

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC NO.10812 OF 2018

Chakradhar Joshi

....

Petitioner

In person

-versus-

State of Orissa & ors.

....

Opposite Parties

Mr.U.K.Sahoo, ASC

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
5.1.2022**

Order No.

5. 1. Heard the Petitioner, Mr.Chakradhar Joshi in person being assisted by his son, Mr.Nrushingh Joshi and Mr.U.K.Sahoo learned Additional Standing Counsel for the Opposite Parties.
2. The Writ Petition involves the following prayer :-

“The Petitioner therefore prays that this Hon’ble Court may graciously be pleased to admit the writ application, issue a Rule NISI calling upon the Opp.Parties to show cause as to why this writ application shall not be allowed and if the Opp.Parties fail to show cause or satisfactory cause, your Lordship may be pleased to make the rule absolute, and issue a writ of mandamus/certiorari or any other writ by setting aside the order dt.15.3.2018 passed by the Collector, Bolangir vide Annexure-9 and the eviction notice vide Annexure-1 and the Opp.Parties may be directed to settle the encroached land in favour of the petitioner or may pass such other order/orders as this Hon’ble Court may think just and proper.”

3. Background involving the case is that the Executive Officer, Bolangir N.A.C. while issuing notice to the Petitioner and his son being unauthorisedly encroaching the land in Dunguripada, Bolangir, at the same time it appears, vide Annexure-5 there is initiation of Encroachment Case No.526/05-06 under the provision of the OPLE Act involving Chakradhar Joshi, the Petitioner. It appears, this matter has been decided on contest observing that the Petitioner is an Encroacher not only that the land involved since objectionable in nature and that the Petitioner being not a landless person, the prayer of the Petitioner could not be considered for settlement otherwise. Consequent upon disposal of the OPLE Proceeding, the Petitioner has been directed to remove the encroachment within thirty days. It further reveals from the proceeding as well as Annexure-9 that in the meantime being aggrieved by the order of the Encroachment Authority, the Petitioner preferred Misc. Appeal (OPLE) No.8/2018 on the file of the Collector, Bolangir. This Appeal appears to have been dismissed for non-prosecution while also declining to condone the delay in filing the Appeal.

4. The Petitioner along with his son appearing in person makes a statement that even though he had some land but the land having

been acquired by the State Authority for public purpose, he has been paid a sum of Rs.7.00 lakh, the Petitioner being dissatisfied with the quantum of amount, there appears, there is pending of some proceedings under appropriate provision of law. The Petitioner brings to the notice of this Court while admitting that his son is a retired Teacher and in enjoyment of Pension further claims that the land involved is the only land belonging to his family as of now. The Petitioner therefore claims that in the event the land is not settleable, at least there should be consideration of re-settlement of the Petitioner under any provision of law available. While challenging the impugned order under Annexure-9, the Petitioner claims the Competent Authority for considering his case in appropriate manner while taking into account that the Petitioner is a landless person.

5. Mr.U.K.Sahoo, learned Additional Standing Counsel for the State, however, taking this Court to the counter affidavit filed by the Tahasildar, Bolangir, O.P.2 , particularly referring to Paragraphs-4 & 5 thereof submitted that the Petitioner had vast land. As per the Schedule given therein in Paragraph-4, the Petitioner had a total area of Ac.1.37 decs., which was acquired as per the 4(1) Notification and there has been also grant of compensation to the Petitioner. Mr. Sahoo further alleged that even after acquisition of the land, there

was an attempt for re-occupying the land involved even though the Petitioner has no right to do so. Mr. Sahoo however did not object to the manner of disposal of the Appeal involved herein being disposed of in absence of the Petitioner.

6. Considering the rival contentions of the Parties, this Court on perusal of the appellate order at Annexure-9 impugned herein, finds, the order dated 15.3.2018 reads as follows :-

“Perused the appeal petition filed by Sri Chakradhar Joshi S/o.Late Bijayananda Joshi of Chudapali, P.O.-Chudapali, PS-Bolangir Sadar,Dist.-Bolangir through his advocate, Sri K.K.Sarangi and associates along with certified copy of order dtd.2.11.2010 of Sub-Collector, Bolangir which reads as follows :

Xxx The appellant is absent and taking no steps. In the previous many dates also the appellant was found absent and taking no interest to proceed with the case. Hence, this case is dropped for default of the appellant.”

Further, the appellant has filed a petition u/S.5 of the Limitation Act for condonation of delay.

Head the Advocate for the appellant on the matter of condonation of delay. Perused the documents filed by the petitioner and I do not find sufficient cause in condoning the delay. As such, the petitioner found devoid of merit is disallowed at the stage of admission.

Pronounced the order in the open court this day the 15th day of March, 2018.”

Reading the aforesaid order, there remains no doubt that on the date of hearing, neither the Petitioner nor his Advocate was present. Therefore, the case was dropped for default of the Appellant. Further while dealing with the Section 5 Application, the Collector, Bolangir has come to observe that there was no sufficient reason to condone the delay. It is considering the plight of the Party and Misc. Appeal (OPLE) No.8/2018 filed under Section 12(2) of the OPLE Act, 1972 being dismissed for non-prosecution and again in refusal to condone the delay involved therein, this Court finds, the Proceeding should have been decided in presence of the Petitioner. Nothing prevented the Appellate Authority at least to ensure the presence of the Petitioner/Appellant therein by adjourning the matter to at least once chance. This Court here also takes into account the plea of the Petitioner that he is a landless person and that this aspect has not been considered by the original authority in the OPLE Proceeding, this Court does not want to enter into such aspect and leaves it for the consideration of the Appellate Authority.

7. It is in this view of the matter and further considering that in disposal of the Appeal, the Petitioner is losing his scope to house may be he is in unauthorized possession. In the process, interfering with the impugned order at Annexure-9, this Court sets aside the

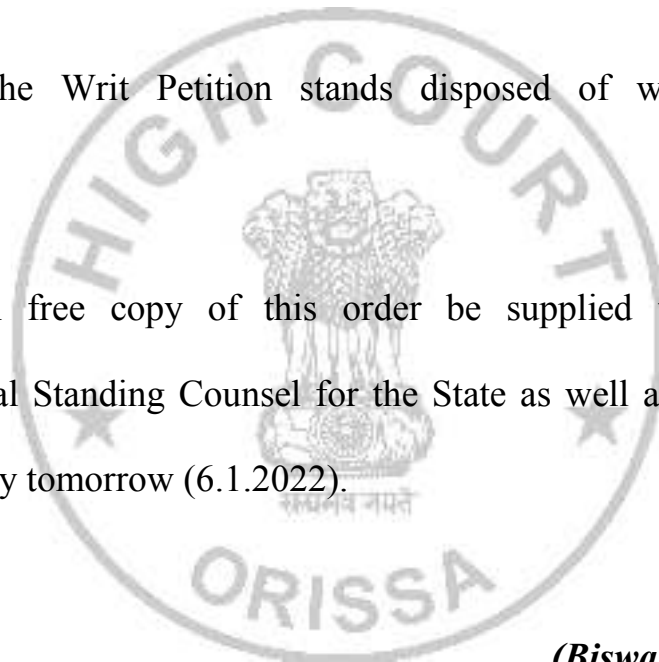
same and remits the matter to the Appellate Authority for re-hearing of Misc. Appeal (OPLE) No.8/2018 giving full opportunity to the Petitioner to contest his case. It may be open to the Petitioner to bring any further submission and/or document to establish his claim on landlessness. The Petitioner is also directed to appear before the Appellate Authority, Collector, Bolangir undertaking the Appeal exercise under Section 12(2) of the OPLE Act, 1972 on 18.1.2022 along with further pleading, if any. The Collector, Bolangir is directed to re-hear the Appeal and dispose of the same afresh after giving opportunity of hearing to the Petitioner/Appellant and the State Agency, if any within a period of four months from the date of production of certified copy of this order and further pleading, if any, by the Petitioner.

8. Looking to the clear claim of the Petitioner that he is landless and he may be re-settled otherwise, the Collector, Bolangir is also directed to use its Agency to have a fact-finding report to find out if in fact the Petitioner and his son are landless in the State after the land of the Petitioner has been acquired and decision, as appropriate, if necessary for rehabilitation of the Petitioner may also be undertaken. The Petitioner shall be involved in any such enquiry.

9. This Court since finds, there is also notice by the Executive Officer, Bolangir N.A.C. under Annexure-1 to the Petitioner for eviction and if the notice pertains to the very same land, there shall be no given effect to such notice under Annexure-1 at least till a decision is taken by the Appellate Authority. Till a decision is taken on the Appeal, there shall be status quo in respect of the disputed property involved by all concerned.

10. The Writ Petition stands disposed of with the above direction.

11. A free copy of this order be supplied to the learned Additional Standing Counsel for the State as well as the Petitioner himself by tomorrow (6.1.2022).



(Biswanath Rath)
Judge

M.K.Rout