

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 41618 of 2021

Anurupa Manjari Devi and others* *Petitioners

Mr. Biplaba P.B. Bahali, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr.Swayambhu Mishra,

Additional Standing Counsel

(For Opposite Party Nos. 1 to 4)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.03.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the letter dated 6th September, 2021 (Annexure-8) issued by the Tahasildar, Rairakhol-Opposite Party No.4 directing the Petitioner to vacate the land, i.e., Plot Nos.2553 and 2555 under Khata No.895, kisan Bandha-Adi in mouza Rampur under Rairakhol tahasil (for short, 'the case land') within one month of receipt of the said letter indicating therein that action as per rules will be taken on failure to vacate the land.
3. Mr. Bahali, learned counsel submits that in the show cause notice issued to the Petitioners under Annexure-5, it has been clearly stated that the case land is not an agricultural land and she has made construction over the case land, which is Bandh-Adi kisan of land and Rairakhol has been declared as NAC vide H & UD Department Notification No.7606/HUD dated 26th February, 1999. Therefore, provisions of Odisha

Land Reforms Act, 1960 (for short, 'the Act'), more particularly provision under Section 8(1)(c) of the Act is not applicable to the case at hand. It is his submission that the Petitioner is ready to pay the premium of land for conversion, as conversion of land of similar nature has already been allowed by Tahasildar, Rairakhol. But, the Petitioner has been discriminated and without considering the show cause filed by her, letter under Annexure-8 has been issued for her eviction. Hence, he prays for setting aside the impugned letter under Annexure-8.

4. Mr. Mishra, learned ASC referring to the counter affidavit, submits that the Petitioner, namely, Anupama Manjari Devi submitted in her show cause that Plot No.2560 under Khata No.895 of mouza Rampur, Rairakhol is coming under NAC area. Thus, it is clear that the case land is not situated within the local limit of Rairakhol NAC. As such, the Tahasildar, Rairakhol has committed no error in issuing impugned letter under Annexure-8. He further submits that although the case land was not recorded as agricultural land, but construction has been made over the 'Bandha Adi', which could not have been used for homestead purpose. He therefore prays for dismissal of the writ petition.

5. Taking into consideration the rival submissions of learned counsel for the parties and on perusal of record, it appears that the Tahasildar has specifically stated in Annexure-5 as well as in Annexure-8 that the case land is not an agricultural land. Thus, applicability of Section 8(1)(c) of the Act is a matter which needs adjudication. Mr. Bahali, learned counsel for the Petitioner further submits that the Petitioner is

prepared to pay the premium for conversion of the case land. It is his submission that the land of similar nature has been permitted to be utilized for homestead purpose. Mr. Mishra, learned ASC though refutes such submission, but the materials available is insufficient to record a concrete finding to that effect. It further appears that the contention of the Petitioner in the writ petition with regard to applicability of Section 8(1)(c) of the Act has not been specifically answered in the counter affidavit, which also requires consideration.

6. In view of the above, this Court feels that the matter requires fresh consideration. Accordingly, the impugned letter under Annexure-8 is set aside and the matter is remitted back to the Tahasildar, Rairakhol to give further opportunity to the Petitioner to file a fresh show cause within a period of fifteen days hence detailing the grounds. Upon receipt of the show cause, if any filed within the period stipulated above, Tahasildar, Rairakhol-Opposite Party No.4 shall do well to adjudicate the matter afresh giving opportunity of hearing to the parties concerned. Needless to say that if show cause reply is not filed within the time stipulated above, the Tahasildar, Rairakhol may proceed to adjudicate the matter on the materials available on record.

7. With the aforesaid observation and direction, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge