

ORISSA HIGH COURT: CUTTACK

WRIT PETITION (CIVIL) Nos. 31840 & 31319 OF 2011
AND CONTC No. 388 of 2009

In the matter of applications under Article 226 and 227 of the Constitution of India and under Section 14 of the Contempt of Courts Act.

In W.P.(C) No.31840 of 2011

Indramani Biswal and others *Petitioners*

-versus-

State of Orissa & others *Opp.Parties*

For petitioners : M/s.R.N.Mishra, S.K.Das, and S.Barik

For opp.parties : Mr. Ashok Mohanty, Advocate General
(for O.Ps.1 to 5)

In W.P.(C) No.31319 of 2011

Laxmidhar Mohanty and others *Petitioners*

-versus-

State of Orissa & others *Opp.Parties*

For petitioners : M/s.G.K.Acharya, J.Acharya, T.P.Acharya,
K.M.Patra

For opp.parties : Mr. Ashok Mohanty, Advocate General
(for O.Ps.1 to 5)
M/s.Sanjib Swain & associates (for O.P.No.6)
M/s.G.Mukherjee & associates (for O.P.No.7)

In CONTC No.388 of 2009

Smt.Kiran Panda and others *Petitioners/Complainants*

-versus-

Ajit Kumar Tripathy & others *Opp.Parties/Contemnors*

For petitioners : M/s.J.Patnaik, H.M.Dhal, A.Das, B.Mohanty
& T.K.Patnaik

For opp.parties : Mr. Ashok Mahanty, Advocate General
(for O.Ps.)

P R E S E N T :

THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA

A N D

THE HONOURABLE SHRI JUSTICE S.K.MSIHRA

Date of hearing : 29.08.2012 & Date of judgment : 25.09.2012

V. Gopal Gowda,C.J. Both these writ petitions along with the contempt petition were heard together by the consent of the learned counsel for the parties, which are connected to each other in relation to construction of the road to the domestic Airport of Bhubaneswar pursuant to the order dated 27.9.2004 passed by this Court in OJC No. 8090 of 1996 and the batch of cases. Accordingly, common judgment is passed in all these matters.

2. Necessary brief facts are stated in the judgment dated 27.9.2004 passed in the earlier writ petitions bearing OJC Nos.8090 of 1996, 7858 of 1998, 16607 of 1998 and 16419 of 1998. With a view to find out as to whether the writ petitioners are entitled for the reliefs as prayed for by them in the writ petitions and the complainants, who have initiated contempt proceeding bearing CONTC No. 388 of 2009 on the allegation of disobedience of the order dated 27.9.2004 passed in

OJC No.8090 of 1996 and the batch of cases, certain relevant facts are stated hereunder. According to the complainants, there has been willful disobedience of the order, which amounts to civil contempt for which the contemnors are liable to be punished under the Contempt of Courts Act, 1971 read with the High Court Contempt Rules framed thereunder.

3. The prayers made in these writ petitions are to issue rule in the nature of direction to the opposite parties to permanently restraining them from taking up the proposed eviction/ demolition work relating to the land and buildings of the petitioners described in the R.O.Rs. filed by the petitioners in Annexure-1 series and further to hold the notifications, if at all issued by the State Government for acquisition of lands and buildings of the petitioners, as null and void urging various facts and grounds.

4. The petitioners have purchased the residential plots situated at Jagamara, P.O. Khandagiri, Bhubaneswar by spending hard earned money and all the petitioners except petitioner nos.5 & 6 in WPC No. 31840 of 2011, constructed their respective houses thereon long back and are residing there with their family. After purchase of the plots of land, they got their lands mutated in their names and accordingly they have been issued R.O.Rs. by the competent authority, namely, Tahasildar, Bhubaneswar and they have been paying their respective land revenues and electricity charges etc., copies of which are annexed as Annexure-1 series in WPC No. 31840 of 2011.

