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**IN THE COURT OF COMMISSIONER SANTHAL PARGANA**  
**DIVISION, DUMKA**

**R.M.R. No. – 36/2021**

Shanti Marik & Others ----- Petitioners

-: Versus :-

Niranjan Mirdha & Others ----- Opposite Parties

3/6/2022

**ORDER**

This revision has been filed U/s 59 of the S.P.T. Act 1949, against the order dated – 14.06.2019 passed by the Deputy Commissioner, Dumka in R.M.R. No. – 02/2018-19 of Mouza – Jainagra No. – 60, J.B. No. – 51, P.S. – Saraiyahat, Dist. – Dumka, for issuance of appropriate order for quashing the order of the learned Deputy Commissioner, Dumka.

It is the case of the petitioners that the Deputy Commissioner, Dumka as well as Settlement Authority by their aforesaid orders have committed material error and

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constitutional illegality apart from the fact that they have ignored the provision of the S.P.T. Act as well as the inquiry report of the Circle Officer, Saraiyahat.

Learned counsel for the petitioners submitted that in view of Provisions the present revision is Plot No. – 201 having total area – 01 Katha 10 Dhur of J.B. No. – 51 of Mouza – Jainagra No. - 60 S.C. – Nodiha, Circle & P.S. – Saraiyahat, Dist. – Dumka has been recorded as “Gosai Pokhar” in the last Survey Settlement, but the O.P. No. – 1 and 2 both have encroached a small temple in the name of “Yasha Devta” in the Current Survey Settlement.

The learned counsel of the O.P. No. – 1 and 2 submitted that Settlement Plot No. – 201 of J.B. No. – 51 of Mouza – Jainagra No. – 60 within Saraiyahat Circle of Dumka passed by the learned Deputy Commissioner, Dumka vide order dated – 14.09.2019 in R.M.R. No. – 02/2018-19 is not maintainable in the eye of law and against the doctrine of Adverse Possession. Further submitted that since more than 12 years above having acquired permanent tenancy, right and presumptive title in the said Plot

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No. – 201 under Regulation – III of 1872, Survey Rule 1978 and on the basis of doctrine of Adverse Possession built a small temple, which is named as “Jainagra Yaksha Sthan” on the Binda of the said Gosai Pokhar and working as “Pujari”.

Counsel of the O.P. No. – 1 and 2 submitted that the learned Deputy Commissioner, Dumka also admitted in his judgment that the Zamindar of Handwa Estate had been settled the said land 01 Katha 10 Dhurs in the name of the ancestor of the O.P. No. – 1 and 2 on 13.05.1944 and since being the ancestor the O.Ps. had been working as ‘Pujari’ of the said Yaksha Mandir till date. Below court rightly held that O.Ps. are Sewayat of the said ‘Yaksha Sthan Mandir’ and land recorded as ‘Sewayat’ in the Current Survey Settlement in T.B. Case No. – 112/2011 vide order dated – 23.06.2011 passed by the Charge Officer – I in the name of Sewayat Niranjan Mirdha and Kuldip Mirdha in the Final Survey Purcha of Jainagra No. – 60, J.B. No. – 54, S.C. – Nodiha, P.S. and Anchal – Saraiyahat, Dist. – Dumka. It is further submitted that A bench of Justice Arun Mishra, S. Abdul Nazeer and M.R. Shah of the Hon’ble Supreme Court hold that - “a person in possession cannot

be ousted by another person except by due procedure of law and once 12 years period of adverse possession is over, ever owner's right to eject him is lost and the possessory owner acquires right, title and interest, possessed by the outgoing person / owner as the case may be against whom he has prescribed.

Learned counsel for the O.P. No. - 1 and 2 submitted that Sub-divisional Officer has passed the order after careful consideration of the facts and circumstances of the case as also the provision of law. It has nowhere been found about assailing the finding recorded in the impugned order pertaining to amalgamation of Gochar Plot No. - 57/201 of Mouza - Jainagra No. - 60, J.B. No. - 54/51, which is being used as "Yaksha Sthan Mandir" and the allegation of encroachment of the said land, which is public in nature, has not been disputed by the petitioner. The nature of allegation about grabbing of the 'Gochar land' or the land which is being used as 'Yaksha Sthan Mandir' since is falling under the common property.

Learned counsel for the petitioners in course of argument has submitted that a 'Yaksha Devta Mandir' established

on the Pind of the Pokhar encroaching an area – 01 Katha 10 Dhur in the name of Yaksha Devta and also flow water from Pokhar for irrigation has been stopped by the O.Ps. by erecting small temple and delete the name of the O.Ps. from the Current Survey Settlement J.B. No. – 54/51, Plot No. – 57/201 having an area – 01 Katha 10 Dhur and also delete the word 'Sewayat'.

Considering the aforesaid facts and circumstances the case I find the order passed by the Deputy Commissioner, Dumka in R.M.R. No. – 02/2018-19 order dated – 14.06.2019 and also the order passed by the Sub-divisional Officer, Dumka in R.M. Case No. – 41/2009-10 order dated – 30.07.2009 is bad in law and against the settled law. This court has gone across the factual aspect about the commission of irregularities in order to consider it as to whether the nature of allegation is falling under encroachment of certain land made by the petitioners. The Charge Officer – I Dumka in T.B. Case No. – 112/2011 order dated – 23.06.2011 is rightly upheld.

Hence the impugned order dated - 14.06.2019 passed by the Deputy Commissioner, Dumka and order dated –



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30.07.2009 passed by the Sub-divisional Officer, Dumka passed in R.M. Case No. – 41/2009-10 are hereby upheld.

In that view of the matter there is no merit in this revision petition, which is accordingly dismissed. However, there shall be no order as to cost.

Dictated and Corrected by me.

  
3/6/2022

Commissioner  
S.P. Division, Dumka.

  
3/6/2022

Commissioner  
S.P. Division, Dumka.