

**A.F.R.**

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14296 of 2016

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

*Lal Baba Dargha (Mazahar)* .... *Petitioner(s)*

*-versus-*

*State of Odisha & Ors.* .... *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

*For Petitioner(s)* : *Mr. A.K. Nanda, Adv.*  
*along with Mr. G.N. Sahu, Adv.*

*For Opposite Party (s)* : *Ms. Sarita Moharana, ASC*

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**DATE OF HEARING:-18.06.2025**

**DATE OF JUDGMENT:-18.07.2025**

**Dr. S.K. Panigrahi, J.**

1. The Petitioner, in the present Writ Petition, is challenging the initiation of O.P.P. Case No.55/2015 by the Sub-Collector-cum-Estate Officer, Sadar, Sundargarh, under the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972.
2. The Petitioner is further assailing the appellate order dated 19.07.2016 passed by the Collector, Sundargarh, whereby the appeal was

dismissed and the eviction order dated 26.09.2015 passed by the Sub-Collector-cum-Estate Officer, Sadar, Sundargarh was upheld.

**I. FACTUAL MATRIX OF THE CASE:**

3. The brief facts of the case are as follows:

- (i) The Petitioner is a religious institution of the Muslim community situated at Rajgangpur in the district of Sundargarh.
- (ii) A burial ground exists over Plot Nos. 1055 and 1056 situated within the territorial jurisdiction of Rajgangpur Municipality. The said land has been continuously used by members of the Muslim community for burial purposes for over a century. It is believed that a saint, known as Lal Baba, spent his final days at Rajgangpur and was buried at the said burial ground. Subsequently, a prayer house, referred to as the Lal Baba Dargah or Mazhar, was constructed at the site approximately forty years ago. The Dargah continues to attract devotees from across various regions who visit to offer prayers and seek blessings.
- (iii) In the absence of sanitation facilities being provided by the civic or governmental authorities, the Lal Baba Managing Committee constructed thirteen toilets and bathrooms, comprising six for women and seven for men, on adjacent Plot Nos. 1052/P, 1053, and 1054 under Khata No. 518 and Khata No. 1 of Mouza Rajgangpur Ka. These facilities have reportedly been in continuous use since their construction.
- (iv) A notice dated 16.09.2015 was issued to the Petitioner by the Sub-Collector-cum-Estate Officer, Sadar, Sundargarh under Section 4(1) of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 in O.P.P. Case No. 55 of 2015. The notice alleged unauthorised

encroachment over Plot Nos. 1052/P and 1054 under Khata No. 518 and Plot No. 1053 under Khata No. 1 of Mouza Rajgangpur Ka, and called upon the Petitioner to show cause by 26.09.2015 as to why an order of eviction should not be passed.

- (v) Subsequently, the Sub-Collector-cum-Estate Officer, Sadar, Sundargarh, upon recording that no reply had been filed by the Petitioner to the show cause notice, passed an order of eviction directing the Petitioner to vacate the premises.
- (vi) Aggrieved by the said eviction order dated 26.09.2015, the Petitioner filed W.P.(C) No. 2884 of 2016 before this Court. This Court, while disposing of the said writ petition, directed the Petitioner to avail the statutory remedy of appeal before the competent authority.
- (vii) In compliance with the direction of this Court, the Petitioner filed Misc. Appeal No. 04 of 2016 (OPP EUO) before the Collector, Sundargarh, challenging the eviction order. The said appeal was dismissed by order dated 19.07.2016 on the ground that the land stood recorded in the name of the Government and was classified as "Rasta".
- (viii) Being aggrieved by the orders passed by the Sub-Collector-cum-Estate Officer, Sadar, Sundargarh and the Collector, Sundargarh, and having no alternative or efficacious remedy available in law, the Petitioner has approached this Court seeking appropriate relief, including quashing of the proceedings initiated in O.P.P. Case No. 55 of 2015, as well as the orders dated 26.09.2015 and 19.07.2016.

## **II. SUBMISSIONS ON BEHALF OF THE PETITIONER:**

- 4. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

- (i) The Petitioner contended that the kissam of the land described in the notice is recorded as “Rasta,” which does not fall within the definition of “public premises” under the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972, and therefore the proceeding initiated under the said Act is without jurisdiction and not maintainable in law.
- (ii) The Petitioner contended that the appropriate statutory framework, if at all applicable, would be the Orissa Prevention of Land Encroachment Act, 1972, and not the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972, as land recorded as “Rasta” falls within the ambit of Section 2(a) of the Orissa Prevention of Land Encroachment Act, 1972, which defines “property of Government” to include public roads and adjacent lands.
- (iii) The Petitioner asserted that the land in question is not used as a public road, but constitutes roadside land. In the absence of any sanitation facility provided by the Government or the local authority, thirteen toilets and bathrooms were constructed on the said land and have been used, free of cost, by members of all communities for over four decades, thereby serving an essential public purpose.
- (iv) The Petitioner submitted that Rajgangpur Municipality, by resolution dated 06.01.2014, resolved to provide funds for the maintenance of the said facilities and has consistently acknowledged their existence as forming part of the Dargah premises.
- (v) The Petitioner asserted that the road in front of the Dargah is the widest within Rajgangpur Municipality, and the structures housing the

sanitation units are situated on the adjoining land in a manner that does not cause any obstruction to public passage or vehicular traffic.

