffer irreparable loss. On perusal of the case record, even though the petitioner pleaded that the Raja of Kanika leased out the suit property in his favour and he is paying rent to the ex-intermediary, no such hata patta and rent receipts has been filed. Similarly even though the petitioner has pleaded that his name has been entered in the tenancy ledger in respect of the suit land, but the tenancy ledger has not been filed. In absence of any prima-facie proof as to the induction of the petitioner as a tenant by the ex-intermediary and in absence of any material to show that the petitioner was in khas possession of the suit land at the time of vesting, since U/s.3 of the Orissa Estate Abolition Act, the estate vested with the Government free from all encumbrances, this Court find no prima-facie case. As discussed above, the balance of convenience also does not lean in favour of the petitioner. Since the petitioner is neither the owner nor any material is forthcoming to show his possession over the suit land, he will not suffer any irreparable loss if the prayer for injunction is denied.

Hence, ordered:

ORDER

The I.A be and the same is dismissed on contest against the O.P No.1 & 5 and exparte against O.P No. 2,3 and 4, under the circumstances without any cost.

Civil Judge(Sr.Divn.)
Bhubaneswar.

The order of the I.A is typed to my dictation by the Stenographer attached to this Court directly on the Computer provided under e-court project, corrected and pronounced by me in the open court today i.e. the 19th day of September, 2014 under my signature below.

Civil Judge(Sr.Divn.)
Bhubaneswar.