

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14308 OF 2022

Duryodhan Agarwal

.... Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

**CORAM:
JUSTICE K.R. MOHAPATRA**

Order No.

**ORDER
07.06.2022**

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 20th May, 2022 passed by the Sub-Collector-cum-Sub-Divisional Officer, Bargarh-Opposite Party No.2 in Encroachment Appeal No.2 of 2022.
3. Mr. Bose, learned counsel for the Petitioner submits that assailing the order passed by the Tahasildar, Ambabhona in Encroachment Case No.132 of 2021, the Petitioner has filed Encroachment Appeal No.2 of 2022 and also filed an application for stay of the order of eviction passed in encroachment case. But the Sub-Collector, Bargarh by a cryptic order refused to pass any interim order. In view of rejection of the application for interim protection, the Tahasildar, Ambabhona is taking step for his eviction and in that event, the Encroachment Appeal No.2 of 2022 will be infructuous. In that view of the matter, he prays for setting aside the impugned order and to protect the possession of the Petitioner over the land in question till disposal of Encroachment Appeal No.2 of 2022.

4. Mr. Mishra, learned Additional Standing Counsel submits that the Petitioner has filed Civil Suit No.26 of 2021 before learned Civil Judge (Junior Division), Bargarh for declaration of right, title and interest over the case land. Along with the plaint, the Petitioner also filed I.A. No.7 of 2021 under Order XXXIX Rules 1 and 2 of CPC, which was rejected vide order dated 22nd March, 2022. Assailing the same, the Petitioner has filed FAO No.2 of 2022 and the same is posted to 12th July, 2022 for consideration of the interim application. Since the Civil Court has already rejected the prayer of the Petitioner for injunction, the relief sought for in this writ petition should not be granted.

5. Taking into consideration the submissions made by learned counsel for the parties, this Court is of the considered opinion that since the appeal filed under Section 12 of the Orissa Prevention of Land Encroachment Act, 1972 is pending for consideration, the order of eviction should not be given effect to till disposal of the appeal.

6. In view of the above, the writ petition is disposed of with a direction that the order of eviction passed by the Tahasildar, Ambabhona in Encroachment Case No.132 of 2021 shall not be given effect to during pendency of Encroachment Appeal No. 2 of 2022. It is made clear that the order of this Court shall not in any manner influence by the District Judge, Bargarh for consideration FAO No. 2 of 2022 or the interim application, if any, pending therein.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Vacation Judge