



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.1307 of 2025

(An application under Article 227 of the Constitution of India)

Satyabati Pradhan

.....

Petitioner

Represented by Adv. –
Mr. S.K. Mishra, Sr.Adv.
Mr. Jagajiban Pradhan

-versus-

State of Odisha and others

.....

Opposite Parties

Represented by Adv. –
Mr. C.M. Singh, ASC

CMP No.1393 of 2025

(An application under Article 227 of the Constitution of India)

Sujata Biswal

.....

Petitioner

Represented by Adv. –
Mr. S.K. Mishra, Sr. Adv.
Mr. Prajna Sarita Mohanty

-versus-

State of Odisha and others

.....

Opposite Parties

Represented by Adv. –
Mr. C.M. Singh, ASC

CORAM:

THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

Date of Hearing: 31.03.2026

: Date of Judgement: 25.06.2026



1. The CMP No.1307 of 2025 has been filed with a prayer to quash the impugned order dated 10.07.2025 passed by the learned Civil Judge (Senior Division), Nilgiri, Balasore in C.S. No.365/2023-(I), under Annexure-4, and to allow the Order XXVI Rule 9 petition filed by the Petitioner under Annexure-2 thereof.
2. Likewise, the CMP No.1393 of 2025 has been filed with an identical prayer to quash the impugned order dated 10.07.2025 passed by the learned Civil Judge (Senior Division), Nilgiri, Balasore in C.S. No.364/2023-(I), under Annexure-4, along with an additional prayer to allow the Order XXVI Rule 9 petition filed by the Petitioner under Annexure-2.
3. Both the aforesaid Civil Miscellaneous Petitions arise out of a common order dated 10.07.2025 passed by the learned Civil Judge (Senior Division), Nilgiri, Balasore, in C.S. No. 365/2023 and C.S. No. 364/2023 respectively, whereby the trial court rejected the applications filed by the respective Petitioners under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (hereinafter “the CPC”) praying for deputation of Survey Knowing Commissioner to carry out local investigation. Since the aforesaid CMP applications also raise identical legal questions and involve similar factual circumstances, they are heard and decided together by this



common judgement. For the sake of convenience, CMP No.1307 is taken as the lead matter.

FACTUAL MATRIX OF THE CASE

4. A concise overview of the material facts leading to the filing of the petitions is as follows; the suit land in question traces its origin to M.S. Plot No.1303 measuring A.0.79 dec under M.S. Khata No.333 of Mouza Baligohiri. One Bhanumati Sethi, w/o Kangali Sethi, was the recorded owner-in-possession of the said plot. The M.S. recorded tenant transferred A.0.37 dec. out of A.0.79 dec. in favour of Krushnapriya Panigrahi. Pursuant to M.C. Case No.222/1983, a new part plot bearing No.1303/2195, measuring A.0.37 dec., was separately recorded in the name of Krushnapriya Panigrahi. After her death, her legal representatives (LRs) transferred Plot No. 1303/2195 to one Sri Ganesh Khuntia vide R.S.D. No. 10121701022 dated 19.11.2017, and his name was recorded under Mutation Khata No. 512/741.

5. Later on, Ganesh Khuntia sold A.0.04060 dec. and A0.0374 dec. out of the said plot to the respective Plaintiffs/Petitioners vide R.S.D. No. 10122101275 dated 11.10.2021 (to Satyabati Pradhan-Petitioner in C.S. No. 365/2023 and CMP No.1307 of 2025) and R.S.D. No. 10122101248 dated 29.09.2021 (to Sujata Biswal, i.e. the Petitioner in C.S. No. 364/2023



and CMP No.1393 of 2025). After the purchases, the suit lands were mutated in the names of the respective Petitioners under Mutation Khata No. 512/1111. Plot No.1303/2195/3012, measuring A.0.0406 dec. was mutated in the name of Sujata Biswal, and Plot No. 1303/2195/3016, measuring A.0.0374 dec. was mutated in the name of Satyabati Pradhan, the first Petitioner herein.

