

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.25762 OF 2022

Parbati Dei & anr.

....

Petitioners

Mr.A.Pattanaik, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.Ghosh, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
28.10.2022**

Order No.

1. 1. Heard learned counsel for the Parties.
2. 2. The Writ Petition involves the following prayer :-

“Under the circumstances, the Petitioner most humbly pray that this Hon’ble Court may be graciously be pleased to direct the Opp.Party No.4 not to construct the Dhalapathar Gram Panchayat ‘Waste Segregation Shades’ over the Plot No.1439, Khata No.460, Mouza-Koduabereni, Kisam-Basti Jogya, Tahasil-Bolagarh, Dist-Khurda.

Or in alternatively to direct the Opp.Party No.2, i.e., Collector, Khurda to consider the representation dated 12.9.2022 of the Petitioner within a stipulated period.

And any other order/orders, relief/relieves as the Hon’ble Court deems fit and proper in the facts and circumstances of the case.”

3. 3. Taking this Court to Annexure-4, learned counsel for the Petitioners claims, the Petitioners are in occupation of such land over thirty years and utilizing the land involved by undertaking

cultivation, which is their sole source of livelihood and now such land is being utilized as a garbage storage in the locality, the Authority undertaking compound walling of the area under the decision of the Competent Authority. Learned counsel for the Petitioners alleged, in spite of making their request to the Collector, Khurda, O.P.2 not to proceed in a way to affect the livelihood of such persons, there is no decision on Annexure-1 by the Competent Authority. For the development work is fast proceeding, a request is made for interfering in the action of the Public Authority.

4. Mr.Ghosh, learned Additional Government Advocate appearing for the State taking this Court to the own document of the Petitioners at Pages-12 & 13 of the Brief submitted, it appears, involving the disputed land, there is already involvement of OPLE Proceedings and on conclusion of such Proceedings involving the Petitioners, there has been finding that the Petitioners are encroachers, not only that, consequent upon such ascertainment/finding through Pages-14 & 15 of the Brief, it appears, the Petitioners have already deposited the required penalty. It is in the circumstance and for the disposal of number of encroachment proceedings involving both the Petitioners herein, Mr.Ghosh submitted, the Petitioners have no right to continue over the disputed land and they are rank encroachers. It is alleged, even

after ascertainment through appropriate proceeding, there is no vacation of the land involved. In the process, Mr.Ghosh, learned Additional Government Advocate attempted to justify the action of the State Authority.

5. Considering the rival contentions of the Parties and on perusal of the documents at Pages-12 & 13 of the Brief, this Court finds, there is already initiation of Encroachment Proceedings, vide E.C. No.4-19/2018 and 19/18 involving both the Petitioners herein. Both the Proceedings also appear to be involving Plot No.1439 Khata No.460, which are also the plots claimed in the representations of the Petitioners. This Court finds, the Petitioners have made a representation for their protection on Plot No.1439 Khata No.460, which appears to be already involved in the Encroachment Proceedings. For there is already adjudication of the Encroachment Proceedings and for no disclosure in the pleadings of any further litigation process involving such order, this Court finds, the learned Additional Government Advocate claiming that the Petitioners are rank encroachers is justified. Further for the development through disposal of the Encroachment Proceedings and compliance thereof by the Petitioners on compliance on such determination making payment of penalty through Pages-14 & 15 of the Brief establishes the Petitioners are determined encroachers and illegally occupying

the disputed land even after pronouncement by the Competent Authority. For the clear disclosure in the representation, it appears, Petitioners utilize the land involved for agricultural purpose. This makes it clear that Petitioners' residence is not going to be affected.

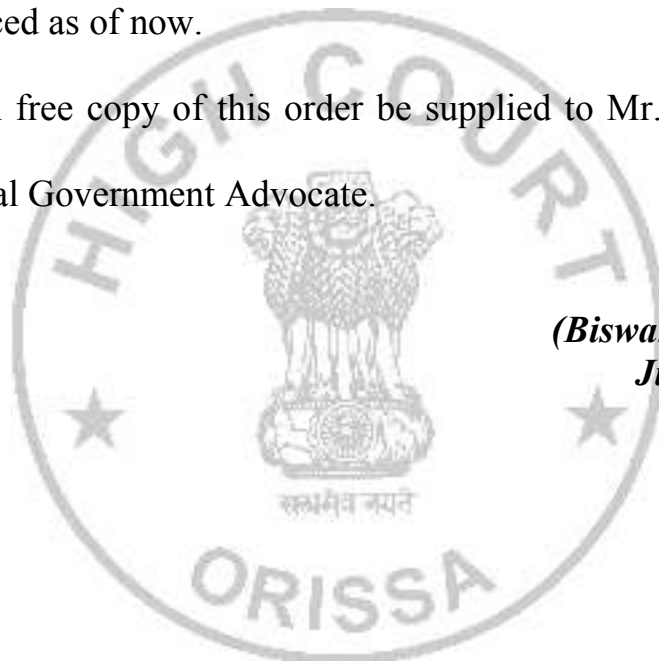
6. In the circumstance and as this Court finds, the Petitioners are in illegal occupation of the disputed land even after determination in appropriate proceeding against them, this Court takes into account the claim of both the Petitioners that they are poor and landless and from the representation, this Court also finds, the Petitioners are claiming to be utilizing the land for agricultural purpose. There is no question of Petitioners' becoming homesteadless. In the circumstance, this Court finds, no claim of the Petitioners in the above background is sustainable in the eye of law.

7. However, considering the pleading in Paragraph-3 of the Writ Petition, it appears, the Petitioners claim to be losing the livelihood and they are poor, to avoid any difficulty on their maintaining livelihood, this Court in disposal of the Writ Petition permits the Petitioners to file an application requesting for allocation of agricultural land under any of the Schemes of Government at least within seven days along with their undertaking to vacate the possession of the disputed site within two weeks hence enclosing therein the copy of this order. In the event any such application is

filed and the disputed land is vacated, the Collector, Khurda, O.P.2 shall do well in undertaking an enquiry exercise to find possibility of allotment of appropriate extent of agricultural land under any of the Schemes available for the purpose but only in the event the Petitioners in fact have no means for survival completing such exercise within a period of one month. Till three weeks, there may not be any progress in the construction taking place, if it is not commenced as of now.

8. A free copy of this order be supplied to Mr.Ghsoh, learned Additional Government Advocate.

M.K.Rout



(Biswanath Rath)
Judge