

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 14341 OF 2022

***Amarnath Parida @ Amar Parida &
others***

Petitioners

Mr. S.K.Padhy, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. S.N. Nayak,
Additional Standing Counsel

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

**ORDER
07.06.2022**

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the initiation of proceeding by the Tahasildar, Kanas under the provisions of the Odisha Prevention of Land Encroachment Act, 1972 in Encroachment Case No.4-120 of 2021.
3. Mr. Padhy, learned counsel for the Petitioners submits that earlier Encroachment Case No. 01 of 2017 was initiated and Form-C Notice was issued against the Petitioners in respect of Plot No.379 to an extent of Ac.0.010 decimals out of Ac. 0.600 decimals under Khata No.230 situated in Mouza- Maitra Trilochanpur under Kanas Tahasil in the district of Puri (for short 'the case land'). Assailing the same, the Petitioners had moved this Court in W.P.(C) No.3274 of 2018, which was disposed of vide order dated 22nd March, 2018 with the following order:

*"Heard learned counsel for the petitioner and
learned Addl. Standing Counsel.*

As final order has already been passed by the Tahasildar, Kanas, the petitioner, if so advised, may file appeal before the competent authority within four weeks from today. If any appeal is filed by the petitioner within the prescribed period, the delay in filing the appeal shall be condoned, taking a liberal view of the matter.

Till disposal of the appeal, no coercive action shall be taken against the petitioner, so far as the disputed land under his occupation is concerned.”

4. Pursuant to the aforesaid order, the Petitioners have filed an appeal before the Sub-Collector, Puri in Encroachment Appeal No.13 of 2018, which is still pending for consideration. During pendency of the said Appeal, the Tahasildar, Kanas again initiated another encroachment case in Encroachment Case No. 4-120 of 2021 in respect of the case land and issued notice in Form-A requiring the Petitioners to file show cause.

5. It is submitted by Mr. Padhy, learned counsel for the Petitioners that during pendency of the encroachment appeal, no fresh encroachment case can be initiated in respect of the self-same property. As such, the encroachment case is not maintainable. He, therefore, prays for quashing the proceedings in Encroachment Case No.4-120 of 2021.

6. Mr. Nayak, learned Additional Standing Counsel submits that he has not received the copy of the writ petition. Hence, he is not in a position to respond to the submission made by learned counsel for the Petitioners. He further submits that the Petitioners, if so advised, may file their show cause before the Tahasildar, Kanas in Encroachment Case No. 4-120 of 2021 stating the aforesaid grounds, which will be considered in accordance with law.

7. Taking into consideration the rival contentions of the parties, this Court without expressing any opinion on the merits of the case of the Petitioners disposes of this writ petition with a direction that since the Petitioners stated to have filed their reply to the show cause notice under Annexure-7 in Encroachment Case No. 4-120 of 2021, the Tahasildar, Kanash-Opposite Party No.3 shall do well to consider the same in accordance with law giving opportunity of hearing of the parties concerned before passing any final order in the aforesaid encroachment case.

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

(K.R. Mohapatra)
Vacation Judge

swarna