6. Subsequently, the Opposite Parties demarcated the land acquired by the State pursuant to the Notification No.15261 dated 28.05.2019, for the purpose of excavating the Salandi Left Main Canal under the Anandapur Barrage Project. It is the assertion of the Petitioners that the Opposite Parties have illegally demarcated the suit land belonging to the Petitioners by taking aid of a wrongly prepared map. Aggrieved, the Petitioners filed civil suits, bearing C.S. No. 365/2023 and C.S. No. 364/2023 respectively, before court of the learned Civil Judge (Senior Division), Nilgiri, praying, inter alia, for reliefs of declaration, demarcation of the “B” Schedule land by appointment of a Survey Knowing Commissioner of the Civil Court, confirmation of possession over the schedule land, along with alternative remedies of recovery of possession and permanent injunction against the Defendant-Opposite Parties from digging the canal over the “B Schedule” land.



7. Eventually, after evidence from both sides was adduced, the Petitioners filed application under Order XXVI Rule 9 of the CPC, a copy of which is provided under Annexure-2 of their respective CMP applications, with a prayer for appointment of a Survey Knowing Commissioner for local investigation of the suit land for the purpose of locating and identifying the suit plots, and ascertaining whether the suit plots are situated towards the southern or eastern side of original Plot No.1303 and measuring the area encompassed by the canal project which is to be excavated. The Defendants-Opposite Parties filed their objections to the aforesaid application of the Petitioners. Finally, vide the impugned order dated 10.07.2025, the learned Civil Judge (Sr. Division), Nilgiri, rejected the Petitioners' applications under Order XXVI Rule 9 of the CPC. Aggrieved by such rejection, the Petitioners have filed the present CMPs under Article 227 of the Constitution of India challenging the said order.

CONTENTIONS OF THE PETITIONER

8. Heard Mr. S. K. Mishra, learned Senior Counsel appearing for the Petitioner. The learned senior counsel, at the outset, stated at bar that the Petitioner is the rightful owner of the land bearing Plot No.1303/2195 under Khata No.512/741 in Mouza Balighori. However, the Opposite



Parties, based on a wrongly prepared map, have illegally and forcibly demarcated the Petitioners' land for excavating a canal. It was submitted that although the Petitioner's Plot No.1303/2195 is situated on the southern side of the original Plot No.1303, the erroneous map wrongly represents such land on the eastern side of the original Plot instead.

9. Referring to the copy of the Order XXVI Rule 9 petition at Annexure-2, learned Senior Counsel contended that a plain reading of the said petition, specifically Paragraphs 5, 6, and 6(KA) and the written statement of the defendants would reveal that there exists a serious and genuine dispute regarding the topography and location of the suit land, particularly whether Plot No.1303/2195 and the suit plots derived therefrom are situated on the southern side or the eastern side of the original Plot No.1303. It was stated that this fundamental factual controversy cannot be resolved from documentary evidence alone and necessitates an on-the-spot inspection by a competent Survey Knowing Commissioner.

10. Additionally, learned senior counsel for the Petitioner submitted that the evidence collected during the trial is not sufficient to arrive at a just conclusion in the matter. To elucidate the argument further, the learned senior counsel drew the attention of this Court to the copies of the headings of depositions attached to the Petitioner's written submissions, and



contended that the Amin examined on behalf of the plaintiff as P.W.-3, in cross-examination, has admitted that he did not take proper measurement of the suit plot. Similarly, the D.W.-1 examined on behalf of the defendants, has admitted in Para-8 of his deposition (last three lines thereof) that on account of the status quo order in force over the suit land, the defendants cannot proceed with excavation of their acquired land. The learned senior counsel submitted that this admission itself demonstrates the existence of a genuine dispute as to whether the suit land overlaps with the canal area.

11. Further, the learned senior counsel for the Petitioner contended that it is a well settled legal principle that a petition for deputation of a commissioner should be filed after the closure of evidence from both sides. Therefore, the trial court has committed a grave error in observing that local investigation should have been done at an earlier stage. To corroborate his contentions, learned senior counsel has relied on the decision in *2015 (Supp. II) OLR 984* and *2017 (I) OLR 495*, wherein it has been held that the application under Order XXVI Rule 9 should be filed after the evidence stage and not before it.

12. Additionally, with regard to the observation made by the learned trial court that there is no dispute regarding the identification and amalgamation of suit land, the learned senior counsel on behalf of the



Petitioners stated that such observation of the learned trial court is directly contrary to the materials on record and, therefore, the rejection of the petition on such erroneous reasoning is also untenable in law and liable to be interfered with under the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

13. Thereafter, inviting the Court's attention to the stand taken by the Opposite Parties in their Counter Affidavit, learned Senior Counsel for the Petitioner submitted that the Counter Affidavit filed by the Opposite Parties relies on documents not forming the part of the lower Court records. Accordingly, it was contended that the validity or otherwise of an impugned order, in a proceeding under Article 227 of the Constitution of India, can only be adjudicated on the basis of materials before the court below, not on documents filed on behalf of the Opposite Parties for the first time before this Court. As such, the learned senior counsel stated that the documents referred to in the Counter Affidavit filed by the Opposite Parties cannot be taken into consideration for the purpose of testing the correctness of the impugned order.

14. Lastly, the learned senior advocate for the Petitioner stated that the civil suits filed by the Petitioners are for demarcation of the suit property and, **the** questionnaire formulated in the petition filed under Order XXVI Rule 9 of the CPC, at Annexure-2 (titled "Schedule Questions") is directly



relevant to the just and proper adjudication of the suit. It was contended that without the report of a Survey Knowing Commissioner, it would not be viable for the Court to pass an effective decree on the core issue of whether the suit plots are situated in the canal area or not. In such view of the matter, learned senior counsel for the Petitioner submitted that the impugned rejection order dated 10.07.2025, at Annexure-4, being devoid of merit, is liable to be quashed and, resultantly, the Petitioner's application under Order XXVI Rule 9, at Annexure-2, be allowed.

CONTENTION OF THE OPPOSITE PARTIES

15. Heard Mr. C. M. Singh, learned ASC appearing for the Opposite Parties. The Opposite Parties have articulated their case through a Written Note of Submission, a Counter Affidavit filed on behalf of Opposite Party Nos.1 and 4, a separate Counter Affidavit filed on behalf of Opposite Party No. 3, and an Objection dated 05.01.2026 submitted by Opposite Party Nos.1, 3, and 6 before the Tahasildar, Nilgiri, Balasore pursuant to Public Notice No. 6567 dated 31.12.2025. The collective stance of the Opposite Parties, as discernible from the aforesaid pleadings and documents, is that the learned trial Court has not erred in rejecting the application of the Petitioners under Order XXVI Rule 9 C.P.C.



16. It has been stated by the learned ASC at the outset that the Opposite Parties-Defendants have not prepared an erroneous map at the time of acquiring land for canal excavation under Baligohiri Mouza. It was further contended that as per the Form-A requisition filed by the Executive Engineer, Soro Canal Division, to the Special Land Acquisition Officer (Spl. LAO), Anandapur Barrage Project, Soro, there was no proposal for acquisition of land in respect of Khata No.512/741, Plot No.1303/2195 and Plot No.1303/2195/3016 under Khata No.512/1111. The learned ASC stated that the Government in R&DM Department notified Village Baligohiri vide Notification No.15261 dated 28.05.2019 under Section 11(1) of the RFCTLARR Act, 2013. As per the land schedule of the 11(1) Notification, the said plots were not included. Furthermore, a 19(1) Declaration was issued by R&DM Department vide Declaration No. 29828/R&DM dated 13.10.2020, and the land schedule of the 19(1) Declaration equally confirms no proposal for the acquisition of the suit plots.

