
(2005) 08 OHC CK 0009

In the Orissa High Court

Case No : Writ Petition (C) No. 10,553 of 2005

Sri Manoranjan Behera and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:

Citation : (2005) 2 OLR 706

Hon'ble Judges : S.B. Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : Aparesh Bhoi and Sasmita Mishra, for the Appellant; State Counsel, for the Respondent

Judgement

1. Heard learned counsel for the petitioners and the learned Addl. Standing Counsel.
2. The limited grievance of the petitioners in the present writ application is that they are in possession of the property in question from the time of their ancestors for much more than 30 years by constructing small residential houses thereon and that they are landless persons and they have no property far-less homestead property standing in their name. It is further stated that the petitioners have no shelter excepting small residential houses constructed by them over the plots of the land in question.
3. It appears that W.P.(C) No. 433 of 2005 was filed by some persons making allegations therein that the land in question being of communal nature and having been encroached upon by some encroachers, they should be evicted therefrom. By order dated 5.7.2005, this Court disposed of the said writ application by directing that if the petitioners in the said writ application make a representation before the Collector, Balasore, the said Collector shall take appropriate steps thereon for initiating eviction proceedings and evicting the encroachers.. The writ petitioners claim that pursuant to the said order, notices were issued to them by the Tahasildar, Jaleswar under the provisions of the

O.P.L.E. Act by registering different land encroachment cases and directing them to file their show cause by 19.8.2005. It is the further case of the petitioners that before they could file their show cause pursuant to the said notices under Annexure-1 aeries, the eviction orders have been passed directing them to vacate the premises within a period of thirty days. One of such order of eviction passed in Land Encroachment Case No. 1422 of 2005 has been annexed to the writ application as Annexure-2. However, no date has been given in the said eviction order under Annexure-2.

4. In our opinion, the orders of eviction passed against the petitioners cannot be sustained, the same having been passed prior to the date fixed for filing of show cause. We, therefore, have no hesitation to quash the said orders of eviction passed against the petitioners and accordingly, the same are quashed. We direct the Tahasildar, Jaleswar to grant opportunity to the petitioners to file their show cause pursuant to the notices under Annexure-1 series and upon receiving the same, if filed, to adjudicate the encroachment cases afresh as per the provisions of the O.P.L.E. Act. While doing so, he should also give opportunity of hearing to the petitioners.

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

6. A copy of this order be handed over to the learned Addl. Standing Counsel.

7. Urgent certified copy of this order be granted on proper application.