

ORDER SHEET

Order on the Hearing held on dated 30.03.2022 in the Office Chamber of RDC in the matter of WP(C) No.8152 of 2021 filed by Sri Birendra Kumar Meher

Order No. & date	Officer's Order and Signature	Note on compliance of orders
1	2	3
01.11.22	<p>This case is taken up today. The Petitioner, Sri Birendra Kumar Meher (here in after is called as the petitioner) filed the WP(C) No.8152 of 2021 challenging the illegal construction of Government High School, Manamunda over the Petitioner's private plot without following due process of land acquisition and without paying any compensation or without providing any alternative lands to the petitioner.</p> <p>The Hon'ble High Court has ordered dated 28.01.2022 to Opposite Party No.1 to take a decision on the grievance petition filed by the petitioner in accordance with law within a period of eight weeks from the date of receipt of such grievance.</p> <p>Accordingly the report from Collector, Boudh has been called for on the petition of the petitioner Sri Birendra Kumar Meher.</p> <p>The case was heard on dated 30.03.2022 by the under signed. The A.D.M., Boudh, Deputy Collector, Boudh, Tahasildar, Kantamal, District Education Officer Boudh, R.I, Manamunda and Advocate to the petitioner were present.</p> <p>The claims of the case are contained in the petition of Sri Birendra Kumar Meher is delineated as under,</p> <p>The petitioner is the owner of the Khata No.73/206 which contains several plots. The properties under the Khata adjoin each other and remain in one compact area. There was however no boundary or demarcation of the properties under the Khata. In the first part of January he came to learn that the authorities of Director, Secondary Education and the Circle Inspector of School have constructed a building of Manamunda High school in the village Basudevalli which is a Government High School, in a most unauthorised</p>	

manner. This school building stands over an area of Ac0.350 dec out of Ac.0.490 dec of Plot No. 275 in Khata No. 73/206 which belongs to him. As the entire area of the Khata measure a little less than one acre, the construction made on the plot could not be detected earlier. Therefore he demarcated the land and through measurement came to know that the school building has been constructed by the authorities on the plot in question.

The petitioner prays that appropriate immediate action may be taken for initiation of appropriate proceeding for acquisition of his property occupied for the purpose of the school building and award appropriate compensation for the same within a stipulated period, failing which to redeliver vacant possession of the said properties in his favour by awarding appropriate compensation for the damage caused to the property.

As per the reports received from Collector, Boudh, District Education Officer, the fact of the case is that, Manamunda High School was established in the year, 1965. The school became Government school on 07.06.1994. Rakhita Khata No. 75 ,Plot No. 162 ,kissam Unnat Jojana Jogy with Ac 0.042 dec of Mouza-Basudevalli is under the possession of Basudevalli High School which is mentioned in the remark column of Government R.O.R. Besides, an area of Ac.0.33 Dec. out of Ac.0.35 Dec. in Plot No.275 Kissam-Atta under Khata No.73/206 of Mouza- Basudevalli is recorded in the name of Birendra Kumar Meher, which is also under the possession of Basudevalli High School since 1965 as reported by Collector, Boudh vide his Letter No.2272 dated 17.03.2022.

The District Education Officer reported that new school buildings got constructed, the Government having accorded a land measuring Ac. 0.42 Dec. in the name of Manamunda High School, recorded in Khata No.75, Plot No.162 under Mouza- Basudevalli, Tahasil, Kantamal, District- Boudh. The land in question in WP(C) No.8152 of 2021 filed by Birendra Kumar Meher-Vrs-State of Odisha was already iron-fenced and the compact land was under the possession of Manamunda High School. 5 number of RAMSA buildings got constructed inside the iron-fenced boundary in the year 2014 and subsequently compound walls got constructed in the school premises. Buildings constructed under 5T initiatives of Govt. of Odisha in the year

2021. After the School was taken over by Government many class rooms/buildings from different Government grants have been constructed from "Raashtriya Madhyamika Shiksha Abhiyan", "Samagra Shiksha Abhiyan" & "Mo School Abhiyan" on the said land. By the date 25.04.2018 (date of sale of the land) some 2 & 3 storeyed School Buildings were standing on the above mentioned land. He also reported that the buyer Sri Birendra Kumar Meher has purchased the above suit land knowingly.

On the date of hearing on 30.03.2022 the following points were discussed.

The District Education Officer said that Manamunda High School was established in the year 1965 and taken over by Government in School and Mass Education Department, Odisha, Bhubaneswar in the year 1994. He said that Manamunda High School exists on a piece of land measuring Ac.0.75 decimal. Out of which Ac.0.42 decimal Plot No.162, Khata No.75, Mouza- Basudevalli is recorded in the name of the School and Ac.0.33 decimal, Plot No.275, Khata No.73/206 Mouza- Basudevalli is not recorded in the name of the School.