17. The learned ASC further stated that the 11(1) Notification date of 28.05.2019 is the cut-off date for Village Baligohiri under the RFCTLARR Act, 2013 and the Petitioners, as they have clearly stated in their CMP petitions, purchased the suit land on 11.10.2021 vide RSD No.10122101275 and on 29.09.2021 vide RSD No.101122101248



respectively, i.e. almost two years after the 11(1) Notification. It was contended that such sale transactions of the notified land after the 11(1) Notification are completely illegal as per the RFCTLARR Act, 2013. Accordingly, the Petitioners have no right to sue against the Defendants claiming damages and other reliefs. Furthermore, the learned ASC has also stated that as per the Canal Map prepared by an experienced survey knowing person, before execution of the earthwork for excavation of the Salandi Left Main Canal, the suit plots bearing Plot No.1303/2195/3016 and Plot No.1303/2195/3012 do not fall within the canal area. As such, it was stated that the Opposite Parties have not illegally demarcated the suit land. Instead, it was submitted that the suit land is situated towards the eastern side adjacent to Government acquired Plot No. 1303/2656, as clearly shown in the suit village map on which the demarcated canal map has been prepared/drawn.

18. Next, referring to the provision contained in Order XXVI Rule 9 of the CPC, the learned ASC contended that the power vested in the Court under Order XXVI Rule 9 of the CPC is purely discretionary in nature. It was submitted that the object of local investigation is not to collect evidence for a party. Therefore, such discretionary power cannot be exercised to assist a party by appointing a Commissioner for local investigation. Instead, the discretion is to be exercised only where the



Court finds it difficult to pass an effective decree on the existing evidence on record. The learned ASC further submitted that in the instant case, the Canal Division, i.e. the Government, demarcated the acquired land through the Government Amin and prepared the Canal Map with the knowledge of the villagers of Village Baligohiri. However, the Petitioners, their vendor, and the public in general did not file any objection against the demarcation and preparation of the canal map at any point of time.

19. Referring to the impugned order of rejection dated 10.07.2025, the learned ASC submitted before this Court that the Petitioner's own Amin has already been examined as P.W. 3, as reflected in the impugned order dated 10.07.2025. Once the Amin has been duly examined during the trial, the subsequent prayer for appointment of a Survey Knowing Commissioner at this stage is nothing but a dilatory tactic aimed at obstructing and hampering the progress of Government work on the canal project. The learned ASC submitted that the Order XXVI Rule 9 application of the Petitioner served no purpose other than to stall proceedings and interfere with the Government's timeline. Moreover, it was also stated by the learned ASC that since canal map of the suit land filed by the Opposite Party-Defendants has already been exhibited in the suit, there is no requirement for allowing the petition under Order XXVI Rule 9 of the C.P.C. It was contended that the learned trial court has



correctly observed that the object of Order XXVI Rule 9 CPC is not to collect evidence that can be taken in court, but to obtain evidence which, from its very peculiar nature, can only be assessed on the spot.

20. In the course of his argument, learned ASC, referred to the status quo order dated 01.12.2023 passed by the learned Civil Judge (SD), Nilgiri (a copy of which is attached to the written submissions filed by the Opposite Parties) and submitted that the learned Court has continued the status quo order in respect of the “B Schedule” land, and not in respect of the I.A. Schedule land, which is the land where canal work is going on. In fact, it was contended that vide the aforesaid order, the learned trial court has simultaneously allowed the Opposite Parties to excavate the identified land for the Salandi Main Canal project, which is of significant public importance and for the benefit of the public at large. It was submitted that since the legal restriction applies only to specific plots (Schedule-B), there is no legal barrier for the Opposite Parties to proceed with work on their site.

21. Furthermore, the learned ASC contended that the possession of the land acquired under the notification No.15261 dated 28.05.2019 was handed over to the Requisitioning Body (Executive Engineer, Soro Canal Division, Soro) on 23.03.2022. The excavation of the canal is the duty of the Soro Canal Division and not of the Special Land Acquisition Officer,



Anandapur Barrage Project, Soro. He further contended that, no staff was deputed from the Special Land Acquisition Officer's office after handing over possession for construction/excavation of canal work and, contrary to the claims of the Petitioner, there was neither any illegal activity done by the defendants and their staff nor was any threat ever given to the Petitioner, or any attempt made at forcible dispossession.