5. As per the decision taken by the State and Central Governments for expansion of runway at Bhubaneswar Aerodrome Field, it was decided to close the existing road from Siripur to Gandamunda and in lieu of that to construct a new road from Siripur to Gandamunda for convenience of the local people. After the decision was taken by the State Government for construction of the proposed new road, plan was prepared to that effect. After preparation of the plan for construction of the proposed new road, some plot owners being aggrieved by such demarcation of the land for the purpose of construction of the new road, approached this Court by filing writ petitions bearing OJC Nos.8090 of 1996, 7858 of 1998, 16607 of 1998 and 16419 of 1998, which came to be disposed of on 27.9.2004 by a common order. This Court while disposing of the said writ applications was pleased to give the following directions, which read thus:

- “(i) The State Government shall construct a road from Jagamara to a place nearby Delta Junction as shown in red ink in the map produced by the Advocate General along with additional counter affidavit filed by Opp.party no.5 on 13.09.2004 within a period of four years.
- (ii) Road existing from Siripur Chhak to Gandamunda junction may be closed for the purpose of expansion of the domestic Airport and expansion work may be taken up. For a period of four years, the petitioners and other residents of the area may use the road from Jagamara to Delta junction via Park and from Jagamara to Khandagiri square and from Khandagiri square to Fire Station for entering into the city.
- (iii) Immediate steps be taken by the State Government to provide funds for construction of the proposed road as indicated above so that construction of road can be completed within the time specified above.”

6. It is the further case of the petitioners that in spite of the aforesaid order passed by this Court in the aforesaid writ petitions in the year 2004, the State Government with a mala fide intention in connivance with the local politicians and high ranking officers did not construct the road as proposed by the State Government in its affidavit filed in the earlier writ petitions referred to supra. But on the other hand, it has decided to construct a road over the land of the present petitioners and some other residents by demolishing their houses.

7. It is the further case of the petitioners that there being deviation in the construction of the road, some of the residents of Mallick Complex house, who were being affected, filed a suit bearing C.S.No.288 of 2009 before the learned Civil Judge (Junior Division), Bhubaneswar. In the said suit an interlocutory application, bearing I.A.No.305 of 2008, was also filed seeking an order restraining the opposite parties from demolishing the houses of the petitioners for constructing a road over the suit land belonging to the petitioners. Learned Civil Judge by order dated 26.9.2008 was pleased to direct the opposite parties 1 to 3 not to make any construction of road in violation of the order dated 27.9.2004 passed in OJC Nos.8090 of 1996, 7858 of 1998, 16607 of 1998 and 16419 of 1998. It is further alleged that despite the order dated 26.9.2008 passed in I.A.No.305 of 2008, the opposite parties did not stop constructing the proposed road. That apart, the writ petitioners in the earlier writ applications referred to

supra have filed the connected contempt petition bearing CONTC No. 388 of 2009 arising out of O.J.C.No. 8090 of 1996 for disobedience of the order of this Court dated 27.9.2004. This Court at the time of hearing of the aforesaid contempt petition by order dated 27.6.2011 directed the State Government to file a status report relating to the alleged construction of road as directed by this Court in the earlier writ petitions referred to supra and also the land to be acquired for that purpose. This Court while passing the said order, referred to the order passed in I.A.No.305 of 2008 arising out of C.S.No. 288 of 2009 by the learned Civil Judge (Junior Division), Bhubaneswar and made an observation that the order passed by the learned Civil Judge (Junior Division), Bhubaneswar is in consonance with the order passed by this Court on 27.9.2004.

8. To comply with the direction given by this Court in the aforesaid contempt matter, the State Government prepared a status report and filed before this Court by way of an affidavit, sworn to by Sri Sribhusan Sukla, Land Officer, G.A. Department, Government of Odisha, on behalf of the Chief Secretary of Odisha on 11.11.2010. In the said affidavit, the State Government referring to the proceedings of the meeting held on 8.11.2011 has admitted that the land over which 15 residential houses are existing, is to be acquired by the State and the residents of those houses are to be evicted by 25.11.2011 and the construction of the road has to be finished by 15.12.2011. Copy of the

said affidavit along with the proceedings of the meeting held on 8.11.2011 is filed as Annexure-5 series to WPC No. 31840 of 2011.

9. It is the case of the petitioners that though there is specific direction given by this Court in the earlier writ petitions vide order dated 27.9.2004 and there being a specific restraint order passed by the learned Civil Judge (Junior Division), Bhubaneswar in the interlocutory application, the opposite parties with the help of police forcibly entered into the residential houses of some of the residents of Mallick Complex on 1.12.2011 at about 11 A.M. and by use of force evicted the residents from their residential houses and tried to get their houses demolished despite the petitioners showing restraint order passed by this Court as well as the Civil Court, which according to them is a total disregard to the orders of the Courts. Further, it is alleged that the eviction squad also have threatened the petitioners as well as other residents that further demolition work would continue so that the road work can be completed as per the decision made in the meeting held on 8.11.2011.

10. Being aggrieved by the aforesaid demolition process, some of the residents of Jagamara approached this Court by filing W.P. (C) No. 31319 of 2011. This Court by interim order dated 3.12.2011 in Misc. Case No. 18675 of 2011 directed the opposite parties to maintain status quo.

