

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 810 OF 2022

Papala Shyamala @ P. Syamala and others ***Petitioners***

Mr. Sidhartha Mishra, Advocate
-versus-

State of Odisha and others ***Opp. Parties***
Mr. Ajodhya Ranjan Dash,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 1st August, 2022 (Annexure-4) passed by learned Additional District Judge, Chatrapur, Ganjam in I.A. No.02 of 2022 (arising out of F.A.O. No.3 of 2022), whereby he rejected an application filed for interim injunction by the Plaintiffs-Petitioners.
3. Mr. Mishra, learned counsel for the Petitioners, at the outset, submits that the land stands recorded in the name of Home Department, Government of Odisha. However, the Petitioners have constructed their residential house over the said land and are residing thereon. By applying force, the boundary wall of their residence has already been demolished. Thus, they apprehend that at any moment, the residential house of the petitioners may be demolished and in that event, nothing will remain for adjudication in the suit. Moreover, the Petitioners will be homeless. This material aspect was not taken into

consideration by learned appellate Court while entertaining the I.A. No.2 of 2022. It is his submission that even a trespasser cannot be evicted without following due procedure of law. Thus, action of the authorities of Government (Opposite Parties) is illegal in taking steps to evict the Petitioners by force. Hence, he submits that since the Opposite Parties are functionaries of the State and Executive Engineer of TPSODL, the appeal can be disposed of at an early date without disturbing their possession.

4. Mr. Dash, learned Additional Government Advocate submits that by encroaching upon the Government land, the Petitioners have forcibly constructed their house thereon. Learned appellate Court considering the same has rejected the interim application filed under Order XXXIX Rules 1 and 2 C.P.C. holding that balance of convenience does not lean in favour of the Petitioners. Since the Government requires property for developmental purpose, no injunction can be granted in the matter. However, he submits that the appeal can be disposed of at an early date, if there is no legal impediment.

5. Taking into consideration the rival contentions of the parties and that the land stands recorded in favour of the Home Department, Government of Odisha, this Court is not inclined to entertain the CMP, which has been filed assailing the rejection of an interim application filed in F.A.O. No.3 of 2022.

6. Learned counsel for the Petitioners submits that the Opposite Parties have already entered appearance in the appeal.

7. Accordingly, this Court without interfering with the impugned order disposes of the CMP with a direction to the learned Additional District Judge, Chatrapur, Berhampur to dispose of the appeal on its own merit as expeditiously as possible preferably within a period of three weeks from the date of production of certified copy of this order.

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

(K.R. Mohapatra)
Judge



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