

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14944 of 2022

Prahallad Sahoo

....

Petitioner

Mr. A.Ch. Behera,
Advocate

-versus-

State of Odisha & Ors.

....

Opposite Parties

Mr. U.K. Sahoo,
Addl. Standing Counsel

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
22.06.2022**

Order No.

01. 1. Taking this Court to the plea taken in this writ petition as well as the documents at Annexure-1(series) more particularly at page 15 of the brief, Mr. Behera, learned counsel for the Petitioner submitted that earlier the case initiated vide Encroachment Case No.12/15-16 involving the land came to be disposed of in favour of the Petitioner in the disposal of the L.E. Appeal No.84/2015 vide Annexure-2 (series). Taking this Court to the fresh notice under Annexure-3 (series) Mr. Behera, learned counsel for the Petitioner contended that once there is disposal of the litigation involving Khata No.91, there should not have been initiation of further proceeding involving the very same land. Giving reference to the document at Annexures-1, 2 & 3(series) Mr. Behera, learned counsel for the Petitioner attempted to demonstrate his case accordingly. It is further also brought to the notice of this Court that in the meantime the Petitioner on his appearance has already submitted his objection

to the notice involved before the competent authority as find place at page 26 & 27 of the brief.

2. Mr. Sahoo, learned State Counsel attending to the allegation of the Petitioner that there is repeated initiation of encroachment proceedings, taking this Court to the disclosures in page 15 of the brief relating to the land description and the disclosures in Annexure-3(series) at page 24 & 25, submitted that the area involved in the fresh notice does not match with the case disposed of and demonstrated herein vide Annexures-1 & 2. There is even different plot involved in the 2nd notice involved herein.

It is, in the above circumstance, Mr. Sahoo, learned State Counsel contended that in the writ petition there is overlapping of the disputed plot already decided vide Annexure-2 and nothing prevented the Petitioner to place his case before the competent authority for its consideration in disposal of the L.E. Case No.11/2022-23 & No.12/2022-23. In the process, Mr. Sahoo, learned State Counsel objected the entertainability of the writ petition also on the premises that the Petitioner has sufficient scope to consider his case in the pending case.

3. Considering the rival contentions of the parties and on perusal of the final order in Encroachment Case No.12/15-16 this Court finds, the order involves plot no.91 "Pani Nala" under Khata No.204 area Ac.0.40 and the encroached area remains to be 25X20 'Kadi' and there is use of the land by way of putting a "Pacca Slab". On perusal of Annexure-2 this Court finds, there is no dispute that the authority considering the grievance of the Petitioner vis-à-vis the notice at Annexure-1 (series) at page 15 of the brief, has come to observe that there is no encroachment by the Petitioner and though the concrete slab is constructed by the Petitioner, but the same

remains for common use in the locality. This Court records the statement of the Petitioner that there is no challenge to such order and that the order remains final. It is, at this stage of the matter, keeping in view the grievance of the Petitioner involving Annexure-3, this Court on perusal of the notice at Annexure-3 finds, though the 'Khasada' number indicated there tallies with the notice at Annexure-1 at page 15 of the brief, but from the disclosures through the notice at page 24, it, however, appears, there is encroachment of additional area and use of land remains completely different to the use of land indicated in L.E. Case No.12/2022-23 as available at page 25 of the brief and also involves a different plot all together.

4. In the circumstance, this Court finds, there is strength in the submission of Mr. Sahoo, learned State Counsel on the entertainability of the writ petition. This Court further finds, for the glaring difference in the plot in the notice at Annexure-1 page 15 and the notice at page 24 & 25, the Petitioner has clear opportunity of filing his objections even including the developments in Annexures-1 & 2. In the process, while declining to entertain the writ petition, this Court observes, in the event the L.E. Case No.11/2022-23 and L.E. Case No.12/2022-23 are still pending, it may be open to the Petitioner to file a fresh objection indicating the grounds involved herein for consideration of the Tahasildar. In such event the Tahasildar shall do well in disposing of both the proceedings, if pending, in accordance with law and also taking into consideration the plea of the Petitioner, further the development through Annexures-1 & 2. Petitioner may file fresh objection in both the proceedings within a period of ten days hence.

5. The writ petition stands disposed of with the above direction.

(Biswanath Rath)
Judge

Ayaskanta Jena

