

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14575 of 2005

Sarat Chandra Gantayat

....

Petitioner(s)

Mr. J. Biswal,
Advocate appearing on behalf of
Mr. B. Routray,
Sr. Advocate

-versus-

State of Orissa & Ors.

....

Opposite Party(s)

Mr. S.P. Panda,
Addl. Govt. Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
26.08.2022**

Order No.

16. 1. This writ petition involves a challenge to the order at Annexure-5 appears to have been passed under the provision of the O.P.L.E Act on commencement of a further encroachment proceeding appearing as E.C. No.825 of 1991.
2. Taking this Court to the background of the case through the pleadings and Annexures-1 & 2, an attempt is made to establish that the Petitioner has right over the property in question and there is also recording of the disputed land in favour of the Petitioner. It is thus taking this Court to the notice at Annexure-4 Mr. Biswal, learned counsel for the Petitioner contended that in view of such documents in favour of the Petitioner the notice at Annexure-5 should not have been issued. In reference to the notice under Annexure-5 it is submitted that three days' time was granted for vacating the disputed land, which is also otherwise illegal as it is not in terms of the provision under Rule

7(2) of the O.P.L.E Rules. It is, in this view of the matter, Mr. Biswal, learned counsel for the Petitioner sought for interference of this Court in the order at Annexure-5.

3. Mr. Panda, learned State Counsel, however, in reference to the order at Annexure-3 (series) contended that the notice at Annexure-5 is a repeat notice considering that the Petitioner has not vacated the disputed land even after determination of the Petitioner as an encroacher vide Annexure-3(series). Mr. Panda, learned State Counsel taking this Court to the appeal provision also questions entertainability of the writ petition and thus requests for dismissal of the writ petition. Mr. Panda, learned State Counsel also did not dispute to the allegation that there should not have been grant of three days' time.

4. Considering the rival contentions of the parties and looking to the notice under Annexure-5 issued under the provisions of the O.P.L.E Act, this Court is of the view that there is no determination holding the Petitioner as an encroacher; for the provision contained in the O.P.L.E Act the Petitioner should have been provided with at least thirty (30) days' time to vacate the disputed land in question and also to at least get an opportunity of appeal. Further keeping in view the scope of appeal at the instance of the Petitioner and finding that the writ petition is entertained with an order of status quo since 30.11.2005, which is continuing as of now, this Court while holding that no writ petition can be entertained involving the development through Annexure-5, directs, if the Petitioner is so advised, he may prefer appeal along with an application for condonation of delay and also with an application for interim protection within a period of two weeks hence. It is open to the Petitioner to take all such grounds in the memorandum appeal. In such event the delay shall be condoned and the appeal shall be heard and decided on its own merit at least within a

period of six months from the date of its filing. The interim application for protection shall be considered and disposed of within a period of two weeks thereafter. For six weeks the order of status quo granted by this Court on 30.11.2005 shall continue.

5. The writ petition stands disposed of with the above order.

(Biswanath Rath)
Judge

Ayaskanta Jena

