

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12118 of 2022

Mita Das

.....

Petitioner

Ms. P. S.Mohanty, Advocate

- Versus-

State of Odisha & Ors.

.....

Opposite parties

Mr.U.K.Sahoo, ASC

CORAM:

JUSTICE BISWANATH RATH

ORDER

18.05.2022

Order No.
02

1. Heard learned counsel appearing for the parties.
2. There is serious allegation that in issuing notice in Encroachment Case No.2/21-22 on 28.7.2021, the Tahasildar Kakatpur fixed the case to 15.9.2021 itself. It is alleged even though the encroacher had appeared on the same date but in absence of any show-cause being filed and without even giving an opportunity of hearing to the encroacher, the Tahasildar on the same day not only disposed of the proceeding but has also come to assess the levy as well as penalty imposing therein a sum of Rs.4.00/- towards levy assessment and Rs.1,000/- towards penalty and issued 'J' slip on the same day.
3. Learned counsel appearing for the petitioner submits that the encroacher since an illiterate woman and not well aware of law involved, in the event there was already appearance of encroacher in the interest of justice, the Tahasildar should have at least provided one more

opportunity to the petitioner file show-cause. There is also allegation that in the event the Tahasildar taking up the matter for final hearing ought to have recorded the submission of the encroacher and also recorded his own finding before coming to observe the petitioner as an encroacher. It is in the above background, petitioner prays this Court in interference of this Court in the impugned order at Anenxure-1 & 2 herein.

4. Mr.Sahoo, learned Additional Standing Counsel on production of record however attempted to satisfy that pursuant to the notice dated 28.7.2021 the record clearly establishes that the petitioner was present on the date fixed. Mr.Sahoo, learned Additional Standing Counsel on instruction also submitted that the petitioner presented her case and it is only after considering the case of the petitioner, the Tahasildar appears to have held the petitioner as an encroacher and assessed on account of levy as well as penalty. In the process, Mr.Sahoo attempted to justify the action of the Tahasildar.

5. Considering the rival contentions of the parties involving serious allegation in the manner of disposal of the proceeding by the Tahasildar particularly involving encroachment proceedings under the provision of O.P.L.E. Act, this Court takes here notes from the proceeding file of the Tahasildar and finds on 28.7.2021, the Tahasildar recorded as follows:

“28.7.2021.

Received requisition in form No. ‘G’ from R.I.,Kantapada regarding unauthorized occupation of Govt. land as per Schedule given below:

Mouza-Balana, Name of the Encroacher(s):Mita Das, W/o:-Jitendra Das, Khata No.1196, Plot No.3869, Kisam-Gochar, Total Area, 12.32, Encroached Area, 0.08, Nature of Occupation, Thatched house. Register

as Encroachment case and issue Notice in Form-(Ka) to the Encroacher for appearance in the court on dt.15.9.2021 at the time 11 A.M. and show cause. Case to 15.9.2021.”

Pursuant to the above fixation of date, the case was next posted to 15.9.2021. The Encroachment Case record further discloses the Tahasildar, Kakatpur on 15.9.2021 passed the following order involving a proceeding under O.P.L.E. Act.

“15.9.2021.

The encroacher is present on call and filed hazira.

The suit land is Which cannot be settled/settled U/S.7(2) provision of the O.P.L.E. Act. Moreover the encroachment is objectionable in nature. Hence issue order for eviction.

1. Levy assessment (Per Acre per annul of unauthorisid Occupation Rs.4.00/-
2. Penalty imposed Upon the encroacher-(per acre of Land for each year of for un-authorized occupation):- Rs.1,000/-

Total Rs.1004.00/-

ISSUE ‘J’ slip in duplicate to the R.I., Kakatpur for realization of the above amount from the encroacher and send a copy of the ‘J’ slip to this office for record.

Put up after 15 days.

Sd/-15.9.2021
Tahasildar, Kakatpur.”

