

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.7597 OF 2010

A F R

*An application under Articles 226 & 227 of
the Constitution of India.*

Rajesh Verma

: Petitioner

-Versus-

State of Orissa & ors.

: Opposite Parties

For Petitioner : M/s.J.Pal, A.Pal, B.K.Mishra,
G.N.Rana & A.Behera

For O.Ps.1 to 3 : Mr.P.Panda, AGA

For O.P.5 : None

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of Hearing & Judgment : 16.12.2022

1. The Writ Petition involves a challenge to the order at Annexure-3 appears to have been passed by the Competent Authority involving a proceeding under Section 3-A of Regulation-II of 1956 and a consequential order by the Appellate Authority.

2. Background involving the case and as brought by both the Parties in the trial proceeding, while the Tribe Member claims, there is illegal

and forcible occupation of land involving Plot Nos.1009 and 1009/1081 measuring Ac.0.05 decimals and 0.18 decimals respectively under Khata No.122, the Non-Tribe Member claims, while admitting in occupation of the land brings to the notice of the Court that he has already constructed a residential building over an area Ac.0.030 decimals from the year 1993 and residing therein with his family. It is in this background of the case, after involving the R.I. report, it appears, the Competent Authority even though discussed on the effect of the decision in *Amrendra Pratap Singh vrs. Tej Bahadur Prajapati & ors.* reported in AIR 2004 SC 3782, however for the objection of the Tribe Member to be benefited on application of the decision *Amrendra Pratap Singh (supra)*, the Original Authority came to allowing the Application with an order of eviction giving rise to bring an Appeal, the Appeal has also come to be dismissed by virtue of the orders at Annexure-4 but on same analogy.

3. In course of hearing, there is no dispute at Bar about applicability of the decision in *Amrendra Pratap Singh (supra)* to the case at hand. For the undisputed facts that the Petitioner has already utilized the disputed land by constructing residential building and residing over there, this Court finds, the Petitioner has the benefit through the observation and direction of the Hon'ble apex Court through Paragraphs-30 to 33, which are noted herein below :-

“30. The other question which arises is as to the construction made by defendant-respondent No.1 over the property of the plaintiff-appellant encroached upon by defendant-respondent No.1. During the course of hearing, it was submitted by the learned counsel for defendant-respondent No.1 that huge construction has come up over the property in suit, while according to the plaintiff-appellant some construction, rather a major portion thereof, has taken place during the pendency of the appeal in this Court as no interim relief was granted by the Court though it was prayed for by the plaintiff-appellant.

31. On these two aspects the case needs to be remanded to the trial court for the ends of justice and determination of appropriate relief. We propose to make suitable directions in this regard in the operative part of the judgment.

32. The appeal is allowed. The judgment of the High Court is set aside. The case is remanded to the trial court for decision in accordance with the following directions:-

(1) The trial court shall find if an undisputed or proved map of the land belonging to the plaintiff-appellant demarcating the area encroached upon by defendant-respondent No.1 is available on record, and if so, the same shall be accepted and made a part of the decree; if not, the trial court shall appoint an Advocate- Commissioner assisted by a person proficient in survey to draw up a map of the plaintiff-appellant's land and demarcate specifically therein the area encroached upon by defendant- respondent No.1.

(2) The trial court shall determine, after hearing the learned counsel for the parties and if necessary by recording additional evidence, whether a decree for demolition of the construction, made by defendant-respondent No.1, and specific restoration of possession to the plaintiff-appellant, is called for. In the alternative, the trial court shall determine if, in spite of the encroachment having been proved, a decree for the award of suitable compensation in lieu of demolition and restoration of possession would be a more appropriate relief.

(3) In the event of the trial court forming an opinion in favour of awarding compensation the same shall be assessed by reference to the date of this judgment. The payment of compensation, as quantified by the trial court, shall be a condition precedent for condoning the encroachment and unauthorized construction of the defendant-respondent No.1.

33. The trial court shall dispose of the suit, consistently with the terms of this judgment, expeditiously and in any case within a period of six months from the date of the communication of this judgment.

34. The costs incurred in the High Court and this Court shall be borne by defendant-respondent No.1. The costs incurred in the trial court shall be in the discretion of the trial court.”

4. In the circumstance, for the position herein settled through the above law, this Court finds, mere denial of the Tribe Member to accede to the terms set by the Hon’ble apex Court could not have been permitted the OSD (LR), Panposh, O.P.4 in allowing the proceeding and directing eviction of the Petitioner not in terms of law already set into motion. As a consequence and the decision under Annexure-3 being contrary to the decision indicated herein above, this Court interferes with the impugned order at Annexure-3 to the extent of direction eviction of Petitioner and sets aside to that extent. The consequential order under Annexure-4 is also interfered with and set aside for being bad in law.

5. While the matter is remitted to the Original Authority for undertaking an exercise of enquiry to assess the area required to be retained by the Petitioner, for a development already given by him and the required compensation to be paid to the Tribe Member as a consequence of extent of construction over the land of the Tribe Member but however dependent on the course of action required to be followed through Paragraphs-32 & 33 of the decision in Amrendra Pratap Singh (supra). Recording the statement of the Petitioner that there has been some payment to the Tribe Member in the meantime, this Court also observes, in the event any proof of such payment is filed, the Competent

Authority, if satisfied, shall do well in adjusting the said amount in the ultimate payment of compensation.

6. The Writ Petition succeeds but however with an order of remand for limited purpose indicated herein. No costs.

(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 16th December, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

