

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.6981 OF 2003

Birendra Mohan Harichandran Petitioner
Mr.Y.Mohanty,
Sr.Advocate

-versus-

Commissioner, Consolidation & Opposite Party(s)
Anr. . Mr.S.Mishra,
ASC.

CORAM:

JUSTICE BISWANATH RATH

ORDER

25.11.2022

Order
No.6

1. Heard Mr.Y.Mohanty, learned Senior Counsel for the petitioner and Mr.Mishra, learned Addl. Standing Counsel for the State.
2. This writ petition involves a challenge to the order of the competent authority involving R.C. No.76 of 1999 passed in exercise of power under Section 37(1) of the OCH & PFL Act, 1972. Keeping in view the allegation herein and reading the impugned order, this Court finds in the consideration process on 28.03.2003. the Commissioner has decided to admit the matter and directed for posting of the matter for

final hearing on 25.04.2003. Commissioner appears to have observed as follows:

“The revision petition filed U/s.37(1) of the Act by the Dy. Director, Bhubaneswar is considered on its admissibility. In the present case I find that the Dy. Director has only made a reference assailing the wrongly prepared Hal R.O.Rs which attracts the provisions of Sub-Sec-1 Section 37 of the .C.H. & P.F.L. Act, 1972 which runs as follows:- 37-Power to call for records-(i) Consolidation Commissioner may call for and examine the records of any case decided or proceeding taken up by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may after allowing the parties concerned a reasonable opportunity of being heard make such order as he thinks fit”. Therefore, depending on the facts and circumstances of the present case, I find that there are some genuine grounds for non-prosecution of remedies to prevent abuse of process of law for which the powers u/s.37(1) of the Act can be exercised. (1993-ii-O.L.R..464). In the instant case I feel that the citation which is being produced by the opposite party in O.J.C. No.4269/2000 has no relevancy at all and accordingly, it is not accepted.

In the above premises, the revision petition is admitted and posted for hearing on merit. Ask the Tahasildar, Khurda to produce all the relevant records on 25.4.2003. Inform all parties accordingly.

Put up on 25.4.2003 for hearing on merit.”

3. Reading the reasoning in entertaining the proceeding under Section 37 (1) of the Act, this Court finds there is great level consideration process of the providing under Section 37(1) of the Act. For there is mere entertaining an application and posting the case for hearing in the involvement of party likely to be affected, this Court finds there is no scope for interfering with such orders at this stage. Further this Court since finds, in the hearing process, the petitioner gets scope of objection, nothing prevents the petitioner to raise all such contentions as raised herein for consideration of the Commissioner concerned. In the process, this Court declines to interfere in the interim order and while rejecting the petition. vacates the interim order dated 27.10.2003 passed in Misc. Case No.6725 of 2003. Petitioner is directed to appear before the

Commissioner concerned on 12.12.2022. This Court also observes since there is loss of contact of the Senior Counsel for the petitioner, in the event the petitioner does not respond in the meantime, Commissioner may notice to parties concerned and proceeding for hearing.

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

(Biswanath Rath)
Judge



sks