6. This Court firstly observed when a proceeding is initiated under a statute, it has a definite purpose for consideration more, particularly, when the matter involves encroachment, Tahasildar should not have rushed to decide the matters on that date itself. Looking to the nature of the case and for involvement of eviction of a person from his residence the Tahasildar has a responsibility to find whether the encroacher is an educated and law knowing person or not. Further, the Tahasildar has to see the encroacher if belongs to weaker section or person downtrodden in the society having not even sufficient income to take aid of

counsel. It appears under the *bonafide* impression of a direction from Tahasildar, encroacher volunteers to appear and in many occasions even agree to the imposition of fine and penalty. Thus, once an encroacher volunteers to appear, the Tahasildar if find there is no written response from him, at least should provide one more opportunity to file his response to find the reason on his residing over such plot and if a person is landless or not? Even after filing of show cause, there should not be passing of orders in encroachment proceedings mechanically. Since there is allegation of encroachment, Tahasildar should record the case of the party and the State then to proceed to have his own finding and record ultimate decision.

7. On reading of the order-sheet taken note hereinabove, this Court finds on the first date, notice appears to have been issued fixing the date of appearance and show cause involving the party likely to be affected. Even the first date order, nowhere discloses the date was fixed for hearing. Since there was notice to appear and show-cause, even in absence of filing of show cause, the Tahasildar should have fixed a date of hearing even providing one more opportunity of show cause. Further, looking to the final order, the Tahasildar in holding the petitioner as an encroacher, the order dated 15.9.2021 has no disclosure on particulars of land, no assigning of reason and conclusion before holding the person as an encroacher. The position meant for suit land even kept unfilled. Further looking to the final order involving proceeding under Section 7 of the O.P.L.E. Act passed by the Tahasildar, this Court also observes the Tahasildar even not provided the reason

and discussed the case of the party stated before him. There is even no consideration of case of the party involved. Further, to the surprise of the Court, there is even no finding of the Tahasildar in coming to hold a person as an encroacher to provide at least opportunity to the person affected to have its statutory appeal remedy. It is on the above background, this Court finds there has been mechanical disposal of the proceeding under Section 7 of the O.P.L.E. Act.

8. In the above background, while interfering in the impugned notice at Annexure-2, this Court remits the matter back to the Tahasildar to the stage 15.9.2021 with direction to the petitioner to appear before the Tahasildar on 27th or 30th May, 2022 along with its show-cause. The Tahasildar upon receipt of the show-cause of the petitioner involved will fix the date of hearing with intimation to such party and will pass its order after entering into hearing involving the petitioner involved and also passing a reasoned order.

9. Finding bizarre disposal of proceeding under Section 7 of the O.P.L.E. Act by the Tahasildar, this Court directs copy of this order be communicated to the Principal Secretary, Revenue & Disaster Management Department and Principal Secretary to Law Department for making an endeavour through the Tahasildars being the original authority under the Act not to repeat such mistakes thereby restricting unnecessary loading of cases to the High Court involving such unnecessary litigation.

10. For the matter is heard involvement of the Tahasildar and Tahasildar claiming *bonafide* action involved herein, to see no repetition of this nature of order by such

Authority in the State of Odisha, this Court directs the Tahasildar to at least plant 50 numbers of tree needed to be planted in road side in any sector in the C.D.A. area in the involvement of Cuttack Development Authority.

11. A free copy of this order be handed over to the learned State Counsel for communication purpose to the Principal Secretary, Revenue & Disaster Management Department and Principal Secretary to Law Department.

12. Further, a free copy of this order also be handed over to Mr. Dayananda Mohapatra, learned counsel, who usually appears for the Cuttack Development Authority to ask the Authority to cooperate the Tahasildar in the matter of plantation.

13. The writ petition stands disposed of with the observation and direction made hereinabove.

Sks



(BISWANATH RATH)
JUDGE