- (vi) The Petitioner submitted that the notice dated 16.09.2015 was received by the President of the Petitioner institution only on 24.09.2015, thereby affording merely two days to prepare and submit a response before the scheduled hearing on 26.09.2015. Such a short interval deprived it of a reasonable opportunity to be heard. Notwithstanding this, the Sub-Collector-cum-Estate Officer, Sadar, Sundargarh proceeded to pass the eviction order on 26.09.2015.
- (vii) The Petitioner submitted that the appeal was dismissed by the Collector, Sundargarh, by order dated 19.07.2016 solely on the ground that the land is recorded in the name of the Government and classified as "Rasta," without adverting to the jurisdictional objection raised by the Petitioner.
- (viii) The Petitioner submitted that the initiation of O.P.P. Case No. 55 of 2015 and the orders dated 26.09.2015 and 19.07.2016 are ex facie illegal, without jurisdiction, and violative of Articles 14, 16, and 21 of the Constitution of India, and are liable to be quashed.

### **III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:**

- 5. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of her contentions:
  - (i) The Writ Petition is devoid of merit, both on facts and in law, and is liable to be dismissed. The eviction order was validly passed and no procedural or legal infirmity can be attributed to it. The land in question is recorded in the name of the Government and classified as "Rasta." Since it falls within the jurisdiction of Rajgangpur Municipality, the

provisions of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 are squarely attracted.

- (ii) Plot Nos. 1052, 1053, and 1054 are classified as “Rasta” in the revenue records. Any construction made thereon is unauthorised and causes obstruction to the free movement of the public as well as vehicular traffic.
- (iii) The local civic body is undertaking steps to construct public sanitation facilities in accordance with the requirements of the locality. Permitting unauthorised structures to remain on land classified as “Rasta” would undermine public infrastructure and hinder planned civic development.
- (iv) The Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 is applicable to land classified as “Rasta” within municipal limits, as such land falls within the definition of “public premises” under Section 2(f) of the said Act. The provisions of the Orissa Prevention of Land Encroachment Act, 1972 have no application in such cases.

#### **IV. COURT’S REASONING AND ANALYSIS:**

- 6. Heard learned counsel for the parties and perused the materials on record.
- 7. The principal issue that arises for determination in the present writ petition is whether the eviction proceedings initiated by the Sub-Collector-cum-Estate Officer, Sadar, Sundargarh under the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972, in respect of land classified as “Rasta” within Rajgangpur Municipality, suffer from any legal infirmity warranting interference by this Court.

8. At the outset, it is necessary to examine the statutory framework under the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972, since the maintainability and legality of the impugned proceedings hinge upon its applicability.
9. While public premises are intended to serve the broader public interest, their use must conform to the governing legal framework. The Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 provides a structured mechanism for the removal of unauthorised occupation, thereby enabling public authorities to manage such premises efficiently.
10. Section 2(f) of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 defines “public premises” to include any premises situated within the jurisdiction of a Municipal Council, Notified Area Council, or an area declared by the State Government as an industrial estate, which either belong to or are taken on lease by the State Government, any Board, Company, Corporation, Municipal Council, Notified Area Council, Improvement Trust, Special Planning Authority, or University, or have been requisitioned by the State Government.
11. Section 5 of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 empowers the Estate Officer to pass an order of eviction upon being satisfied, after considering the cause shown in response to a notice under Section 4 and affording a reasonable opportunity of hearing, that the premises are under unauthorised occupation.

12. Having delineated the applicable legal framework, the facts of the present case may now be examined.
13. A conjoint reading of Section 2(f) of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972, along with the admitted facts that the land is classified as “Rasta,” lies within the territorial jurisdiction of Rajgangpur Municipality, and stands recorded in the name of the State Government, clearly establishes that it falls within the definition of “public premises” under the said Act. The classification as “Rasta” does not exclude the land from the ambit of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972. On the contrary, it affirms its public character and reinforces its inclusion within the scope of the statute. The Petitioner’s attempt to draw a distinction between land recorded as “Rasta” and “public premises” is misconceived and contrary to the plain language and scheme of the enactment.
14. Further, a perusal of the record indicates that the Petitioner was afforded adequate opportunity to participate in the proceedings. Notice under Section 4 of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 which was duly issued and served. The Petitioner availed the statutory remedy of appeal, and no material irregularity or violation of the principles of natural justice is discernible in the conduct of the authorities.
15. With regard to the plea based on long-standing structures and assertions of public utility, it must be noted that no amount of well-intentioned justification can override the statutory restrictions governing the occupation of Government land. Unauthorised use of



public premises, even if purported to serve a public purpose, cannot be legitimised unless regularised in accordance with law.

**V. CONCLUSION:**

16. In view of the foregoing analysis, no ground is made out for interference with the impugned orders dated 26.09.2015 and 19.07.2016 passed by the Sub-Collector-cum-Estate Officer, Sadar, Sundargarh and the Collector, Sundargarh respectively.
17. Accordingly, the Writ Petition stands **dismissed**.
18. Interim order, if any, passed earlier stands vacated.

**(Dr. S.K. Panigrahi)**  
**Judge**

*Orissa High Court, Cuttack,  
Dated the 18<sup>th</sup> July, 2025/*