Further the District Education Officer, Boudh submitted that since the inception of this High School in the year 1965 till the inauguration of the High School under 5T initiative in the year 2021 the school is running for the interest of the students and public since 1965 peacefully.

The Advocate for the petitioner agreed that it was not verified if the case land was free from all encumbrances at the time of purchase/transaction of the land and neither the seller nor the buyer of the land had met the school authority i.e. H.M. or D.E.O. prior to the registration of the land and the RAMSA building was already in existence much prior to the date of purchase.

The R.I. Manamunda said that Settlement Operation was started in the locality in the year, 1975.

Advocate for the petitioner presented that Sri Birendra Kumar Meher purchased Ac.6.00 of land in the year 2018 from Bharati Darji and Prakash Darji. Out of Ac.6.00, 0.33 decimal is under illegal possession of the School. Also he alleged about illegal construction of

Government High School over the petitioner's private land without following due process for Land Acquisition and without paying any compensation or without providing any alternative land to the petitioner. Also he said RAMSA buildings got constructed near the School in the year, 2014 but not in the School premises.

The Tahasildar said that the School authority had never applied for demarcation of the school area till date.

ADM, Boudh/ Deputy Collector revealed that as per record, Manamunda High School is running since 1965 which means the old School building is existing over its own plot since 1965. On the other hand Manamunda High School is in continuous undisputed and peaceful possession of the case land since 1965 having its own boundary with barbed wire fencing. ROR of Mouza-Basudevalli was published in the year 1997. No objection has ever been received from any quarter regarding the existence of the School building/RAMSA building. Neither R.T. nor their successors have also filed any complaint regarding the existence of the School till date, though the School building is standing over Plot No.275 of Hal Khata No.27 of Basudevalli Mouza which is a private land. The RAMSA building was operationalized in 2014 where as the petitioner purchased the land in 2018. During execution of sale deed fact regarding existence of the RAMSA building was not verified properly. Sri Birendra Kumar Meher the buyer has purchased the said plot without detailed/ proper verification of field position/ possession at the time of transaction. It is also learnt that neither the vendor nor the vendee of land had met the School authorities (Head Master) or the District Education Officer in the matter prior to registration of the land, since the RAMSA building was already in existence much prior to the date of purchase.

After hearing the party and Officers present in the hearing, RDC directed to submit further documents if any within 15 days for disposal of the case.

Accordingly the petitioner Sri Birendra Kumar Meher through his Advocate filed the documents i.e. ROR bearing Khata No.73/206, Yadast of village Basudevalli vide Hal Khata No.27 and respective plots, registered notice issued to the Collector-cum-D.M, Boudh, Director of Secondary Education Bhubaneswar, Circle Inspector of School, Boudh by the petitioner

dated 13.01.2021.

Similarly the District Education Officer, Boudh also submitted the documents vide Letter No.1652 dated 07.04.2022 relating to Government High School, Manamunda viz. copy of Resolution No.4/31.12.2011 which show that Rs.20,000/-(Twenty Thousand) only from school development fund was spent on barbed wire fencing around the School in the year 2012, vide Copy of Bill No.294 towards purchase of barbed wire (1.25 Qtl) from Ajay Traders, Sonepur, copy of abstract of expenditure of Rural Works Division in the year 2016-2017 for construction of Additional Class Room, Science Lab and Library and Copy of Bill No.166/02.02.2015 of Tarini Enterprises towards supply of Science equipment.

Further, the District Education Officer and Sub- Registrar, Kantamal were requested to verify and submit reports on the valid transfer of the suit land from private parties to the School Authority at any Forum by way of Resolution or Registered Gift Deed etc. The reports were also received in this context vide M.No.3088 dtd.29.07.2022 of DEO, Boudh and L.No.120 dtd.14.07.2022 of Sub-Registrar, Kantamal. Further, the ADM has reported vide L.No.6191 dtd.12.08.2022 that the Govt. plots adjacent to the High School are under encroachment.

Findings :

- It is revealed from the certified copy of Yadast that the suit land (Hal K.N-27,P.N-275) was recorded in the name of Ramanatha Darjee, during the settlement Operation in the year 1991. In the ROR published in the year 1997, the Hal Khata and plot stands recorded in the name of Ramanatha Darjee, Basanti Darjee, Sukanti Darjee, Arati Darjee, Bharati Darjee S/D/O Sachidananda Darjee, Prabhavati Darjee W/O Sachidananda Darjee and the Hal suit plot corresponds with that of sabik .Hence it is clear that the suit land is a private land since long.
- The school records reveal that the school is running since 1965 and taken over by Government in School & Mass Education Department in 1994.As per the ROR published in the year, 1997 it is seen that there is a possession note against plot number 162 over Ac 0.42 dec with kissam Unnat Jojana Jogya which is recorded in Government Khata number

(Rakhita) -75.The Tahsildar reported that Manamunda High School is standing over it.

Hence the school is an old school since it has been functioning from 1965 over the above land.