11. It is further stated that if the opposite parties are allowed to go ahead with the eviction process and get the petitioners' houses demolished, great prejudice would be caused to them as they would be deprived of their residential houses, thereby they will be put to great difficulties to find an alternative accommodation within a short span of time. Therefore, they have approached this Court.

12. It is further alleged that the State Government and its officers in the garb of public purpose, are trying to demolish the residential houses of the petitioners in the Mallick Complex in utter violation of the settled principles of law, which action of the State Government and its officers is arbitrary, unreasonable and unfair as it is the prime duty of the Government to protect its citizens and ensure safety of their lives and dwellings, which is coming within the meaning of basic needs of human beings.

13. In the earlier writ petition bearing OJC No. 8090 of 1996, the Deputy Secretary to the Government, G.A. Department filed an additional counter affidavit on 13.9.2004, wherein it was stated that after various alternative road proposals, the following three proposals have been considered in addition to the available connectivity:

- (i) Road of either side of narrow apron of Runway connecting Gandamunda junction to Jhadeswri Temple junction (Alt-R-1) in the map enclosed.

- (ii) Master plan road connecting the Gandamunda-Khandagiri Road and Siripur Fire Station Road (at Santoshi Maa Temple) (Alt-R-2 in the map enclosed)
- (iii) Jagamara junction to Delta junction via Baramunda High School.

This Court, while disposing of the aforesaid writ petition referred to supra, observed that since the third proposal required widening, strengthening and improving an existing road, considering all aspects including cost and time, the same was accepted to be suitable and accordingly issued direction to construct the said road from Jagamara to a place nearby Delta junction as shown in red ink in the map annexed to the affidavit.

14. It is alleged in the present writ petitions that deviating the red ink portion in the sketch map, eviction and demolition process has been initiated by the opposite parties for construction of the aforesaid road without the leave of this Court, which amounts to an act of mala fide and it is contemptuous in nature as there is violation of the order of this Court dated 27.9.2004 and the restraint order passed by the Civil court referred to supra, which action of the opposite parties is illegal, arbitrary and in gross violation of law and also the interim order passed by this Court on 3.12.2011 in Misc. Case No. 18675 of 2011 arising out of W.P.(C) No. 31319 of 2011 directing to maintain status quo.

15. The contempt petition bearing CONTC No. 388 of 2009 came up before this Court on 27.6.2011 and this Court after hearing

the petitioners in the said case as well as learned Advocate General with reference to the show cause reply filed on behalf of the Chief Secretary to the Government of Odisha/ Secretary to Government, General Administration Department along with Annexure-A, the table indicating the name of the land owners in C.S.No.228 of 2008 on the basis of the facts stated in the affidavit filed on behalf of the opposite parties and the details furnished in the notifications showing the lands acquired, made observation that it appears that the writ petitioners' land/buildings are acquired as per the notifications under Annexures-B & C. For the said reason, the proceedings before the Civil Court has made it very clear that the opposite parties were thereby prevented from making construction in violation of the order dated 27.9.2004 passed in O.J.C. No. 8090 of 1996. Therefore, the opposite parties were required to comply with the order and submit a status report by four weeks. Pursuant to the said order, the Land Officer has filed the affidavit along with the status report.

16. On 30.1.2012 after hearing the learned counsel for the petitioners in both the writ petitions as well as in the contempt petition and the learned Advocate General, this Court appointed a Committee consisting of four persons, namely, (1) Sri K.C.Patra, Superintending Engineer, Odisha Geo Spatial Data Centre, Survey of India, Survey Bhawan, Bhubaneswar, (2) Sri G.S.Bhuyan, Associate Town Planner, BDA, Bhubaneswar, (3) Sri P.C.Nayak, Executive Engineer (R&B), Division No.III, Bhubaneswar and Sri C.P.Gantayat, Executive Engineer

