

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**O.J.C. No.17326 of 1997**

***Khitendra Kumar Dutta & Ors.*** .... ***Petitioner(s).***

Mr.G.K.Mohanty, Sr.Advocate

*-versus-*

***Nanda Dutta & Ors.*** .... ***Opposite Party(s)***

Mr.S.Ghose, AGA

Mr.N.K.Sahoo, Advocate

**CORAM:  
JUSTICE BISWANATH RATH**

**ORDER  
21.09.2022**

**Order No.**

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1. It is submitted by Mr.Mohanty, learned senior counsel that since opposite party no.4 died issueless, there is no requirement of substitution. Petitioner nos.2 and 3 are already on record.
2. Heard learned counsel appearing for the parties. Writ petition involves a challenge to the order at Annexure-5 in R.P. Case No.3304 of 1997 appearing to be in disposal of a proceeding under Section 15(b) of the Orissa Survey & Settlement Act, 1958. Mr.Mohanty, learned senior counsel taking this Court to the entire gamut of pleading in the writ petition submits that even though petitioner has already got right, title and interest over the property, there is no consideration of such aspects in the 15(b) exercise by the Commissioner. It is for the above, Mr. Mohanty, learned senior counsel claims the order impugned be interfered and reversed.
3. Mr.Sahoo, learned counsel appearing for the contesting opposite parties, the petitioners in the R.P. proceeding taking this Court to the case of the parties, plea of the parties and taken into account by the Commissioner submits the petitioners though provided with

opportunity, failed to establish their case and thus requested this Court for dismissal of the writ petition. Learned State Counsel adopts the stand of the private opposite parties.

4. Considering the rival contentions of the parties, this Court finds petitioners claim on the basis of right, title and interest created in their favour and the attempt of the petitioners in 15(b) proceeding appears to be seeking adjudication on declaration of right, title and interest. For the nature of proceeding under Section 15(b) of the O.S.S. Act, this Court is of the opinion that the Commissioner in exercise of power under Section 15(b) of the Orissa Survey & Settlement Act, 1958 has no scope to get into declaration of right, title and interest of parties as this proceeding is aiming to correction of record-of-right based on existing right, if any. In the event the petitioners were in requirement of consideration of the right, title and interest aspect, nothing prevented the petitioners to approach under the appropriate provision of law before appropriate court in at least getting a declaration of right, title and interest of the party involved. In the circumstance, this Court finds there is no scope for interfering in the impugned order. Consequently, the writ petition stands dismissed.

***(Biswanath Rath)***  
***Judge***

skS