- The RT Bharati Darjee and Prakash Chandra Darjee(S/O Late Basanti Darjee another RT) had sold the case land on 25.04.2018.But as per the report of District Education Officer Boudh ,the construction over the suit land had been taken up prior to 2018.It is reported that there were already some two and three storeyed buildings on the suit land at the time of transaction in 2018.The constructions were taken up after the school was taken over by Government out of different grants under Rastriya Madhyamika Siksha Abhiyan, Samagra Siksha Abhiyan and Mo School Abhiyan. From the receipt and other documents submitted by the Headmaster, Manamunda High School it is seen that the expenditures were made in the years 2012,2015 ,2017 and the payment for Barbed wire fence had been passed for payment in the year 2012. It proves the construction of the structures and fence was made prior to the purchase of the suit land by the present petitioner.
- Further the report received from the Sub Registrar, Kantamal reveals that no transaction of the suit land has been done in his office towards Gift Deed or any Deed document in favour of Manamunda High School by the owner(s) of the land.
- The Headmaster of the school has reported that there is no resolution available in his office or Gram Panchayat Offices under Kantamal Block regarding transaction/donation of the land in the name of the school.
- Also it is understood that the Vendors or the vendee had not verified the field status properly prior to the transaction. There is also a clause in the sale deed that “....ଏହା ଗୃହ ବିହୀନ ସଂପତ୍ତି ଅଟେ ଗୃହ ଥିବାର ପ୍ରମାଣିତ ହେଲେ ଦଲିଲଟି ଅଗ୍ରାହ୍ୟ ହେବ”, which literally means that there is no house over the land and the deed will be invalid if any house is detected later over the suit plot.
- It appears that the concerned parties had not tried to know the facts in the field nor taken any steps to have the same demarcated before transaction.

- It may be noted here that the original RT had never ever on record raised issue with the Authorities over the existence of the school in their private patta land and the school has been functioning there for decades. At a much later stage, that is after the transaction in 2018 was made between private parties, this situation of the school (portion of the school) vis-a-vis the plot in question has arisen. It is imperative to appreciate that the High School is a public facility of Education and the fundamental rights of the students are incontrovertible.
- Law of adverse possession enunciated in Article 65 of Schedule-I of the limitation Act prescribes a timeline of 12 years, within which an aggrieved person may file a suit for recovery of possession of immovable property or, any interest therein based on proprietary title. Section 27 of Limitation Act says that “at the determination of the period hereby limited to any person for institutions a suit for possession of any property, his right to such property shall be extinguished. In the instant case the educational institution is in possession of suit land since 1965 and till execution of registered deed in 2018, though 53 years had passed in between, no objection/ suit was filed by the original RT against the school. The judgment dt. 24.01.1881 passed by Hon’ble Calcutta High Court in case of Kally Churn Sahoo & other-vrs-Secretary of State for India legal recognition to ownership of the school over the suit plot as per doctrine of adverse possession supports the cause of the school in this case.
- Taking the above facts into consideration this Authority arrives at the conclusion that:
- The suit land is in possession of Government High School, Manamunda since the year, 1965. The Sabik RT Ramantha Darjee and his successors were not in possession of suit land and have never raised issue on record against the existence of the school Building/ RAMSA building over the suit land.
- As per prescribed format for registration deed, the parties concerned are required to state undertaking with regard to existing structures over the suit land and on later detection of facts to the contrary, the RSD is liable to be invalidated. It is a fact that prior to execution of deed, buildings of

the school were existing on the suit land. But the parties in their registered undertaking have submitted that no building was existing over the suit land on the date of execution of registered deed and that the deed will be invalid if any house is detected later on the suit plot. In this context, question also arises regarding sustainability of the registered deed.

- The ultimate assessment of this Authority, therefore, is that the petitioner's main quarrel should lie with the original RT from whom the suit plot was purchased in 2018. Both parties are bound by the contents of the RSD which, among others, certifies that no house or structure exists on the suit land at the time of transaction.
- That the relevant portion of land was under the unhindered possession of the Government High School, Manamunda since 1965 and that its interest over the land predates the sale transaction of 2018, much prior to the present petitioner's interest, is undeniable.
- To be on the better side of law, the aforesaid points notwithstanding, this Authority directs the following on the parties;

1. Let the Collector, Boudh, initiate a re-assessment of the records pertaining to the suit land by involving the DEO (Boudh), revenue functionaries, the High School authority, the petitioner and the Original RT (or their legal heirs, as the case may be), and cause a proper demarcation of the plot in issue.

2. In the event that the land is still confirmed to be falling under private RoR (patta), the DEO (Boudh) shall initiate steps to take affirmative action vis-a-vis the prayer of the petitioner with the help of the district authority. The entire exercise be completed within two months from the receipt of this order.

The petition as such is disposed of accordingly.


RDC (SD), Berhampur.