(R&B) Division No.IV, Bhubaneswar with a view to find out the correct factual aspect with reference to the allegation and counter allegation of the parties to the effect that there is a deviation of the road as shown in red colour portion of the map and there has been violation of the direction of this Court in the earlier writ petitions. The said Committee was directed to visit the spot and conduct an inspection of the spot in the presence of the parties with reference to the additional counter affidavit filed by the opposite party no.5 dated 13.9.2004 and the map showing the red colour portion and to submit a report within a period of four weeks. However, a petition was filed on behalf of opposite party nos.1 to 3 seeking extension of time to submit the report pursuant to the order dated 30.1.2012 and accordingly two weeks' time was granted by this Court by order dated 29.2.2012. Thereafter on 10.4.2012 the Executive Engineer, Bhubaneswar (R&B) Division No.III submitted the report vide Annexure-A/3. After filing objection and after hearing learned Advocate General for the opposite parties and learned Senior Counsel for the petitioners in the contempt matter, this Court did not accept the said report since the disputed land and the land over which construction of the road is to be made as indicated in the red colour in the map has not been surveyed and inspected and therefore, gave opportunity to the Committee to re-survey the spot and submit a report along with the notes of survey after affording opportunity to the writ petitioners, one of the complainants in the contempt petition and the opposite parties in the writ petition immediately after summer

vacation for perusal of this Court. Accordingly, the report was submitted in a sealed cover on 7.8.2012 along with CD in another sealed cover. The same was opened in the open Court. The relevant observation made in the said report reads thus:

"After that, the Committee along with petitioners, opposite parties and complainants visited the turning point for spot survey and reassessment. After super imposition of the red marked road on the sketch map with the Survey of India map showing marked (A),(B) and (C) and found to be tallying. It is pertinent to mention here that the curvilinear road shown in the red marked road sketch map does not follow the alignment of existing Baramunda road and it is totally different from the existing alignment.

Committee is of the view that the present alignment of Master Plan road now being constructed is mostly in agreement with the alignment shown in red marked road in sketch map.

In this connection, it is further to bring to your kind notice that the petitioners have gone to the extent of motivating the hierarchy of Survey of India organization to influence Sri Patra, Superintending Survey (Member of the Committee) when the matter is being adjudicated and monitored by the Hon'ble High Court, Odisha, Cuttack."

Learned Senior Counsel Mr.J.Patnaik for the complainants in the contempt petition and the learned counsel appearing for the writ petitioners wanted some time to get the certified copy of the report along with annexures to peruse the same and to make submission on the report of the Committee. Accordingly, the matters were adjourned to 22.8.2012 and thereafter to 29.8.2012, on which date, arguments of the learned Senior Counsel for the complainants in the contempt petition, learned counsel for the petitioners in both the writ petitions as

well as learned Advocate General Mr.Ashok Mahanty for the State and its officers were heard at length both on the Court Commission Committee report and also on the merits of the writ petitions. Mr.J.Patnaik, learned Sr. Counsel appearing for the complainants in the contempt petition has objected to the 2nd report dated 7.8.2012 inviting our attention to paragraph 5. He has placed reliance on the following portion, which reads thus:

“It is neither a revenue map nor any map prepared by B.D.A. or Survey of India. So, it was not possible to exactly demarcate the red road on field. In order to substantiate, three points were chosen (i) starting point on Siripur-Fire Station road (ii)Turning point near airport fencing (iii) the end point touching Khandagiri-Gandamunda road.”

Further, according to Mr.Patnaik, the Court Commission Committee members, do not have minimum requirement to demarcate the red colour portion road marked in the sketch map as part of the order dated 27.9.2004. Therefore, the field verification made by the above Committee to the scale measurement of red colour mark road in the sketch map by adopting the methodology is not correct as they were asked to measure two roads. In the absence of master plan, the proposed road as shown in red colour in the map annexed along with the affidavit filed on 13.9.2004 could not have been identified. The report submitted by the Court Commission should not contradict the fact as indicated in the order passed in the earlier writ applications referred to supra. Therefore, he has prayed this Court not to admit the report as it would affect the public interest.

17. Learned counsel appearing for the petitioners in W.P.(C) No. 31840 of 2011 placing reliance on the submission made by Mr.J.Patnaik, learned Senior Counsel, submits that no notice has been served on the petitioners, who are recorded tenants. The sketch map shown in the red colour is over-lapping upwards to Gandamunda around 300 meters alignment. Mr.Acharya, appearing for some of the petitioners in W.P.(C) No. 31840 of 2011 also challenged the map Annexure-2 as the same does not match with the existing road. Learned counsel appearing on behalf of the petitioners in W.P.(C) No. 31319 of 2011 also adopts the argument made by the other counsel in the above referred writ petition.

18. Mr.Ashok Mahanty, learned Advocate General places strong reliance on the additional affidavit filed in the earlier writ petition along with the map of the proposed road shown in red colour portion as an alternative road to the domestic Airport of Bhubaneswar. He submitted that 60% of the said road work has already been completed and the rest 40% is yet to be completed and because of the interim orders passed by this Court as well as the Civil court at the instance of the writ petitioners, the completion of the same has been stalled. Therefore, the State authorities could not be able to comply with the directions issued in the order dated 27.9.2004 passed in the earlier writ petitions. Therefore, he prayed to drop the contempt proceeding initiated against the contemnors.

