

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.27400 OF 2022

Biswanath Agrawala

Petitioner(s)
Mr.A.Pal,Adv.

-versus-

State of Odisha and others

Opposite Party(s)
Mr.S.Ghose,AGA
Mr.D.Mohapatra,Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
20.10.2022

Order No.

01.

1. Heard learned counsel for the Parties.
2. The Writ Petition is filed on an apprehension against the Development Authority in working out their own order in UAP Case No.261 of 2015 by effecting demolition of alleged structure of the Petitioner, if any, during pendency of Appeal.
3. Mr.Pal, learned counsel for the Petitioner taking this Court to the provision at Section 91(2) of the Odisha Development Authorities Act, 1982, reading through the allegation herein made an attempt to satisfy the court that for the restricted provision under Section 91(2) of the Act, there is even no scope for grant of interim protection by the competent authority exercising appellate power.
4. It is in the circumstance, Mr.Pal, learned counsel for the Petitioner submitted the Petitioner has no other remedy than to approach the High Court for interim protection at least till disposal of the Appeal.

5. Mr.Mohapatra, learned counsel appearing for Development Authority while not disputing the contentions raised by Mr.Pal, learned counsel for the Petitioner involving Section 91(2) of the Act that there is no scope with the appellate authority but for the limited provision therein to enter into interim aspects involved therein, it is in the circumstance, Mr. Mohapatra, learned counsel for the Development Authority contended for there is absence of an interim protection provision, no fault can be found with the Development Authority in undertaking such exercise, in the circumstance entertaining the Writ Petition is challenged. There is however no dispute in the Bar that pendency of a statutory Appeal should create a restrain in implementing the lower authorities order. Learned State Counsel also supports the contentions raised by Mr.Mohapatra, learned counsel for the Development Authority.

6. Considering the rival contentions of the Parties, this Court finds question required here to be decided as to even assuming there is no contingency for interim protection under the provision of Section 91(2) of the Act, in the event an Appeal is preferred involving the order under Section 91(1) of the Act should the executing authority await till final outcome in the proceeding already initiated under Section 91(2) of the Act?

7. Considering the rival contentions of the Parties, this Court finds, undisputedly there has been disposal of a 91(1) proceeding in the outcome of a proceeding under UAP Case No.261 of 2015. Further undisputed facts remain Petitioner has already preferred an Appeal which is even registered as Appeal Case No.24 of 2022 and for the submission of both sides, there is already commencement of Appeal proceeding. It is at this stage looking to the question framed, this Court takes into account the provision at Section 91 of the Odisha

Development Authorities Act. 91(1) of the Act which prescribes disposal of complaint by the competent authority and through Section 91(2) provides Appeal mechanism. Therefore, this Court finds, undisputedly the parties are involved in Appeal mechanism under the provision of Section 91(2) as against the orders, 91(1) of the Act and the provision at Section 91(2) of the Act reads as follows:-

(2) Any person aggrieved by an order under Sub-section (1) may appeal to the State Government or an Officer appointed by the State Government in this behalf, against that order within thirty days from the date thereof, and the Government or the Officer, as the case may be, may after hearing the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order. The decision of the State Government or the Officer shall be final and shall not be questioned in any Court of law.”

Entire reading the provision of Section 91(2), this Court finds, undisputedly there is no mechanism for grant of interim protection. In the above contingency and for the Appeal, if entertained and to be decided on its own merit and involving all parties concerned, there cannot be denial of interim protection to the parties aggrieved and preferring Appeal in the absence of interim protection and if lower authorities order if executed, Appeal remedy will be surely ineffective.

8. It is in the above contingency, this Court finds, it is time for the State to decide bringing amendment at Section 91(2) of the Act incorporating appropriate provision under the Act, 1982, an interim mechanism in the pendency of Appeal further also considering of the appellate authority framing time limit for disposing of the Appeal. Pending such amendment brought on statute, there should be operation of stay of order under Section 91(1) proceeding to not to

prejudice the prospect in the pending Appeals at least till disposal of Appeals and further to avoid flowing of litigations in such contingency to High Court. This Court observes in the event of an Appeal already instituted under the provision of Section 91(2) of the Act, there should be deemed to be an interim protection involving Section 91(1) of the Act proceeding at least till disposal of the statutory Appeal.

9. It is at this stage, this Court also considers the prospect of the parties likely to be affected in pendency of the Appeal, this Court further also observes on the institution of an Appeal and registration of the same, there should be all round endeavor to at least conclude such Appeal within a period of six months but however involving the parties likely to be affected.

10. The Writ Petition thus stands disposed of.

11. Free copy of this order be provided Mr.Ghose, learned Additional Government Advocate for its onward transmission to competent department to give early effect to the amendment aspect involved herein.

(Biswanath Rath)
Judge

Swarna