

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12430 of 2022

Banamali Dhangadamajhi

....

Petitioner(s)

Mr.R.K.Patnaik,
Advocate

-versus-

Collector ,Kalahandi & Ors.

....

Opposite Party(s)

Mr.U.K.Sahoo, ASC

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
06.07.2022**

Order No.

1.

1. Heard the submission of learned counsel appearing for the petitioner. Referring to the averments in paragraph-10, a claim is made that there cannot be eviction of the petitioner in absence of initiation of any eviction proceeding. It is further contended that considering the petitioner is in long possession of the disputed land, eviction, if any, should be following due process of law. Referring to the request vide Annexure-5, a claim is made that the petitioner has a claim before the Sub-Collector, Dharmagarh for settling the land and for issuing patta considering petitioner is in adverse possession of the disputed land. Mr.Patnaik, learned counsel thus claimed for suitable direction entertaining the writ petition.

2. Mr.Sahoo, learned Additional Standing Counsel appearing for the State on the other hand referring to the document of the petitioner vide Annexure-1 and 2 series brings to the notice of the Court that petitioner is an encroacher over the piece of land. Finding the father of the petitioner an encroacher over very piece of land, there has been initiation of encroachment proceedings against the father of the petitioner and such proceedings have also come to be closed holding the

father of the petitioner as encroacher. It is in the circumstances, Mr.Sahoo, learned Additional Standing Counsel objected the entertainability of the writ petition and issuing any direction.

3. Considering the rival contentions of the parties, this Court finds undisputedly Sanatan Dhangada Majhi, the father of the petitioner has already faced several encroachment proceedings such as Encroachment Case No.1610 of 1982 and Encroachment Case No.2 of 1999. On perusal of own document of the petitioner at Annexures-1 and 2, this Court again finds there is not only determination observing the father of the petitioner as encroacher but there has been even payment of penalty by the father of the petitioner admitting him to be encroacher over the disputed land and at no point of time there is challenge to such proceeding and or request for settlement of particular land by his father. In the circumstance, this Court finds once the occupier is already held to be an encroacher involving particular patch of land, there is no law providing to go on initiating eviction proceedings involving the legal heirs of such encroachers.

4. It is at this stage of the matter, this Court takes into consideration the request of the petitioner involved herein through Annexure-5 taking support of Annexure-6. Perused the provision at Sections 6, 7 and 8 of the O.P.L.E. Act. Provisions hereinabove make it clear to make an application for settlement of land. For there is no pendency of encroachment proceeding, application at Annexure-5 remains unentertainable so far it relates to the claim under O.P.L.E. act. Consequently, the writ petition stands dismissed. Petitioner if has any other alternate for settlement of land or resettlement of the petitioner of any land under any scheme and or statute, may approach the competent authority under appropriate relief.

5. Writ petition stands disposed of with the above observation only.

(Biswanath Rath)
Judge