

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3632 of 2010

C.G.M., M.C.L.

....

Petitioner(s)

Mr. S. Mohanty,
Advocate

-versus-

R.D.C, N.D., Sambalpur & Ors.

....

Opposite Party(s)

Mr. S. Ghose,
Addl. Govt. Adv.

CORAM:

JUSTICE BISWANATH RATH

ORDER

14.12.2022

Order No.

03.

1. Undisputedly this Writ Petition involves a challenge to the impugned order at Annexure-1 involving Certificate Appeal No.1 of 2004 i.e. an appeal under the provisions of Section 60 of the O.P.D.R. Act, 1962.

2. Taking into consideration the entertainability of a Writ Petition against a statutory appeal order, this Court finds, the provision at Section 61 of the OPDR Act, 1962 reads as follows:-

“61. Revision – An order passed in an appeal under Section 60 may be revised by –

- (a) if the order was passed by an Additional District Magistrate or by a Collector, the Revenue Divisional Commissioner;
- (b) if the order was passed by a Revenue Divisional Commissioner the Board of Revenue :

Provided that where the certificate-debtor makes an application under this section for revision of any appellate order, no such application shall be entertained unless he has paid all amounts due under the certificate to the Certificate Officer, whether or not, under protest made in writing at the time of payment, and produces a certificate from the Certificate Officer showing such payment to have been made.

3. For the proviso requiring on entertainment of the revision the party is required to pay all amount due under the certificate to the Certificate Officer under protest in order to maintain a revision, this Court finds, this provision secures the whole deposit in filing the revision petition and filing of writ petition is purely an attempt to avoid the statutory requirement in depositing the whole amount involved.

In the circumstance, this Court finds, this Writ Petition is not entertainable.

4. Learned counsel for Petitioner here raises the question of maintainability of the proceeding. This Court keeping in view the submission of learned counsel for Petitioner observes, such a question also form part of consideration of appeal. Since the question of maintainability having already been raised/ agitated, nothing prevented the Petitioner, if aggrieved, to re-agitate such submission through the revision. Since this Writ Petition is aimed in avoidance of the statutory compliance, the Writ Petition is not maintainable. Petitioner, if so advised, may bring statutory revision.

5. The writ petition is, accordingly, dismissed.

(Biswanath Rath)
Judge