

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.13856 of 2022

Gouranga Khamari & Ors.

....

Petitioner(s)

Mr.B.S.Das Parida,
Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr.U.K.Sahoo, ASC

CORAM:

JUSTICE BISWANATH RATH

ORDER

26.07.2022

Order No.

3.

1. Heard learned counsel appearing for the parties.

2. This writ petition involves serious allegation that even though declining of injunction by Civil Court and clear dismissal involving encroachment appeal, the competent authority is not taking effective steps for clearing the encroachment . In response to such allegation, counter has been filed by the opposite party nos.2 and 4 indicating therein in paragraph-4, which reads as follows:

“4.That the allegations made by the petitioners in the writ petition are not correct and hereby denied. It is humbly submitted that on 01.10.2020, eviction order was passed in L.E. Case No.1157 of 2019 by the then Tahasildar and same has been confirmed by appellate authority vide order dated 15.9.2021 in Encroachment Appeal No.6 of 2020 for eviction of Opp. Party No.5 the encroacher of Govt. land vide Chaka Khata No.780, Plot No.756, area Ac.0.08 dec. of Mouza- Guniapali, Kudopali, P.S./Tahasil-Bheden in the district of Bargarh. The encroacher, i.e. Opp. Party No.5 could not be evicted as the Opp. Party No.5 has filed Civil Suit No.83 of 2021 which is now pending before the learned Senior Civil Judge (W.C.), Bargarh transferred from Senior Civil Judge, Bargarh for submitting list of witnesses. The suit has been posted to 21.7.2022 for list of witnesses. The petition under Order 39, Rule 1 C.P.C. of the plaintiff/petitioner has been rejected vide order dated 25.10.2021 by the Senior Civil Judge, Bargarh in I.A.No.28. 2021 . Being aggrieved by the said order dated 25.10.2021, the Opp. Party No.5 has filed F.A.O.No.13 of 2021 before the learned District Judge, Bargarh and the same is now pending for disposal.”

3. Considering the rival contentions of the parties and taking into account the counter averments in paragraph-4, this Court finds the

competent authority also supports the claim of the petitioner that there is no injunction operating involving the disputed property as of now. However, there is pendency of F.A.O.No.13 of 2021 involving declining of injunction by the trial court in I.A.No.28 of 2021 arising out of C.S. No. 83 of 2021 but in absence of any interim order.

4. In the above circumstance, this Court finds there is no legal impediment as of now obstructing the final order passed in Encroachment Case No.1157 of 2019 ended with an order of dismissal nor in Encroachment Appeal No.6 of 2020. The competent authority is directed to work out the direction involving L.E. Case No.1157 of 2019 undertaking such exercise at least within a period of four weeks from the date of communication of certified copy of this order.

5. The writ petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)
Judge

sk/s

