

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.682 OF 2022

A F R

Dhiren Chandra Behera & ors.

....

Petitioners

Mr.N.M.Praharaj, Adv.

-versus-

State of Odisha and ors.

....

Opposite Parties

Mr.A.K.Mishra, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
20.1.2022**

**Order
No.**

01.

1. This matter is taken up through video conference.
2. Heard learned counsel for the Parties.
3. This Writ Petition involves the following prayer :-

“The Petitioners therefore pray that this Hon’ble Court may graciously be pleased to admit the writ petition and to issue writ in the nature of certiorari or any other appropriate writ/direction/order to set aside/quash the impugned orders dtd.24.1.2020 and 16.12.2021 (Annexure-6 and 7) passed by learned Sub-Collector-cum-Estate Officer, in OPP (EUO) Case No.09 of 2019 and Collector-cum-District Magistrate in OPP(EUO) Case No.02 of 2020 and to pass any such other appropriate order(s) as this Hon’ble Court think just and proper.”

4. The Petitioners being unauthorised encroachers have the grievance of non-compliance of provisions of Section 5 of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972

and Rule 7(2) of the Orissa Public Premises (Eviction of Unauthorised Occupant) Rules, 1988 more particularly through Ground Nos.C & E involving the eviction proceedings undertaken in the meanwhile. Petitioners alleged that in spite of raising such grounds, there is no consideration of their such claim even by the Appellate Authority. Sri Praharaj taking this Court to series of documents filed herein claims that had the Petitioners got proper opportunity, the decision involving the dispute would have been otherwise.

5. Mr.Mishra, learned Additional Government Advocate appearing for the O.Ps., however, supports both the impugned orders on the premises of discussions and reasonings made therein but looking to the grounds raised by the Petitioners contented that State does not hesitate to re-determine the issue but it should be within a time frame.

6. Considering the rival contentions of the Parties, on consent of the Parties for taking up the matter for final disposal at the stage of admission and on perusal of the discussions in the impugned order under Annexure-6 passed by the original authority, this Court finds, there is no decision involved herein and allegation involving non-compliance of the provisions taken note herein above at least by

the Appellate Authority. The order of the original Authority also does not disclose on the aspect of long continuance of each of the Petitioners and their landlessness. Further on perusal of the Appeal Memorandum, this Court finds, the Petitioners even though raised this particular ground, it appears, the Appellate Authority has not taken into account the same and has not given any reasoning on the suffering of the Petitioners for taking decision involving such matter without taking recourse to the provisions of Section 5 of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and Rule 7(2) of the Orissa Public Premises (Eviction of Unauthorised Occupant) Rules, 1988 involved herein. The Original Proceeding is almost ex parte one. It is keeping this in view and for non-compliance of the provisions as above, this Court finds, there is clear violation of minimum natural justice as provided through the above provisions even by the original Authority and the Appellate Authority also did not take any cognizance of such complain.

7. In the circumstance, this Court finds, both the impugned orders under Annexure-6 & 7 suffer. In the result, this Court interfering with the impugned orders sets aside the both but however since the OPP(EUO) Case No.9 of 2019 is required disposal afresh, the Sub-Collector & Estate Officer, Baripada is directed to re-do the

exercise involving each of the Petitioners and also taking care of the provisions of Section 5 of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and Rule 7(2) of the Orissa Public Premises (Eviction of Unauthorised Occupant) Rules, 1988 involved herein. Let the Petitioners appear before the Sub-Collector, the original authority along with copy of this order within fifteen days from today along with their individual response and documentary support to enable the Sub-Collector to re-do the exercise of disposal of the proceeding involved herein and take date for personal hearing, if any. Since the Petitioners collectively facing the litigation, the original Authority may allow their authorized representative/ Advocate to represent their case and if necessary, record the evidence, if any petitioner so desires. The Competent Authority is directed for completing the fresh exercise within a period of four months from the date of appearance of the Petitioners.

8. The Writ Petition stands disposed of accordingly.

9. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the Parties may utilize a printout of the order available in the High Court's Website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March,

2020, modified by Notice No.4798 dated 15th April, 2021 and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(Biswanath Rath)
Judge

M.K.Rout

