

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.5255 OF 2004

Radha Mohan Dev

....

Petitioner(s)

Mr.D.Mohapatra,
Advocate

-versus-

State of Orissa and others

....

Opposite Party(s)

Mr.U.K.Sahoo,
ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER

24.08.2022

Order No.

07.

1. Heard learned counsel for the Parties.
2. Background involving the case is that the tenants in the guise of raiyats on the pretext of having the dwelling house over the disputed property and residing long since initiated the original proceeding which appears to have been disposed of in the absence of the present Petitioner. Appeal being preferred, the Appellate Authority while allowing the Appeal remanded the proceeding to the original authority for fresh determination in the involvement to the parties including the Petitioner herein. On a revision being filed by the raiyats/tenants, the Revisional Authority while observing the Appellate Authority had no jurisdiction to entertain such Appeal and giving further direction impugned herein. The Revisional Authority while observing as above base on material on record decided the revision in favour of the private Opposite Parties.
3. Mr. Mohapatra, learned counsel for the Petitioner, the landlord, a deity advancing his submission in two fold, one in the event the Appellate Authority had no jurisdiction on entertaining the Appeal and

there is material available for further consideration the Revisional Authority at least should have remitted back the matter for fresh consideration by the original authority. The Second argument of Mr. Mohapatra, learned counsel for the Petitioner is that even assuming that there is no further scope of the Appeal, the Writ Petition involved can consider the validity in the original order. Mr. Mohapatra, learned counsel for the Petitioner thus urged in the interest of justice, the matter should be remitted back to the original authority for a fresh adjudication of the dispute at the instance of private Opposite parties, but however in the involvement of Petitioner as well as private Opposite Parties even taking into account the further materials available, if any.

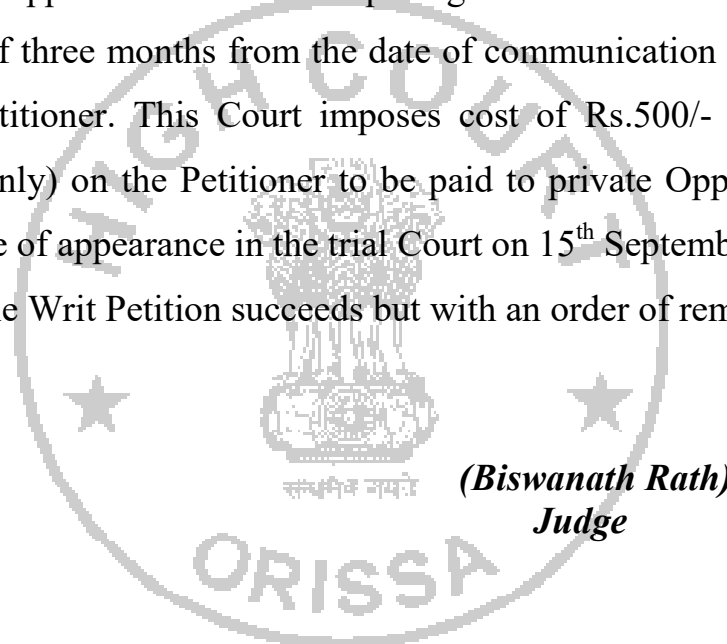
4. Learned counsel appearing for the contesting Opposite Parties however in his opposition submitted that it is not a complete case of ex-parte order by the original authority. The Petitioner even though was a party in the case involved not appeared and therefore there is no infirmity in the order passed by the original authority required to be interfered with. Mr. Sahoo, learned Additional Standing Counsel adopts submissions of counsel for Opposite Party and requests for dismissal of the Writ Petition.

5. Considering the rival contentions of the Parties, this Court on perusal of the impugned order finds, though the Petitioner was made a party in the proceeding but however the proceeding has been decided in absence of the Petitioner may be for non-cooperation of the Petitioner. Ultimately the ex-parte order came to be placed by the original authority. For the nature of dispute involving attempt to take away substantial right of the Petitioner, this Court finds, ex-parte order of this nature cannot be sustainable. This Court finds force in the submission of Mr. Mohapatra, learned counsel for the Petitioner.

6. In the process, this Court interferes in the order of the Original Authority vide Annexure-3 and sets aside the same. But however keeping in view the suffering of the contesting Opposite Parties for no fault of them, this Court finds they deserves to be entitled to some cost at least.

7. In the process, this Court allows the Writ Petition upon settings aside both Appeal order as well as the revisional order and directs for remand of the proceeding to the Original Authority for re-adjudication of the original proceeding in the involvement of the Petitioner as well as private Opposite Parties and disposing of such matter at least within a period of three months from the date of communication of this order by the Petitioner. This Court imposes cost of Rs.500/- (rupees five hundred only) on the Petitioner to be paid to private Opposite Parties on the date of appearance in the trial Court on 15th September, 2022.

8. The Writ Petition succeeds but with an order of remand.



Swarna