



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). NO.15366 OF 2017

Chittaranjan Panda

....

Petitioner

Mr. Santanu Kumar Sarangi, Senior Advocate
being assisted by Mr. T.Sahoo, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Sabita Ranjan Pattnaik,
Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

JUSTICE SAVITRI RATHO

ORDER

04.08.2025

Order No.

24. 1. This matter is taken up through hybrid mode.
2. This matter is listed in the Special Cause List prepared for the purpose of Special Mediation Drive-Mediation 'For the Nation'.
3. Mr. Pattnaik, learned Additional Government Advocate places on record the written instruction imparted by Additional Secretary to Government in the Department of Revenue and Disaster Management Department, Government of Odisha vide Letter No.30136 dated 4th September, 2024. He refers to the note sheet of the Law Department dated 22nd August, 2024 of Government of Odisha, with whom the proposal of withdrawal of the notification was pending. The Second ALR-cum-Additional Secretary to Government of Odisha, Law Department opined as under:

“ The A/D has endorsed the file to this Department seeking views in the matter of withdrawal of land measuring an area Ac.1.525 decimal out of the total notified area of Ac.23.882 decimal in Mouza-Basuaghaj, PS-Bhubaneswar No.81, Tahasil-Bhubaneswar, District-Khurda from the purview of acquisition for the Sewerage Project of Bhubaneswar city.

Preliminary notification for acquisition of the land in question was published in the year, 2009 under Section 4-A of the Land Acquisition Act, 1894. Section 48 of the Act, 1894 provides



that the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. The new Act i.e. Right to Fair Compensation and transparency in Land Acquisition, Rehabilitation & Resettlement Act came into force in the year, 2013. The corresponding provision for withdrawal is Section 93 of the Act, 2013, which provides that Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

So, the pre-requisition for withdrawal of compensation is that possession of the land should not have been taken. In the case of Indore Development Authority Vrs. Manoharlal & others, Hon'ble Apex Court held that "Once possession has been taken by drawing a Panchanama, the State is deemed to be in possession of the entire area and not for a part. There is absolutely vesting in Government with possession and control free from all encumbrances as specifically provided in Section 16 of the Act of 1894" Hon'ble Apex Court further held that "The drawing of Panchanama contemporaneously is sufficient and it is not open to a Court to determine the factum of possession within the purview of Order XXVII, Rule 9 CPC" Accordingly, Hon'ble Court held that "In our opinion under the Act of 1894 when possession is taken after award is passed under Section 16 or Section 17 before the passing of the award, land absolutely vests in the State on drawing of Panchanama of taking possession, which is the mode of taking possession" (Judgment dt. 06.03.2020 passed by the Hon'ble Constitution Bench of Hon'ble Supreme Court of India in SLP Nos. 9036-9038 of 2016 in the case of Indore Development Authority Vrs. Manoharlal & others etc.).

To ascertain as to whether the land in question was taken over into possession after acquisition or not, the A/D was requested to furnish the entire land acquisition file starting from the preliminary notification. The A/D has re-submitted the file furnishing true copy of the entire land acquisition file.

Perused the above file and documents as well as land acquisition records including the note sheets. At Page-7 of the note sheet of the land acquisition file submitted, it reveals that on dt. 03.11.2011, an order was passed for handing over possession of the land to Sewerage Board, Bhubaneswar. This order was passed after notice under Section 12(2) of the Land Acquisition Act, 1894 was issued vide order dt. 09.11.2010. Order dt. 03.11.2011 says that "Possession of the land to the extent of Ac. 23.882 decimal was handed over to Sewerage Board, Bhubaneswar under provision 16 of L.A. Act."

In view of the above position of law, possession of the land being handed over to the Sewerage Board, Bhubaneswar, there is absolutely vesting of the land in Government (Sewerage Board, Bhubaneswar) with possession and control free from all encumbrances. Even, after the possession was handed over, steps have been taken for rectification of the Record of Right in the name of Sewerage Board and in fact, Record of Right has been created in favour of the Sewerage Board. Abatement of Government



revenue in respect of the acquired land measuring Ac.23.882 decimal (including the land in question) required for the integrated sewerage project of Bhubaneswar was sanctioned w.e.f. 03.11.2011 i.e. the date of handing over possession, vide order No.121 dt.12.05.2015.

In view of the above position of law, when the land in question has already been vested with the requisitioning body, the land measuring an area Ac.1.525 decimal out of the total notified area of Ac 23.882 decimal in Mouza-Basuaghai, PS-Bhubaneswar No.81, Tahasil-Bhubaneswar, District-Khurda cannot be withdrawn from the purview of acquisition for the Sewerage Project of Bhubaneswar city.

The A/D is advised accordingly.”

4. In view of such opinion of the Law Department, Government of Odisha, it is submitted by Mr. Pattnaik, learned Additional Government Advocate that the matter should be heard on merit.

5. Mr. Sarangi, learned Senior Advocate appearing for the Petitioner submits that a date may be fixed for final disposal of the writ petition.

6. Accordingly, this matter stands adjourned to be listed on 25th September, 2025, on which date, an endeavour shall be made for final disposal of the writ petition.

7. Interim order dated 1st August, 2017 passed in Misc. Case No.14105 of 2017 shall continue till the next date.

(K.R. Mohapatra)
Judge

(Savitri Ratho)
Judge

Rojalin