

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. Nos. 553 and 603 of 2015

Chintamani Prusti and others
(In W.A. No.553 of 2015)

....

Appellants

Muralidhar Dash and others
(In W.A. No.603 of 2015)

Ms. S. Patnaik, Advocate

-versus-

Collector, Balasore and others

....

Respondents

Mr. Debakanta Mohanty, Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

ORDER

19.10.2022

Order No.

12. 1. Both these writ appeals are directed against orders dated 24th April 2015 passed by the learned Single Judge dismissing the Appellants' W.P.(C) Nos.3465 and 3466 of 2015.
2. In both writ petitions, the action of the State-Opposite Parties in evicting the Appellants and demolishing their houses was asked to be declared illegal.
3. While dismissing the writ petitions by the impugned orders, the learned Single Judge referred to an order dated 17th November 2014 of this Court in W.P.(C) 2621 of 2014 whereby the Court has passed a general direction requiring the State to ensure that "encroachments are removed latest by January, 2015 without

fail.” Although the plots occupied by the present Appellants were not specifically mentioned in W.P.(C) No.2621 of 2014, the above direction was construed to be a general one for removal of all encroachments. Consequent thereto, admittedly, the dwellings of the present Appellants on the respective plots were demolished and the Appellants were evicted.

4. In each of the writ petitions, the Appellants have enclosed as Annxure-1 the copies of the judgment passed by the Civil Judge (Junior Division), Nilagiri in T.S. No.61 of 1995 and T.S. No.29 of 2002-01 declaring the right, title and interest of the respective Appellants in respect of the two plots, the dwellings on which were demolished. Further, it appears that the said two decrees, which were passed on contest by the State of Odisha, were challenged by the State in appeal and the appellate court has confirmed the trial Court order. The appellate order was also enclosed with the writ petition.

5. Therefore, the specific case of both the Appellants was that they were not encroachers and had valid title to the respective plots in question through decrees of the civil court.

6. It appears that no counter affidavit had been filed by the State in either of the writ petitions and both writ petitions were dismissed on the second hearing solely based on the fact that the Division Bench of the Court by the order dated 17th November 2014 in W.P.(C) No.2621 of 2014 had ordered removal of encroachments.

7. Even in the present writ appeals in the counter affidavit filed by the State, since it was not a para-wise reply, there is no traverse to the averments in both writ appeals regarding passing of the decree by the civil court and its affirmation by the appellate court.

8. Learned counsel for the Appellant states that to the best of her knowledge, the plots remain vacant although both Appellants are out of the plots. They are still seeking declaration of the action of removal to be illegal and for consequential reliefs. The above facts have not been considered by the learned Single Judge particularly since no reply was filed by the State.

9. This Court is of the view that in the absence of reply, it could not have been possible for the learned Single Judge to adjudicate the writ petitions.

10. For the aforementioned reasons, while setting aside the impugned orders dated 24th April, 2015 passed by the learned Single Judge in W.P.(C) Nos.3465 and 3466 of 2015, the Court restores both writ petitions to the file of learned Single Judge in the roster Bench where they will be listed for directions on 21st December, 2022. The State will file its para-wise reply to both the said writ petitions separately on or before 5th December, 2022 and rejoinder thereto will be filed by the writ Petitioners on or before 21st December, 2022. No further time will be granted for that purpose.

11. The learned Single Judge is requested to thereafter proceed with the hearing of the writ petitions on merits and endeavour to dispose them of within period of six months thereafter.

12. Till the disposal of the writ petitions, the status quo as of today shall be maintained by both parties.

13. The writ appeals are disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

M. Panda