19. He further submitted that this Court with a view to resolve the controversy as to whether there is any change of alignment of the proposed road as indicated in red colour in the sketch map, constituted a Court Commission Committee to find out as to whether there is any deviation of the construction of the road and accordingly, the said Committee comprising of very senior officers submitted the report. Thereafter, since the report submitted by the Committee was not found satisfactory, again this Court by order dated 11.5.2012 directed the said Committee to re-survey the spot and submit a report after affording opportunity to the writ petitioners, and opposite parties in the writ petitions as well as one of the complainants in the contempt petition. Pursuant to the said order, resurvey was conducted and after a threadbare discussion with the writ petitioners and other people who will be using the said road in future, the Committee opined that the present alignment of Master Plan road now being constructed is mostly in agreement with the alignment shown in red colour marked road in sketch map. Accordingly, he submitted that the allegation made by Mr.J.Patnaik that the methodology adopted in the 2nd report is not correct and is not sustainable and further rebutted the submission of the learned counsel for the petitioners contending that they are wholly untenable in law.

20. It is further submitted that the Court Commission Committee for the 2nd time after following due procedure as per the direction issued by this Court on 11.5.2012, has undertaken the spot

inspection and conducted resurvey and submitted a correct report stating that there is no deviation of the proposed road in the sketch map. It is further submitted that the said finding given by the Court Commission Committee comprising of technically competent people, who have got enormous experience in the field of survey after conducting the survey with reference to relevant data in this regard should be accepted by this Court.

21. He further submitted that for widening the road, since acquisition of land/ buildings of the private owners was required, land acquisition notifications have been issued to comply with the direction contained in the order dated 27.9.2004 passed by this Court in the earlier writ petitions, which is for the public purpose. The notifications issued are no doubt challenged in the writ petitions though the same are not annexed to the writ petitions. Even assuming that they are entitled for the relief on the ground of violation of Section 5(A) of the L.A. Act and on the principles of natural justice, the same need not be interfered with by this Court as public interest and public purpose would be adversely affected and to comply with the direction contained in the order passed in the earlier writ petitions referred to above, notifications have been issued and the petitioners, whose land/buildings are required to be acquired for public purpose, would be entitled to compensation for their properties on the basis of the market value + solatium+ interest under the provisions of the Land Acquisition Act. Therefore, the contention urged on behalf of the petitioners that they

have not been noticed before acquisition of their land/buildings, is not sustainable in the eye of law.

22. On the basis of the aforesaid factual and rival legal contentions, the following questions would arise for consideration by this Court.

- (i) Whether the State Government has deviated from the alignment of the construction of the road as demarcated in the red colour portion in the sketch map produced along with the affidavit, which is part of the order dated 27.9.2004 ?
- (ii) Whether the petitioners are entitled for quashing of the acquisition notifications wherein the petitioners' properties are acquired to comply with the order dated 27.9.2004 passed by this Court in OJC No. 8090 of 1996 and connected writ petitions ?
- (iii) Whether the acquisition of the private properties of the petitioners under the Land Acquisition Act is for the public purpose to comply with the direction of this Court in the order referred to supra passed in the writ petitions referred to in point no.(ii) ?
- (iv) Whether for non-compliance of the provisions of Section 5-A of the Land Acquisition Act and the

principles of natural justice on the part of the authorities, the acquisition proceeding so initiated by the State Govt. is liable to be quashed by this Court?

(v) Whether the opposite parties have willfully disobeyed the order dated 27.9.2004 passed by this Court in OJC No. 8090 of 1996 and connected cases and they are liable to be punished under the Contempt of Courts Act ? and

(vi) To what order?

23. The aforesaid points are answered in seriatim by assigning the following reasons.

24. Point No.(i)

This Court after hearing the writ petitioners in OJC No. 8090 of 1996 and connected cases, on the basis of the averments made in paragraphs 6 & 7 of the additional counter affidavit along with the sketch map showing red colour portion filed by the Advocate General on 13.9.2004, by order dated 27.9.2004 directed the opposite parties to construct a road from Jagamara to a place nearby Delta junction as shown in red ink in the map within a period of four years. The operative portion of the direction contained in the said order reads thus:

“(1)The State Government shall construct a road from Jagamara to a place nearby Delta junction, as shown in red ink in the map produced by the Advocate General along with additional counter affidavit filed by the opposite party no.5 on 13.9.2004 within a period of four years

(2) Road existing from Siripur Chhak to Gandamunda junction may be closed for the purpose of expansion of the domestic Airport and expansion work may be taken up. For a period of our years, the petitioners and other residents of the area may use the road from Jagamara to Delta junction via Park and from Jagamara to Khandagiri square and from Khandagiri square to Fire Station for entering into the city.