22. Lastly, referring to the objection filed before the Court of the Tahasildar, Nilgiri, Balasore, the learned ASC contended that since the civil suits (C.S. No. 365/2023-I and C.S. No. 364/2023-I) are *sub judice* before the Civil Judge (SD), Nilgiri, and a status quo order is in operation as confirmed by the District Judge, Balasore, and CMPs are pending before the Hon'ble High Court of Odisha with a stay on further proceedings, any demarcation proceeding by the Tahasildar in terms of Public Notice No.6567 dated 31.12.2025 should be postponed till the disposal of the original civil suits. The learned ASC also urged that fixing the demarcation date without hearing both parties and without giving sufficient time is solely against the provisions of law. Further, as per Government Guidelines, when a civil suit is pending regarding the suit land, no demarcation will be done with respect to such property.

23. In such view of the matter, the learned ASC submitted that there is no illegality in the impugned rejection order dated 10.07.2025, of the



learned Civil Judge (Senior Division), Nilgiri, Balasore, at Annexure-4. Accordingly, it was contended that the present CMP petitions, being devoid of merit, be dismissed forthwith.

ANALYSIS

24. Heard learned senior counsel and the learned ASC, perused the CMP petitions, the counter affidavits and objections filed by the Opposite Parties, and the written submissions by the parties. Both the CMP petitions arise out of the same impugned order dated 10.07.2025 wherein the learned Civil Judge (Senior Division), Nilgiri, Balasore, has rejected the application by the Petitioners under Order XXVI Rule 9 of the C.P.C for appointing a Survey Knowing Commissioner to make local investigation into the location and measurement of the suit land so as to ascertain whether the said suit land falls within the canal excavation site. It is the Petitioners' stance that the learned trial court has erroneously rejected their application under Order XXVI Rule 9, whereas, the Opposite Parties on the other hand firmly state that there is no illegality with the order of the trial court and that the Petitioner's application for appointing a Commissioner has been rightfully rejected.

25. Before embarking upon an examination of the merits of the case, it is necessary to address the preliminary objection raised by the Petitioner



that, in proceedings under Article 227 of the Constitution of India, the validity of the impugned order must be assessed solely on the basis of the material that was available before the court below and cannot be tested on the strength of documents produced for the first time by the Opposite Parties before this Court. In view of the said contention, this Court considers it apposite to first succinctly delineate the contours and scope of its supervisory jurisdiction under Article 227 of the Constitution. The power under Article 227 is one of superintendence over subordinate courts and does not permit this Court to sit as a court of appeal. Instead, the jurisdiction is to be exercised only where the court below has committed a grave error of jurisdiction, acted in excess of jurisdiction, or caused a failure of justice.

26. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when the court or tribunal has assumed a jurisdiction which it does not have; has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice; and the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction [reference in



this regard may be had to ***Surya Dev Rai v. Ram Chander Rai & Ors.*** reported in ***(2003) 6 SCC 675***]. In a similar vein, in ***Shalini Shyam Shetty and Another v. Rajendra Shankar Patil***, reported in ***(2010) 8 SCC 329*** and the recent pronouncement of the Hon'ble Apex Court in ***Nandi Infrastructure Corridor Enterprises Ltd. & Anr. V. B. Gurappa Naidu & Ors.*** bearing ***2026 INSC 434***, specifically para 35 thereof, the Hon'ble Apex Court has further reiterated that the power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.

