

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 11501 OF 2022

Balikapileswar Eco Development Committee, Puri ***Petitioner***

Mr. H.N. Mohapatra, Advocate

-versus-

State of Odisha and others ***Opp. Parties***

Mr. Swayambhu Mishra,

Additional Standing Counsel

(For Opp. Party Nos.1 to 4)

Mr. Prasanta Kumar Satapathy, Advocate

(For Opp. Party No.5)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

29.09.2023

Order No.

17

1. This matter is taken up through hybrid mode.
2. This writ petition has been filed assailing Memo No. 2083/F dated 15th May, 2017 (Annexure-5) issued by the Divisional Forest Officer, Puri Wildlife Division, Puri-Opposite Party No.3 to the Range Officer, Konark Wildlife Range-Opposite Party No.4 requesting him to take needful action for formation of VSS in Liakhia Village as per Joint Forest Management Resolution, 2011 (for short 'Resolution, 2011') and to discuss with the villagers in the matter and submit a detailed report along with views for further action.
3. Mr. Mohapatra, learned counsel for the Petitioner submits that memo under Annexure-5 is without jurisdiction in view of sub-clause (iii) of Clause-3 for constitution of VSS/EDC. For better appreciation, Clause-3 of Resolution, 2011 is quoted hereunder:

“3. Constitution of VSS/EDC:

- (i) *Ordinarily there will be one VSS/EDC for a single village. One VSS may also cover more than one village or there may be more than one committee in a village especially large in size. Other Forest Protection groups, if any would also be covered under this Resolution.*
- (ii) *All adults of the village will be the members of the VSS/EDC. They may pay an enrolment fee determined by the General Body (GB) of VSS/EDC.*
- (iii) *The Palli Sabha shall send its Resolution to the Range Officer concerned regarding constitution of VSS/EDC for his record and communication to the DFO concerned for registration at the Division level."*

3.1 It is also submitted that for delegation of power to the VSS/EDC, the forest land has been categorized under two groups under Clause-2 of the Resolution, 2011, which is as under:

- (a) *Reserved Forests, Protected forests, Village forests, Revenue forests etc. not covered under Protected Areas.*
- (b) *Protected Area (National Park and Sanctuaries) excluding Core Areas and Mangrove Wetlands.*

3.2 It is also submitted that while deciding the extent of area to be assigned, the Palli Sabha shall consult the Forest Range Officer concerned and shall take into account the area customarily being protected and used by the community, the number of adjacent villages, their claims, if any and users' regime. Thus, the Palli Sabha has to initiate the proceeding for selection of area and appointment of VSS/EDC. It is his submission that village Liakhia is coming under the protected area, i.e. under Clause-2(b) of the Resolution, 2011. As such,

VSS cannot be constituted in respect of the said area. It is also submitted that alleging non-compliance of the memo under Annexure-5, one Tulu Raj Bhoi (Opposite Party No.5) filed W.P.(C) No. 40048 of 2021, which was disposed of vide order dated 7th January, 2022 with the following direction:

“Considering the same, this writ petition is disposed of with a direction to the Opposite Party No.3-Range Officer, Konark Wildlife Range to take necessary action on Annexure-3 to the writ petition as directed by the Opposite Party No.2-Divisional Forest Officer, Puri Wildlife Division within a period of three months, if the same has not been taken and intimate the same to the Opposite Party No.2-Divisional Forest Officer, Puri Wildlife Division, as required.”

3.3 It is further submitted by Mr. Mohapatra, learned counsel that the Petitioner has filed a miscellaneous application for recall of the aforesaid order, which is pending for consideration. This Court while considering the said application filed in W.P.(C) No. 40048 of 2021 directed that it should be listed along with the present writ petition. But the present writ petition has been listed independently. At the time of admission of the writ petition, the aforesaid facts were brought to the notice of the Court and considering the same, this Court has passed the following order on 13th May, 2022.

- “1. This matter is taken up through hybrid mode.
2. In W.P.(C) No. 40048 of 2021, this Court, vide order dated 7th January, 2022, had directed the Range Officer, Konark Wildlife Range to implement the order under Annexure-5 to this writ petition.
3. Petitioner has challenged the said order in this writ petition, as the same is to be without jurisdiction.
4. Considering the facts and submissions made, it is made clear that if the order under Annexure-5 to this

writ petition is without jurisdiction or contrary to law, any decision taken pursuant to the direction of this Court in W.P.(C) No.40048 of 2021, the same shall be subject to the outcome of the writ petition.

5. *List this case on 15th July, 2022."*

4. Mr. Mohapatra, learned counsel for the Petitioner referring to Annexure-A/3, i.e. the application stated to have been submitted by the villagers of Liakhia village for formation of VSS, submits that Plot No.1779 of Khata No.385 (as stated therein) is not available in the village map of Liakhia village.

5. It is, however, submitted by learned counsel for the parties that no action has yet been taken pursuant to the direction in W.P.(C) No.40048 of 2021.

6. Mr. Mishra, learned Additional Standing Counsel referring to para-6 of the counter affidavit submits that vide memo under Annexure-5, the Divisional Forest Officer, Puri Wildlife Division has never directed the concerned Range Officer to form any Vana Surakhay Samiti (VSS) in the existing assigned area of Balikapileswar Eco-Development Committee. As yet no decision has been taken on the representation of the villagers in their letter dated 21st April, 2017. Thus, apprehension of the Petitioner is without any basis.

7. Mr. Satapathy, learned counsel for Opposite Party No.5 submits that since an application for recall of the order dated 7th January, 2022 passed in W.P.(C) No.40048 of 2021 at the instance of the Petitioner is still pending before this Court, the Petitioner can raise all his grievances in the said writ petition. If any order is passed in this writ petition at this stage, it may prejudice the Opposite Party No.5 at the time of consideration

of the petition filed by the Petitioner in W.P.(C) No.40048 of 29021.

8. Taking into consideration the rival contentions of the parties, this Court finds that this Court vide order dated 7th January, 2022 disposed of W.P.(C) No.40048 of 2021 directing the Range Officer, Konark Wildlife Range-Opposite Party No.4 to take necessary action pursuant to the memo dated 15th May, 2017 (Annexure-5). At present, an application at the instance of the Petitioner to recall the order dated 7th January, 2022 passed in W.P.(C) No.40048 of 2021 is pending for consideration. It also appears that pursuant to the direction of this Court in W.P.(C) No.40048 of 2021, no decision has yet been taken on the memo under Annexure-5. As such, the Petitioner has scope to raise all the aforesaid grounds at the time of adjudication of the petition filed in W.P.(C) No.40048 of 2021.

9. In that view of the matter, this Court disposes of this writ petition with an observation that the Petitioner is at liberty to ventilate all his grievances raised in this writ petition at the time of disposal of the application filed in W.P.(C) No.40048 of 2021 for recall of the order dated 7th January, 2022 passed therein.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

Signature Not Verified

Digitally Signed
Signed by: BIJAY KUMAR SAHOO
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 03-Oct-2023 11:00:57

