

2. 31.05.2018

Heard Mr.B.Baug, learned counsel for the petitioners and Mr. R.P.Mohapatra, learned Additional Government Advocate, who accepts notice on behalf of opposite party No.1.

2. In view of the order proposed to be passed, this Court dispenses with issuance of notice to opposite party No.2-Bhubaneswar Development Authority.

3. Case of the petitioners in this writ petition is that they have filed suit (TS No.557/557 of 2009/1999)for declaration of right, title, interest, correction of ROR as well as for permanent injunction. During Pendency of the suit, interim injunction was granted in their favour in CMA No.218 of 2009, which was extended from time to time. Due to default of the plaintiffs-petitioners in the suit, the same was dismissed. However, vide order dated 05.03.2018, the same was subsequently restored to file subject to payment of cost of Rs.5,000/-.

4. Mr.Baug, learned counsel for the petitioners submits that as the plaintiffs could not arrange the amount of cost as directed, they prayed for extension of time for payment of the same. It was not acceded to and the suit could not be restored to file. However, CMA No.41 of 2018 has been filed for restoration of the suit, which is pending for consideration. Due to ensuing Summer Vacation, the petitioners are not in a position to move the learned Court below for appropriate direction. Thus, the instant writ petition has been filed by the petitioners to restrain the opposite parties from evicting them from plot Nos.1574 and 1575 under Khata No.740 in Mouza Bhubaneswar Sahar, Unit No.22, Bhimpur for which CMA

No.41 of 2018 (Annexure-46) has also been filed.

5. In course of hearing, Mr.Baug, learned counsel for the petitioners submits that plaintiffs-petitioners may be given breathing time to move the restoration petition as well as the interim application on reopening of the Courts after the Summer Vacation and till then they may not be evicted from the case land.

6. Mr.Mohapatra, learned Additional Government Advocate vehemently opposes to such prayer and submits that since the restoration application has been dismissed for non-payment of cost in time and the interim order has been vacated, the writ petition is not maintainable.

7. Taking into consideration the rival contentions of the parties as well as on perusal of record, this Court disposes of the writ petition with a direction that the petitioners shall not be evicted from the case land till 2nd July, 2018 to enable them to move the restoration application and the interim application, as well, if so advised. It is made clear that this Court has not gone into the merit of the case while granting interim protection, as aforesaid. The interim protection granted shall not be extended in any circumstances.

Issue urgent certified copy of the order on proper application.

.....
K.R. Mohapatra, J.
(Vacation Judge)

