

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A.No.1422 of 2022

Gandhraba Behera & others **Appellants**

Mr. Biswarajan Mohapatra, Advocate

-versus-

State of Odisha & others **Opp.parties**

Mr. Lalatendu Samantaray, AGA

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO

ORDER
12.12.2022

Hybrid Mode

Order No.

01. **1.** The writ appeal has been filed with a prayer to set aside the order dated 02.12.2021 passed by the learned Single Judge in W.P.(C) No.22727 of 2021.
- 2.** By the said order dated 02.12.2021, the learned Single Judge disposed of W.P.(C) No.22727 of 2021. The relevant portion of which are extracted herein :

“2. Pursuant to the direction of this Court dated 18th November,2021, the Tahasildar, Balipatna-Opposite Party No.4, namely, Mr. Mrutyunjaya Tripathy and Block Development Officer, Balipatna-opposite party no.5, namely, Mr. Adikanata Behera are present in Court through virtual mode. They beg unconditional apology for not providing instruction to learned State Counsel earlier.

3. This writ petition has been filed with a prayer to take step to evict the poultry firm set up by opposite party nos.7 to 9 over plot no.406 under khata no.151 in Mouza-Badola Paschhimakhanda under Balipatna Tahasil in the district of Khurda.

4. Mr. Mishra, learned Additional Government Advocate for the State submits that upon initiation of encroachment proceeding, eviction of opposite party nos.7 to 9 from the aforesaid land in question, which is recorded as "Gramya Rasta" has been done and penalty has been recovered.

5. Mr. Mohapatra, learned counsel for the petitioners submits that although the encroachment from plot no.406 has been cleared, but the poultry firm is still there and it is creating an unhygienic atmosphere.

6. Since, encroachment has been cleared from the aforesaid land in question, no fruitful purpose will be served by keeping this writ petition pending.

7. Accordingly, this writ petition is disposed of.

8. If the petitioners have any other grievance, they are at liberty to raise the same before the competent authority, which will be considered in accordance with law."

3. In the writ appeal, the appellants have tried to make out a fresh case, which was not contended before the learned Single Judge, i.e., though he encroachments were not removed on the basis of the submissions of the learned Additional Government Advocate, the writ petition was disposed of.

4. On perusal of the order dated 02.12.2021 passed by the learned Single Judge goes to show that the opposite parties-Revenue Authorities like the Tahasildar, Balipatna-opposite party no.4, the Block Development Officer, Balipatna- opposite party no.5 were present in the virtual mode as they were directed

to remain present for not providing instruction to the learned State counsel earlier. It has been further recorded that encroachment proceeding was initiated for eviction of opposite party nos.7 to 9 from the land, i.e., plot no.406 under Khata no.151 in Mouza-Badola Paschhimakhanda under Balipatna Tahasil in the district of Khurda was removed and penalty was recovered as provided under the relevant statute, i.e., Orissa Prevention of Land Encroachment Act & the Rules made thereunder.

5. The learned Single Judge has also noted the contention of the learned counsel for the present appellants, who was also their counsel, the appellants being the petitioners before the learned Single Judge that although the encroachment from plot no.406 has been removed but the poultry firm is still there and it is creating an unhygienic atmosphere.

6. In response to the said submission of the learned counsel for the appellants/petitioners, the learned Single Judge has observed that *“if the petitioners have any other grievance, they are at liberty to raise the same before the competent authority, which will be considered in accordance with law”*.

7. Learned counsel for the appellants though vehemently argued but has failed to persuade us to accept the contention that the writ petition was disposed of by the learned Single Judge on the basis of

the statement of the learned Government counsel. Rather, it is apparent from the perusal of the order passed by the learned Single Judge that the order was passed after hearing and noting the contentions of Revenue authorities, who were present in the virtual mode, the learned counsel for the petitioners as well as learned Additional Government Advocate.

8. Accordingly, we do not find any merit in the writ appeal. The same is dismissed. However in view of the observation of the learned Single Judge, the appellants, if so advised shall have liberty to take recourse of law by approaching the competent authority that would be considered in accordance with law.

(Jaswant Singh)
Judge

(M.S.Sahoo)
Judge

12th December, 2022
Cuttack

Gs/dutta