27. As has been repeatedly emphasised by the Hon'ble Supreme Court as well as this Court, while exercising jurisdiction under Article 227 of the Constitution, the High Court acts in a supervisory capacity and does not sit as a Court of appeal over the orders of the subordinate courts. Consequently, the scope of interference is confined to examining whether the subordinate court has acted within its jurisdiction and whether the impugned order suffers from patent perversity, manifest illegality, or jurisdictional error. In ***Radhey Shyam v. Chhabi Nath***, reported in ***(2015) 5 SCC 423***, the Hon'ble Supreme Court reaffirmed that the jurisdiction under Article 227 is supervisory in nature and is not intended to permit a



re-examination of the matter on merits as an appellate forum. Since the High Court, in exercise of such supervisory jurisdiction, scrutinises the legality and propriety of the decision-making process adopted by the court below, the validity of the impugned order must ordinarily be assessed on the basis of the materials that were available to and considered by the subordinate court at the time of passing the order. In the present case, the order dated 10.07.2025 refusing appointment of a Commissioner is an interlocutory order. Its correctness, therefore, falls to be tested on the record that existed before the learned trial Court when the said order was passed and not on documents sought to be introduced for the first time before this Court by the opposite parties. Such an approach is consistent with the limited supervisory jurisdiction recognised in ***Waryam Singh v. Amarnath***, reported in ***AIR 1954 SC 215***, and the subsequent decisions explaining the scope of Article 227.

28. Next, turning to the **impugned order of rejection** dated 10.07.2025 under Annexure-4, it is evident that the learned trial Court rejected the Petitioner's application under Order XXVI Rule 9 CPC principally on the ground that whenever identification, location, measurement, or any other physical characteristic of the suit land requires determination, a local investigation ought ordinarily to be directed at an early stage of the suit so that the parties may proceed to trial with the



benefit of the Commissioner's report. In the present case, the application for appointment of a Commissioner was filed after the parties had already adduced their evidence. The learned trial Court further observed that, as a settled proposition of law, a local investigation may be ordered where there exists a dispute regarding the identification, location, or measurement of the suit property. According to the learned trial Court, no such controversy exists in the present case in relation to the suit land. The legality and propriety of the impugned order, therefore, hinge upon an examination of the aforesaid two grounds.

29. The nature of the power and purpose of a local investigation under Order XXVI Rule 9 is now fairly well-settled. Rule 9 provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits, damages, or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Furthermore, the expression '*Court deems a local investigation to be requisite*' appearing in the provision makes it apparent that the power to issue a commission under Order XXVI Rule 9 is essentially discretionary in nature and may be exercised either on an application by a party to the suit or on the Court's own motion. It must also



be borne in mind that the object of a commission for local investigation is to obtain evidence that, from its very peculiar nature, can only be held on the spot and is incapable of being satisfactorily assessed by a court in its chamber.

30. On further examination of the provision, it is clear that Order XXVI Rule 9 is not ‘stage-centric’, and, that the provision can be invoked at any stage of the trial where the Court deems it necessary for elucidation of the matter in dispute. If the application is filed before the commencement of the trial, the court having regard to the pleadings and records, upon its discretion, may allow such application before the commencement of the trial. On the other hand, again, having due regard to the pleadings and records, if the court finds that there is every likelihood that after recording the evidence of the parties, the need to appoint the court Commissioner may not arise or that the court is of the view that it can take a call on the application, only after recording the evidence, then it may defer the order on the application till such time. Thus the decision as to when the report of the Commissioner is to be secured must be taken having due regard to the facts and circumstances of the particular case. Such legal position also garners support from the observation made by a Coordinate Bench of this Court in ***Bhabesh Kumar Das vs Mohan Das Agrawal***, reported in ***2015 (Supp. II) OLR 984*** to the effect that “When the



legislature in its wisdom has not prescribed the stage of appointment of Survey Knowing Commission, the power of the Court to appoint the Survey Knowing Commissioner can not be cabined, cribbed or confined”.

