

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C).No.5635 of 2022

Zara Bibi & Anr.

....

Petitioner(s)

Ms.G.Majhi, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr.U.K.Sahoo, ASC

**CORAM:
JUSTICE BISWANATH RATH**

ORDER

08.03.2022

Order No.

1.

1. Heard learned counsel appearing for the parties.
2. Bringing to the notice of O.P.L.E. Case No.9 of 2022 being filed by the petitioners involving eviction order appearing at page-17 onwards of the brief, petitioners assailed the further order of the Tahasildar directing the petitioners to vacate the disputed site vide Annexure-5 series. It is submitted that since the appeal is already filed and registered, the appellate authority is not undertaking the exercise for grant of interim protection, such aspect should have been realized by the Tahasildar and in this situation, there was no occasion for issuing notice of eviction or initiating a fresh eviction proceeding. It is also alleged that issuing such notice, there appears, there is wrong interpretation of the order of this Court. It is also alleged the impugned action is an outcome of wrong interpretation of Collector's order at page-25 of the brief and even in spite of the pendency of appeal, there is issuance of eviction notice at Annexure-5, which shall be interfered and petitioners shall be protected at least till disposal of appeal.
3. Mr.Sahoo, learned Additional Standing Counsel for the State here observes for there is direction of this Court and for involvement

of an order of the Collector pursuant to disposal of the writ petition bearing W.P.(C).No.14309 of 2021, there should not be any obstruction in the clearing of the encroachment. Mr.Sahoo, learned Additional Standing Counsel thus attempted to justify the order at Annexure-5. Undisputedly, there has been disposal of Encroachment Case Nos.1646/2021-22 and 1681/2021-22.

4. Considering the rival contentions of the parties, this Court in disposal of the writ petition directs the Collector, Bhadrak-opposite party no.2 to look into the grievance of the petitioner and dispose of the same thereafter. There appears, there is also disposal of contempt application. It is here observed since the Encroachment Proceeding has gone against the petitioners, statute provides remedy of appeal to the petitioners. Even if a direction is given to the Collector, Bhadrak to consider the grievance of the petitioners involved herein, his role is limited to the extent taking action in accordance with law following the provision of O.P.L.E. Act. Being the revisional authority, he should have left it open for the petitioners to execute their order provided there is no further challenge to such order. Pleading in the submission discloses that the petitioners have also filed appeal in the meantime vide Annexure-1 series. It appears through Annexure-1 series that two appeals involving both the encroachment orders are already pending on the file of the appellate authority. There has been even some proceeding on 30.12.2021 clearly disclosing admission of the appeal. In the event the appeal involving such encroachment proceedings are already admitted, there is no occasion for the Tahasildar issuing fresh notice of eviction for the admission of the appeal and pending consideration of such appeal.

5. In the circumstances, this Court while interfering in the further notice at Annexure-5, sets aside the same and directs maintenance of status quo involving the disputed property vis-à-vis petitioners as on date at least till disposal of the appeals involved herein further also directs the appellate authority to dispose of both the appeals at least

within a period of two months from the date of communication of certified copy of this order but, however, giving opportunity of hearing to the appellants involved herein.

6. Petitioners involved herein are also directed to appear before the appellate authority on 28.03.2022 and bring to the notice of the appellate authority the order and direction of this Court.

(Biswanath Rath)
Judge

Sks

