

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.12692 OF 2022

Benudhar Rout

....

Petitioner(s)
Mr.R.N.Behera,
Advocate

-versus-

State of Odisha and others

....

Opposite Party(s)
Mr.S.P.Panda,AGA
Mr.P.K.Rath,Intervenor

CORAM:
JUSTICE BISWANATH RATH

ORDER
14.07.2022

Order No.

02.

1. Heard learned counsel for the Parties.
2. The Writ Petition involves a controversy involving Annexure-3, a notice asking the Petitioner for the clearance of encroachment of land involved therein. Petitioner alleges that in the event there is initiation of encroachment proceeding, there should be disposal of proceeding involving the Petitioner and the order impugned since did not involve Petitioner remain arbitrary and must go.
3. It is at this stage of the matter, Mr. Rath, learned counsel appearing for the Intervenor submits that Petitioner was originally occupying another piece of land and the land being acquired, he had forcibly occupied the present land thereby also obstructing the passage to the Intervenor's land. On production of instruction memo learned State Counsel also brings notice of this Court, the claim of the Petitioner is that he is a landless person and required to be settled through the disputed land but on inquiry it is found to be false and the clear appearance that Petitioner is not a landless person.

4. Be that as it may, for the nature of notice at Annexure-3 issued without following due process of law and only based on the outcome of the direction to the extent in a proceeding disposed of dated 17.08.2021, for the opinion of this Court even in respect of an encroacher, a proceeding has to be initiated and final order of eviction ought to be passed giving opportunity of hearing to the encroacher, considering Annexure-3 being a direct notice issued without involving the Petitioner to file show cause on the allegation of encroachment, such notice has no existence in the eye of law. Coming back to the allegation of Intervenor, this Court observes in such event, the proceeding can also involve consideration of otherwise objection, if any. Considering the interim protection is already operating and to find logical end of the dispute between the Parties, this Court sets aside the order at Annexure-3 remits the matter back to the Tahasildar, Kamakhya Nagar for undertaking an exercise under the OPLE Act involving the land involved and disposing of the same involving the Petitioner as well as Intervenor herein to have their say on the nature of encroachment and right, if any. To facilitate early decision in such matter both the Petitioner and Intervenor herein are directed to appear before the Tahasildar, Kamakhya Nagar on 28th July, 2022 along with their plea, if any, with material support and take the date of hearing within a period of ten days. The matter should also be disposed of by the Tahasildar, Kamakhya Nagar within a period of one month from the date of communication of this order. There shall be no adjournment to either of the Parties. Till such period there should be status quo involving the disputed property to be maintained by all the Parties.

(Biswanath Rath)
Judge