(3) Immediate steps be taken by the State Government to provide funds for construction of the proposed road as indicated above so that construction of road can be completed within the time specified above.”

The case of the opposite parties is that 60% of the said road work has already been completed pursuant to the above directions of this Court issued to the opposite parties and rest 40% is yet to be completed and because of the interim order passed by this Court and the civil Court in the proceedings referred to supra at the instance of the writ petitioners, the aforesaid order passed by this Court has not been complied with fully by them.

25. This Court in its order dated 27.6.2011 passed in the contempt matter relying upon paragraphs 3 and 5 of the additional affidavit sworn by one Adarsa Kumar Samantaray, filed on behalf of the opposite parties observed that the construction of the road is almost complete about 40% of the entire road marked in red colour in the map and the remaining portion is yet to be completed. This Court also after perusing the interim order of injunction passed by

the civil court, observed that the civil court's interim order does not cause any impediment for the opposite parties to comply with the order complained of. Relying upon the affidavit filed on behalf of the opposite parties in the said contempt matter, this Court observed that the writ petitioners' private plots have been acquired as per the notifications issued under the provisions of Land Acquisition Act vide Annexures-B & C to the writ petition. Therefore, it is observed that the proceedings before the civil court has prevented the opposite parties from making construction of the road in violation of the order dated 27.9.2004 passed in the earlier writ petitions referred to supra. With the aforesaid observations, the opposite parties- contemnors were directed to comply with the order and submit a status report by four weeks from the date of the order. Thereafter, the contempt petition was listed before this Court along with the aforesaid connected writ petitions. This Court having regard to the rival factual contentions urged by the learned counsel for the writ petitioners as well as Sr. Counsel on behalf of the complainants in the contempt petition, heard the matter on 30.1.2012. The petitioners had taken the plea in the writ petition regarding the deviation of the alignment as indicated in the red colour in the map, which was produced by the opposite parties before this Court by way of additional counter affidavit in the earlier writ petition. It is also alleged by the petitioners that the direction given by this Court in the order dated 27.9.2004 has not been implemented properly. Considering the said

allegations made by the petitioners and the complainants, this Court being of the view that it would be appropriate to find out the correctness of the allegations made by the writ petitioners as well as the complainants in the contempt petition, appointed a Committee of Court Commission as per Order 26, Rule 9, C.P.C. consisting of experts with a direction to them to find out the correctness or otherwise of the allegations regarding deviation of the alignment of the road marked in the red colour portion of the map. The relevant portion of the said order dated 30.1.2012 passed in W.P.(C) No. 31840 of 2011 is quoted hereunder:

"4. Therefore, to find out the correct factual aspect with reference to the allegation and counter allegation of the parties to the effect that there is a deviation of the road as shown in the red colour portion of the map and there has been violation of the direction of this Court in the earlier writ petition, we direct the aforesaid four persons to visit the spot and conduct an inspection of the spot in the presence of the parties with reference to the directions issued by this Court in the earlier writ petition and the additional counter affidavit filed by the opp.party no.5-State of Orissa dated 13.9.2004 and the map showing the red colour portion and submit the report within a period of four weeks. Mr.P.C.Nayak, Executive Engineer (R&B), Division No.III, Bhubaneswar will notify to all concerned by issuing notice to all the parties for the purpose."

Pursuant to the said order of this Court, the first report was submitted by the said Committee on 3.3.2012. It is alleged by the writ petitioners that the said Committee without visiting the spot and conducting inspection, submitted the report. On perusal of the said report, this Court finding that the disputed land/buildings and also the

land/buildings over which construction of the road is to be made as indicated in the red colour in the map, have not been surveyed and inspected, directed the said Committee to re-survey the spot after giving reasonable opportunity to the writ petitioners, one of the complainants and the opposite parties in the writ petition.

26. Learned counsel for the petitioners and learned Sr. Counsel appearing on behalf of the complainants took time for filing objection to the said second report. They filed objection by way of affidavit objecting to the said report and prayed this Court not to accept the same.

