

(2023) 05 OHC CK 0165
In the Orissa High Court
Case No : Writ Petition (C) No.12531 Of 2023

Rajendra Kumar Mohapatra And Others	APPELLANT
Vs	
State Of Odisha And Others	RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Constitution of India, 1950 — Article 227
Orissa Estates Abolition Act, 1951 — Section 9

Citation : (2023) 05 OHC CK 0165

Hon'ble Judges : Arindam Sinha, J;S.K. Mishra, J

Bench : Division Bench

Advocate : Manoj Kumar Pati, A.K. Nanda

Final Decision : Disposed Of

Judgement

1. Mr. Pati, learned advocate appears on behalf of petitioners and submits, there has been illegal settlement of land under Bebandobasta Case no.102 of 2017 by the Tahsildar on order dated 29th August, 2022. It was done without proper enquiry. Further illegality was, case record appertaining to Bebandobasta Khata no.164 was also sent for correction. His clients have prayed for interference so that rightful recorded tenants can have settlement in respect of the land under Bebandobasta holding no.164 in Kirasasan Mouza.
2. On query from Court Mr. Pati submits, by order dated 9th September, 2022 of the Tahasildar, made after confirmation of earlier order of settlement, several persons, who are not entitled, have been directed to be noticed for their depositing the salami and back rents.
3. Prima facie, it appears that there is dispute between parties claiming settlement. As such they should be relegated to the civil Court. Persons, who have been noticed for settlement have not been made parties to the writ petition.
4. On query from Court Mr. Pati submits, his clients are in possession but those who have wrongfully obtained settlement will now evict them. That is why

interference and interim order is necessary to protect his clients.

5. Mr. Nanda, learned advocate, Additional Government Advocate appears on behalf of State. He submits, in event there is relegation to the civil Court, petitioners cannot have any protection in meantime. For the proposition he relies on judgment of the Supreme Court in, inter alia, State of Orissa v. Madan Gopal Rungta, reported in 1951 SCC 1024, wherein the Constitution Bench declared the law to be, when Court declines to decide on the rights of the parties and expressly holds that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating institution of such suit, issue directions in the nature of temporary injunctions under article 227 of the Constitution.

He submits further, petitioners have disclosed the circular themselves, which provides for adequate alternative efficacious remedy of appeal.

6. Mr. Pati replies, there is efficacious alternative remedy of appeal provided under section 9 in Orissa Estates Abolition Act, 1951. He submits, provision of appeal in the circular is eclipsed by the substantial provision in the Act. On query from Court he submits, his clients will avail statutory remedy of appeal. He seeks appropriate protection and observation made for exclusion of the time.

7. There cannot be interim protection to facilitate filing of appeal as law declared by Madan Gopal Rungta (supra). However, it is also trite that a person in possession cannot be dispossessed without due process of law. In event petitioners are in possession, resort to due process will enable them to resist immediate eviction and thereby give them opportunity to file appeal and seek interim protection therein, if they are entitled to the same.

8. The writ petition was filed on 19th April, 2023. It is being disposed of today. We are not entertaining it because petitioners have available to them statutory remedy of appeal. In the circumstances, petitioners have urged their cause in this Court, which has not entertained the same. These circumstances may be pleaded before the appellate authority, for exclusion of time and condonation of delay.

9. With above observations, the writ petition is disposed of.

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