

(2024) 02 OHC CK 0263

In the Orissa High Court

Case No : Writ Petition (C) No. 4292 Of 2024

Dillip Kumar Panda

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 28-02-2024

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 7(1)

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 37

Citation : (2024) 02 OHC CK 0263

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : B.K. Sharma, D.K. Behera

Final Decision : Allowed

Judgement

R.K. Pattanaik, J

1. Heard Mr. Sharma, learned counsel for the petitioner and Mr. Behera, learned ASC for the State.

2. Instant writ petition is filed by the petitioner challenging the impugned orders arising out of OPLE Case No.15 of 2022-23 on the grounds stated therein.

3. Mr. Sharma, learned counsel for the petitioner submits that an opportunity of hearing was not provided to the petitioner as made to reveal from order dated 17th June, 2022 (Annexure-1) in OPLE Case No.15 of 2022-23 which was challenged in appeal but without any result with disposal of the same by order under Annexure-2 and later on confirmed vide Annexure-3. It is further submitted that the petitioner has challenged the revenue record in the meantime by filing Consolidation Revision Case No.139 of 2022 pending before the court of learned Additional Commissioner, Settlement & Consolidation, Cuttack under Section 37 of the OCH & PFL Act, hence, in such view of the matter, opposite party No.3 should not have directed eviction with the issuance of notice under

Section 7(1) of the OPLE Act and subsequently, upheld vide Annexures-2 and 4, so therefore, the impugned action is unjust and arbitrary.

4. Mr. Behera, learned ASC for the State on the other hand justifies the order under Annexure-4 on the ground that the action is in respect of a 'Chaura & Pindi' without any inconvenience caused to the petitioner. In response and reply to the above contention, Mr. Sharma, learned counsel for the petitioner would submit that the schedule land belongs to the deity and therefore, the matter is pending decision in Consolidation Revision Case No.139 of 2022.

5. Having regard to the above facts and submissions of learned counsel for the respective parties and on a bare reading of order under Annexure-1 dated 17th June, 2022, the Court finds that the petitioner had requested for reasonable time to submit a written note of argument and filed the time but thereafter, opposite party No.3 proceeded without acceding to such request and ultimately ordered eviction with a direction to the local RI to issue 'J' Form. The Court further finds that the aforesaid eviction with the order under Annexure-1 has been confirmed in appeal as well as in revision without taking cognizance of the fact that the petitioner did not have opportunity with a proper hearing and participation. Hence, the Court is of the humble view that the petitioner, who claims himself as a Marfatdar of the deity in question and having challenged the revenue record in respect of the schedule land wrongly settled with the Govt., should be provided an opportunity to show cause with a proper hearing before any such eviction and demolition is directed.

6. Hence, it is ordered.

7. In the result, the writ petition stands allowed with the impugned orders under Annexures-1, 2 and 3 set aside with a direction to opposite party No.3 to consider the show cause of the petitioner to be filed within a fortnight in connection with OPLE Case No.15 of 2022-23 and thereafter, to proceed and to dispose it of as per and in accordance with law at the earliest preferably within a period of six week from the date of receipt of a copy of this order and till such time, status quo shall be maintained in respect of the schedule land.

8. Urgent certified copy of this order be issued as per rules and in course of the day.

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