27. We have heard learned counsel for the parties and perused the report along with the documents enclosed thereto. As can be seen from the report and the connected documents produced along with the report, personal notice was issued to the petitioners, complainants in the contempt petition and opposite parties, and accordingly they have appeared and participated in the spot inspection and survey. After a thorough discussion with the petitioners, the opposite parties and one of the complainants in the contempt petition, the Court Commission Committee has observed as follows :

“After discussion with the petitioners and opposite parties, the committee revisited the alignment of the road. The red marked road in the sketch map is a map without any scale. It is neither a revenue map nor any map prepared by B.D.A. or Survey of India. So, it was not possible to exactly demarcate the red road on field. In order to substantiate, three points

were chosen (i) starting point on Siripur-Fire Station road, (ii)Turning point near airport fencing (iii) the end point touching Khandagiri-Gandamunda road"

The Committee also observed that there is no dispute from any party regarding the starting point on Siripur Fire Station road, but regarding end point, the measurements, which were reported earlier to this Court was explained to all the parties. But the Committee observed that there seems to be no contradiction on that score. That apart, the Committee also gave opportunity to all the parties to give feed back if there is any contradiction, but till the date of submission of the said report none of the parties came forward with any objection/ suggestion. The Committee along with the petitioners, opposite parties and complainants visited the turning point for spot survey and re-assessment and observed as follows :

"After super imposition of the red marked road on the sketch map with the survey of India map with reference to the ground reality, it is seen that the existing alignment now being constructed is fairly tallying with the red marked road on the sketch map. Other reference points were also checked vis-à-vis survey of India map showing marked (A), (B) and (C) and found to be tallying. It is pertinent to mention here that the curvilinear road shown in the red marked road sketch map does not follow the alignment of existing Baramunda road and it is totally different from the existing alignment."

The Committee also further observed that the present alignment of Master Plan road now being constructed is mostly in agreement with the alignment shown in red colour marked road in the sketch map. In the said report, it is also mentioned that during discussion, the

Committee received petition from the people of the vicinity, who will be using the road in future.

28. Though the observation made by the Committee is strongly opposed by the learned counsel for the petitioners and learned Sr. Counsel on behalf of the complainants in the contempt petition by filing affidavits, stating that the said report cannot be accepted as there are contradictions regarding the reference made in the report, we are of the opinion that the Committee was constituted by this Court as per the provisions of Order 26, Rule 9, C.P.C. to conduct spot inspection and re-survey to find out the correctness of the allegations made by the petitioners and complainants that there is deviation of alignment of the road as indicated in the red colour portion in the map and the said Committee consisting of experts in the field of survey, after giving opportunity to all the parties concerned and examining the ground reality found that there is no change of alignment of the road as alleged by the petitioners and complainants in the contempt petition. That apart, the Committee also asked for objection/ suggestion, but till date nobody has come forward with any such feed-back. Therefore, in absence of any other material produced by the petitioners and complainants in the contempt petition, this Court has to accept the second report of the expert Court Commission Committee and hold that there is no change of alignment of the road marked in red colour in the map, which is part of the order dated 27.9.2004 passed in the earlier

writ petitions. Accordingly, point no. (i) is answered in favour of the opposite parties.

29. Point Nos. (ii),(iii) & (iv)

The opposite parties have acquired the properties of the petitioners for the purpose of implementing the order of this Court dated 27.9.2004 passed in the earlier writ petitions for non-compliance of which order, the aforesaid contempt petition is filed by the complainants. The State Government has exercised their eminent domain power to acquire the properties of the petitioners for widening the road as marked in red colour in the map, which is part of the order passed by this Court in the earlier writ petitions. Therefore, acquisition of the properties of the petitioners for widening the road is for public purpose in terms of Section 3(f) of the Land Acquisition Act, 1894, hereinafter to be referred to as "the Act", in short, which is extracted hereunder:

"3(f). the expression "public purpose" includes-

- (i) The provision of village-sites, or the extens. on planned development or improvement of existing village-sites.
- (ii) The provision of land for town or rural planning;
- (iii) The provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease,

assignment or outright sale with the object of securing further development as planned;

- (iv) The provision of land for a corporation owned or controlled by the State.
- (v) The provision of land for residential purpose to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;
- (vi) The provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to co-operative societies for the time being in force in any State;
- (vii) The provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government by a local authority;
- (viii) The provision of any premises or building for locating a public office, but does not include acquisition of land for companies."

Further, the State Government has got every power to acquire land by invoking the power under Section 17 of the Act, when there is emergency for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road, communication or electricity. However, the authorities under the Act issued notification under Section 4 of the Act for acquiring the private plots of the

petitioners for the purpose of widening the road in question in order to comply the earlier direction of this Court. No doubt the said notifications have not been challenged in the writ petitions, but the petitioners have alleged that without giving any opportunity and conducting enquiry as required under Section 5-A of the Act, their properties are sought to be taken away by evicting them forcibly, and therefore, the action of the opposite parties is arbitrary, unreasonable and unfair. They have also requested the Court to remit the matter back to the appropriate authority to comply with the provisions of Section 5-A of the Act.

30. The contention urged by the writ petitioners is liable to be rejected for the reason that in view of the urgency of the matter, particularly pursuant to the order of this Court dated 27.9.2004 passed in the earlier writ petitions, the opposite parties in order to comply with the said order have acquired the land/properties of the petitioners for the purpose of widening of the domestic Airport road as indicated in red colour in the sketch map enclosed to the report. Therefore, there is compelling reason for the State Government to acquire the land of the petitioners. Even assuming for the sake of argument that the petitioners' land/properties have been acquired by the State Govt. without complying with the provisions of Section 5-A of the Act and the principles of natural justice, no fault can be found with the State because of the fact that for the purpose of widening of the public road and in order to comply with the order of this Court dated 27.9.2004,

acquisition of the said land was badly required. That apart the procedure prescribed in Section 5-A of the Act can be dispensed with since power has been conferred on the State Government under Section 17(4) that in the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5-A shall not apply, and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the date of publication of the notification under Section 4(1) of the Act. In view of the aforesaid provision of law, the prayer made by the petitioners to quash the acquisition proceedings on the ground of non-compliance of the provision of Section 5-A and the principles of natural justice is liable to be rejected. That apart, the acquisition of the land of the petitioners has been made for the public purpose and the same will serve the public interest. Further it is undisputed fact that 60% of the construction work of the road has already been completed and rest 40% has not been completed because of the interim order of status quo passed by this Court as well as the Civil Court in the proceedings referred to supra. Therefore, the matter need not be remitted back to the authorities for the reason that after giving opportunity, the State Government is required to acquire the properties of the petitioners to comply with the direction of this Court referred to above. On acquisition of the properties, the petitioners would be entitled for compensation on the basis of market rate prevailing in the

locality including solatium and interest. Therefore, the petitioners would be compensated and no prejudice or injustice would be caused to them if the acquisition is made for public purposes and in the public interest.

For the reasons stated above, the various legal contentions urged on behalf of the petitioners on the above points, are wholly untenable in law and cannot be accepted by this Court. Hence, point nos.(ii), (iii) & (iv) are answered in favour of the opposite parties.

31. Point no. (v)

It is an undisputed fact that the order dated 27.9.2004 has been complied with partly. The opposite parties could not comply with the said order fully for the reason that this Court by order dated 3.12.2011 in Misc. Case No. 8675 of 2011 (W.P.(C) No. 31319 of 2011) passed interim order of status quo and the learned Civil Judge (Junior Division), Bhubaneswar on an interlocutory application filed by some of the petitioners under 39, Rules 1 and 2, C.P.C., by order dated 26.9.2008 prevented the opposite parties from making construction of the road in violation of the order dated 27.9.2004 passed in O.J.C. No. 8090 of 1996 and connected matters. Therefore, because of the interim orders passed by the Civil court and this Court, the opposite parties could not comply with the order of this Court dated 27.9.2004 fully. Further, as can be seen from the aforesaid facts, the opposite parties in order to implement the order have acquired the land of the petitioners.

This shows that the contemnors/ opposite parties have no deliberate intention not to comply with the order of this Court dated 27.9.2004. There may be some delay in complying with the direction of this Court, but the State Government has to follow the procedure as contemplated under the Land Acquisition Act. Hence, the allegation of the complainants that the opposite parties have deliberately violated the order of this Court referred to supra cannot be attributed to the contemnors.

32. In view of the foregoing reasons stated supra, we hold that there is no willful disobedience on the part of the contemnors to comply with the direction of this Court dated 27.9.2004 passed in O.J.C.No.8090 of 1996. Accordingly, point no.(v) is answered in favour of the contemnors.

33. Point No.(vi)

For the reasons stated supra, the writ petitions being devoid of any merit, are dismissed. The contempt petition filed by the complainants is dismissed by dropping the proceedings. No cost.

S.K.Mishra, J.

I agree.

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V.Gopala Gowda,C.,J.

.....
S.K.Mishra, J.

Orissa High Court, Cuttack
*September 25, 2012/ **PKSahoo***