

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 19819 of 2022

Charo Minz

.....

Petitioner

Mr. Niranjan Singh-1, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Suvashish Pattanaik,
Additional Government Advocate

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

**ORDER
05.08.2022**

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition has prayed for a direction to restrain the opposite parties in evicting him from the land in question till disposal of Encroachment Proceeding bearing Land Encroachment Misc. Case No.4-200 of 2021 and the encroachment proceeding may be adjudicated enquiring his eligibility for settlement of plot No.266 under Khata No.395, measuring an area Ac.0.2000 decimal in Mouza Kuanrmunda under Panposh (Kuanrmunda) tahasil in the district of Sundargarh (for short, 'case land').
4. Mr. Singh, learned counsel for the petitioner submits that the petitioner being a landless person is occupying a piece of government land, i.e., the case land and is staying therein with the family members by constructing his dwelling house since the time of his forefathers.

5. While the matter stood thus, the opposite party No.3-Tahasildar, Panposh (Kuanrmunda) issued the notice to show cause to the Petitioner and the petitioner has already filed his reply dated 29th November, 2021 pursuant to such notice under Annexure-4. But, the Tahasildar, Panposh (Kuanrmunda) is contemplating eviction of the petitioner from the case land by passing order dated 4th December, 2021 (Annexure-5), for which the Petitioner has filed Appeal under Section 12 of the Odisha Prevention of Land Encroachment Act, 1972 (for short, 'the Act') before the Sub-Collector, Panposh on 3rd August, 2022 (Annexure-6). However, the Sub-Collector is sitting tight over the matter and is not registering the Appeal for which this writ petition has been filed.

6. Mr.Pattanaik, learned AGA submits that since the opposite party No.3-Tahasildar, Panposh (Kuanrmunda) has already passed the order of eviction and has issued notice of eviction in Form-'Kha' (Annexure-2) to the petition, the Petitioner may avail the statutory remedy by pursuing the Appeal before the Sub-Collector, Panposh.

7. Considering the submissions of learned counsel for the parties and in view of provision of statutory appeal under Section 12 of the OPLE Act, 1972, this Court is not inclined to invoke its extraordinary jurisdiction under Article 226 of the Constitution. Petitioner may pursue the Appeal filed before the Sub-Collector, Panposh.

7.1 Taking into consideration the submissions of learned counsel for the parties, this Court without expressing any opinion on the merit of the case of the Petitioner, disposes of

this writ petition with the direction that in case Petitioner files an application for early disposal of the Appeal, which is stated to be pending before Sub-Collector, Panposh since 3rd August, 2022, within a period of four weeks hence, the same shall be dealt with in accordance with law. The petitioner may also seek interim protection before the appellate authority, if so advised.

7.2 For a period of six weeks, the order dated 4th December, 2021 (Annexure-5) passed by the Tahasildar, Panposh at Kuanmunda-opposite party No.3 in Encroachment Case No. 4-200 of 2021 shall not be given effect to so far as it relates to possession of the Petitioner over the case land, to enable him to move an application under Section 12(4) of the OPLE Act, 1972 for interim order.

8. The writ petition is accordingly disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge