

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC NO.3603 OF 2022

Anupama Behera

....

Petitioner

Mr.P.K.Nanda, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.Mishra, ASC

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
4.2.2022**

Order No.

01. 1. This matter is taken up through video conference mode.
2. 2. Heard learned counsel for the Parties.
3. 3. Short background involving the case is that the Petitioner while claiming to be landless person as a BPL Card-Holder admitted to be occupying the land in Khata No.345 Plot No.36 area Ac.0.043 decs. in Mouza-1, Cuttack Sadar, Unit-3 Bidanasi Dist.-Cuttack. The Petitioner through the pleadings also admitted that she is occupying the said land since 30 years and residing over the said plot by constructing a thatched house subsequently modified it to an Asbestos house and then a concrete construction and resides with her

family members. Though she is the wife of one Manu Mohan Behera but she has not disclosed the status of her husband. However, she discloses that by passage of time in the meantime she has constructed a concrete building on the said plot and resides there with her family. She was also admitted that the State Authority already initiated an OPLE Proceeding in the year 2010 and decided the same holding the Petitioner to be an encroacher. As an outcome therein, State Authority has collected fine of Rs.20/- from her also in the year 2010, vide Annexure-1 series. She files the Writ Petition alleging that it is under the premises that the JAICA Project is undertaking a drain system in the locality attempted to demolish the structure. She, however, admitted that there is already an eviction and demolition drive involving her house. Filing the Writ Petition the Petitioner has also sought for protection under the Odisha Land Rights to Slum Dwellers Act, 2017 at least before her eviction and prayed as follows :-

“It is humbly prayed that this Hon’ble Court may graciously be pleased to admit the case, issue notice to the Opp.Parties and after hearing from the Opp.Parties, pass an order may direct the Opp.Parties to follow the procedures of law in respect of eviction & demolition from residential premises, vide Khta No.345, Plot No.36, Area Act.0.043 decimals Mouza-Cuttack Sahar, Unit No.03, Bidanasi, PS-Bidanasi, Tahasil/District-Cuttack and further may declare the process adhered by the Opp.Party for eviction as illegal

and violative of principles of nature justice and consequential reliefs may be granted to the Petitioner by this Hon'ble Court.

And this Hon'ble Court may direct appropriate action against the authorities responsible for the same..."

4. Mr.P.K.Nanda, learned counsel for the Petitioner, however, in the above background of the case and in reference to the grounds raised herein claimed for appropriate relief.

5. Mr.S.Mishra, learned Additional Standing Counsel for the State while supporting the action taken by the State Authority submitted that considering there is already initiation of an OPLE proceeding disposed of holding the Petitioner an unauthorised encroacher and after she has deposited fine, she should have volunteered to vacate the disputed premises. Mr.Mishra also contended that if at all she is a BPL Card Holder being a landless person could have requested for allotment of house and/or land under available scheme and she cannot be permitted to hold on the disputed land, as it is required for public purpose for proper outlet of drain water to main drain, called "Petanala".

6. In the above background of the matter, this Court finds, though the Petitioner claims her right over the disputed property for long possession but however getting into the document at Annexure-

1 being filed by the Petitioner herself, this Court finds, there is already determination involving an OPLE proceeding against the Petitioner observing, the Petitioner is an encroacher over the disputed land. Undisputedly, there is no challenge to any such finding of the Competent Authority. This Court here finds, in the event the Petitioner was actually a landless lady and her husband had no income, nothing prevented the Petitioner to apply for allotment of land and/or none under different schemes formulated by the Government. In the instant case, the Petitioner after losing in the OPLE Case rather chose to deposit the fine and did not challenge such order declaring her to be an encroacher and there is already a determination following due process of law. In the circumstance, this Court finds, the Petitioner is already an encroacher. There is no requirement of any further notice in the event of clearing such encroachment even though the Petitioner files certain document in proof of initiation of encroachment proceeding and makes statement that the proceeding has been concluded. The Petitioner has also deposited penalty, vide Page-19 of the Brief. For the opinion of this Court, once a person is already held to be an encroacher in a duly constituted proceeding under the OPLE Act, she has two options; firstly, either to walk out from the disputed land or else challenge

such observation of determination in higher forum even applying for settlement of such land. The Petitioner having not challenged such order and being a determined encroacher, there is no obstruction in clearing such encroachment by the Competent Authority. Pleadings also disclose that the Public Authority attempted to clear the land for public purpose. Learned State Counsel also submits that there is involvement of clearing of a drain passage to see passage of the drain and rain water to main drain called "Petanal", which Project is undertaken under the World Bank Aid.

Looking to the claim of the Petitioner that she is a BPL Card Holder and gets Ration by using Ration Card supplied to her, if by demolition process she becomes homeless, at this stage also keeping in view that the Petitioner chose not to disclose the status of her husband, if the Petitioner approaches for re-settlement for her becoming landless/homeless in the State to the Tahasildar concerned, her application may be considered appropriately but also including an enquiry on the status of her husband and provided the Petitioner and her husband are landless in the entire State.

7. In such circumstance, this Court is not inclined to entertain the Writ Petition, which stands dismissed at the stage of admission but however with the aforesaid liberty.

8. 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.

M.K.Rout

(Biswanath Rath)
Judge