31. Next, the other primary ground on the basis of which the trial court has issued the impugned rejection order, is that “there exists no dispute with regard to the identification or amalgamation of the suit land. A careful perusal of the pleadings by the parties in the present case demonstrates that this finding of the court below is directly contrary to the materials on record in more than one respect. The Petitioner’s case, as culled out from paragraphs 5, 6 and 6(KA) of the application under Order XXVI Rule 9 of the C.P.C and written submissions, is that as per the Bhulekh map prepared by the Tahasil Authority the suit land Plot No.1303/2195 is situated on the southern side of the original Plot No. 1303, adjacent to Plot No. 1332 on the west. However, the Defendants- Opposite Parties have disputed this and claimed that the suit land is situated on the eastern side of the original Plot No.1303. Furthermore, Petitioner's Amin (P.W.-3) admitted in cross-examination that he did not take proper measurement of the suit plot. Whereas, the D.W No.1 in his cross-examination by the Plaintiff has clearly stated that *“it is not a fact that the suit plot is situated towards the southern side of the original plot”*, thereby affirmatively asserting that the suit plot lies on the eastern side and



not the southern side, which is contrary to the Petitioner's claim. The D.W No.1 has also stated that since there is a status quo order pertaining to the land, Defendant-Opposite Parties are prevented from proceeding with excavation of their acquired land. In light of the aforesaid factors, it is clear that there does exist a dispute regarding the suit land which can be elucidated and resolved by taking evidence, which by its peculiar nature, can only be held on the spot, i.e. gathered by the commissioner to aid the Court in elucidating the matter in issue. Therefore, the conclusion of the trial court that there is "no dispute" as to identification and amalgamation of the suit land is perverse and contrary to the materials on record. This Court is also of the opinion that refusal on the part of the trial court to appoint a Commissioner in order to ascertain the location, measurement, demarcation and other characteristics of the suit land, would inevitably lead to a miscarriage of justice.

32. Additionally, the original civil suits filed by the Petitioners are for demarcation and declaration. A survey knowing commissioner's report directly addresses the very subject matter of the suits. The fact that a public project of importance is involved does not override the right of a citizen to have the Court properly adjudicate a bona fide demarcation dispute by all available means, including local investigation. The balance between the advancement of public projects and the protection of individual property



rights is to be achieved by the Court's proper exercise of discretion not by refusing an otherwise legitimate procedural prayer in a manner that effectively pre-judges the merits of the suit in favour of the State. Moreover, it is to be noted that the arguments of the Opposite Parties that the sales/acquisition of the suit land is illegal under the RFCTLARR Act, 2013 on account of the 11(1) Notification dated 28.05.2019 and that the status quo order extends/ confined only to the 'B Schedule' land and not I.A. Schedule land, is a substantive defence that goes to the merits of the suit and is not a ground for refusing the procedural prayer for appointment of a Survey Knowing Commissioner under Order XXVI Rule 9 of the CPC. This Court, therefore, expresses no opinion on that issue, which is to be determined by the trial court after the commissioner's report and final arguments.

33. As such, having heard the learned counsel for the respective parties, on a careful examination of the materials on record and in light of the aforesaid legal analysis of the factual matrix of the present case, this Court has no hesitation in concluding that the impugned order of rejection dated 10.07.2025, at Annexure-4, is untenable in law inasmuch as in the given facts and circumstances, the learned trial court has failed to exercise the jurisdiction vested in it and even if exercise of such jurisdiction is discretionary, the same has to be exercised to advance the cause of justice



and for effective adjudication of the dispute involved in the suit. Therefore, this Court, in exercise of its powers under Article 227 of the Constitution, is legally justified in interfering with the same. Accordingly, the same is hereby set-aside. Additionally, the trial court is directed to appoint a suitable Survey Knowing Commissioner within a period of four (4) weeks from the date of receipt of a copy of this order, to conduct local investigation of the suit lands in terms of the questionnaire framed in the applications filed under Order XXVI Rule 9 of the CPC by the respective Petitioners.

34. Both the CMP applications are hereby allowed accordingly. However, without any cost

(A. K. Mohapatra)
Judge

Orissa High Court, Cuttack
The 25th June, 2026/S.K.Sethi/P.A.