

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18518 of 2022

Lalita Nayak

..... Petitioner

Mr. H.N.Tripathy, Advocate

-versus-

Collector, Cuttack and others

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

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

**ORDER
14.09.2022**

Order No.

1. This matter is taken up through Hybrid mode.
2. Pursuant to order of the even date passed in CMAPL No.378 of 2022, the writ petition is restored to its original number and taken up.
3. Petitioner in this writ petition prays for a direction to implement order dated 9th February, 2022 (Annexure-2) passed by Collector, Cuttack in Maintenance (A) No.41 of 2022 in exercise of power under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act').
4. Mr. Tripathy, learned counsel for the Petitioner submits that the Petitioner is a senior citizen and is mother of Kalandi Charan Nayak, mother in-law of Suchitra Nayak and grand-mother of Arnapurna Nayak (who are not made parties to the writ petition). They have forcibly occupied the land/house she (the Petitioner) has purchased/constructed over Plot No.690/2284 to an extent of Ac.0.120 decimal under Khata No.512/560 situated in mouza Rampei under Athagarh tahasil

(for short 'the case land'). Her son, daughter in-law and granddaughter are forcibly occupying the house situated over the case land for which she filed an application under Sections 4, 5 read with Section 23 of the Act for their eviction. The Sub-Collector, Sadar Cuttack, on a misconception that the Petitioner is not claiming any maintenance, dismissed the application vide order dated 10th February, 2020 under Annexure-1. Assailing the same, the Petitioner preferred appeal under Section 16 of the Act before Collector, Cuttack, which was allowed vide order dated 9th February, 2022 under Annexure-2 with the following direction:-

- "10. Thus in view of the above provision of law & judicial pronouncements, the following orders are passed:*
- 1. The order passed by the Tribunal (Sub-Collector, Sadar Cuttack) dated 10.02.2020 in Maintenance Case No.12/2019 on the ground of jurisdiction is set aside;*
 - 2. The Sub-Collector, Athgarh is directed to take immediate steps for eviction of the respondents from the self acquired property of the appellant situated in Plot No.690/2284, Khata No.512/560 area Ac.0.120 dec Kissam Gharabari Mouza-Rampey under Athgarh Tahasil with the assistance of Superintendent of Police (Rural), Cuttack;*
 - 3. Further , the Superintendent of Police (Rural), Cuttack is directed to ensure protection of life and interest of the senior citizens, at their old age and to allow them to live peacefully as provided U/r 20 of The Orissa Maintenance of Parents and Senior Citizens Rules, 2008;*
 - 4. Accordingly the case id disposed of. Intimate all concerned & return the LCR."*

Pursuant to the aforesaid direction, although Tahasildar, Athgarh issued notice for eviction of her son, daughter in-law and granddaughter, but no action has been taken thereafter for which the Petitioner is seriously prejudiced. Since she has no other

remedy to implement the said order she has approached this Court for the aforesaid relief.

5. Mr. Mishra, learned ASC submits that Tahasildar, Athagarh should see that the order under Annexure-2 is implemented at an early date. Further, Sub-Collector, Athgarh and Superintendent of Police (Rural), Cuttack should also take steps for implementation of the said order. However, since learned counsel for the Petitioner submits that the order has not yet been implemented, the Petitioner can approach Collector, Cuttack under Section 22 of the Act for redressal of her grievance. In that view of the matter, interest of justice will be best served if the Petitioner moves Collector, Cuttack for implementation of order under Annexure-2.

6. Taking into consideration the submissions of learned counsel for the parties and on perusal of provisions of the Act, it appears that Collector, Cuttack is competent to see that provisions of the Act are implemented in letter and spirit. Since a direction has already been made for eviction of the son, daughter in-law and granddaughter of the Petitioner (not made parties to the writ petition), the Petitioner if so advised, may approach the Collector, Cuttack for implementation of the order passed in Maintenance (A) No.41 of 2020 under Annexure-2.

7. Accordingly, this Court, without expressing any opinion on the merit of the case of the Petitioner, disposes of the writ petition with a direction that in the event Petitioner moves appropriate application before Collector, Cuttack within a period of two weeks hence along with certified copy of this order, he shall do well to take steps to see that order under Annexure-2

passed in Maintenance (A) No.41 of 2020 is implemented at an early date, if there is no legal impediment.

8. A copy of this order shall be made over to Mr. Mishra, learned ASC for communication and compliance.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy

