

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20872 of 2022

Laxmi Pradhan

....

Petitioner(s)

Mr. D.R. Bhokta,
Advocate

-versus-

State of Orissa & Ors.

....

Opposite Parties

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

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
30.08.2022**

Order No.

01. 1. This Writ Petition involves a challenge to the order at Annexure-7 being passed by the Sub-Collector, Jeypore in OSATIP Case No.200/2004 thereby asking the Petitioner to appear before the authority on 8.07.2022 for undertaking the exercise of restoration of the land in scheduled area.
2. Mr. Bhokta, learned counsel for the Petitioner taking this Court to the documents particularly at Annexure-5 submits that involving a proceeding under Section 3(B) of the Regulation-II undisputedly an appeal is pending being registered as OSATIP Appeal Case No.12 of 2006. Mr. Bhokta, learned counsel for the Petitioner through affidavit submitted that this appeal is pending consideration. Mr. Bhokta, learned counsel for the Petitioner alleges that even in spite of having knowledge of pendency of such appeal

the Sub-Collector instead of waiting for an outcome in the appeal, is attempting to work-out the order in OSATIP Case No.200 of 2004.

3. Mr. Sahoo, learned State Counsel submits that there is no information as to the development in the appeal as the matter is taken up in the admission stage. Mr. Sahoo, learned State Counsel, however, has no objection to the proposition of law to the effect that in the event of pendency of a statutory appeal, there should not be any coercive action as against the parties involved in a proceeding in such appeal.

4. Considering the rival contentions of the parties, this Court through the pleadings and the communication of the Deputy Collector vide Annexure-6 issued on 22.07.2022 clearly disclosing the matter of pendency of appeal and also disclosing that the records involving such appeal could not be traced out, finds, when the State Authorities admit pendency of an appeal and they are unable to dispose of the same for non-availability of the records in appeal, it is strange to find that the Sub-Collector being subordinate to the Appellate Authority has issued notice asking the Petitioner to appear on 8.07.2022 with an intention to work-out the order in OSATIP Case No.200/04 in spite of pendency of appeal. This Court finds surprise in the attitude of the Sub-Collector in attempting to make the appeal involving the order in OSATIP Case No.200/04 becomes infructuous. Possibly there is no coordination in between the Sub-Collector as well as the Collector, resulting such illegal action. In the process this Court finding force in the submission of Mr. Bhokta, learned counsel for the Petitioner, permits the Petitioner to bring objection disclosing the fact of pendency of the appeal and also enclosing therein copy of communication of the Deputy Collector

dated 22.07.2022 before the Sub-Collector in opposition as response to the notice at Annexure-7, at least within a period of ten working days hence. In the event any such affidavit by way of objection is filed by the Petitioner within the time stipulated hereinabove, the Sub-Collector shall not undertake any eviction exercise at least till disposal of the OSATIP Appeal Case No.12 of 2006. For the admission of the Petitioner regarding pendency of appeal as has also been established through Annexure-6, this Court directs the Appellate Authority to trace-out the record involving the appeal within a period of fifteen days from the date of communication of a certified copy of this order by the Petitioner and make an attempt to dispose of the appeal within a period of two months, but however involving the Petitioner. This Court clarifies that in the event the appeal record is not traceable, on the request of the Petitioner there shall be an attempt to reconstruct the appeal record through the document to be supplied by the Petitioner and appeal will be disposed of accordingly.

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

(Biswanath Rath)
Judge