

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13695 of 2022

Bipin Kumar Panda & Ors.

....

Petitioner(s)

Mr.B.Mohapatra,
Advocate

-versus-

Collector, Sonapur & Ors.

....

Opposite Party(s)

Mr.S.Ghose, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
20.06.2022**

Order No.

1.

1. Learned counsel appearing for the petitioners confines the writ petition to the order at page- 32 vide Annexure-4 series. The writ petition stands dismissed so far as other encroachment cases involved herein but, however with liberty to the petitioners in the event there is scope of writ petition, they may apply independently.

2. Heard the submission of Mr. Mohapatra, learned counsel for the petitioner and Mr.Ghose, learned Additional Government Advocate for the State.

3. This writ petition involves the order at Annexure-4 series, running page-32, appearing to be final order involving Encroachment Case No.65 of 2022. Giving reference to the document at Annexure-3 series, page- 24 of the brief, Mr.Mohapatra, learned counsel for the petitioner attempted to submit here that the case under O.P.L.E. Act has been decided on the date of posting itself. For the illiterateness of the petitioner even though appeared on the date fixed by the Collector but unfortunately did not file any response and the case has been decided only taking into account the appearance of the petitioner.

Mr.Biswajit Mohapatra, learned counsel also contended that for the petitioner having a small shop to run his livelihood, in the event the State is in requirement of the disputed land, the case of the petitioner at least should have been considered for relocation taking into account the sole surviving source of the petitioner from the shop room involved.

4. Mr.Ghose, learned Additional Government Advocate attempted to justify the impugned order and contended that there is scope for appeal for there has been no filing of the objection at all by the petitioner and the petitioner is making an attempt to make out a case in his filing in the High Court itself. Since there is statutory remedy of appeal, entertainability of the writ petition is so objected.

5. Considering the rival contentions of the parties and on perusal of the notice at Annexure-3 series, page 24 of the brief, this Court finds there cannot be any dispute that the Encroachment Case No.65 of 2022 was posted to 30.4.2022 and in the impugned order at page- 32 of the brief it is clearly disclosed that there is disposal of such proceeding on the very date of posting itself. This Court in disposal of W.P.(C).No12118 of 2022 dated 18.05.2022 has already come to frame the guideline for disposal of O.P.L.E. Proceedings. This Court finds the impugned order remains contrary to the guideline already framed by this Court. Further, the impugned order also does not disclose any reason in coming to such conclusion. There is no inquiry as to whether there is bonafide encroachment even after taking into account the claim of the petitioner that petitioner runs a small shop to be sole source of livelihood. In the circumstance, this Court finds the impugned order is not sustainable in the eye of law. Thus interfering in the order at page-32, this Court remits the matter back to the Tahasildar, Birmaharajpur for re-hearing of the Encroachment Case No.65 of 2022 and re-disposal of the same at least within a period of three months from the date of communication of certified copy of this order by the petitioner. Since the matter is decided on contest, this Court fixed the date of appearance of the petitioner before the Tahasildar, Birmaharajpur along with his

response on 11.07.2022 on which date the petitioner along with appearance shall file his objection and or request, if any, and take the date of hearing for the fresh disposal of the proceeding. The Tahasildar shall also involve an inquiry on the claim of the petitioner to have his sole survival on the basis of shop room installed over the Government property. It may be open to the petitioner to serve a copy of this order along with copy of the order dated 18.05.2022 passed in W.P.(C).No.12118 of 2022 before the opposite party no.3.

A free copy of this order be handed over to learned State Counsel for doing the needful.

(Biswanath Rath)
Judge



Sks