

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.1403 OF 2004

Golakha Chandra Pattanaik & ors.

Petitioners

Mr.N.Lenka, Adv.

-versus-

Commissioner, Consolidation & ors.

Opposite Party(s)

Mr.U.K.Sahoo, ASC

CORAM:

JUSTICE BISWANATH RATH

ORDER

11.10.2022

Order No.

8.

1. Heard learned counsel for the Parties.
2. Background involving the case is the Petitioners and O.P.4 preferred Objection Case Nos.778/92 & 582/92 respectively involving same disputed property, which got disposed of, vide Annexure-2 but in allowing Objection Case No.778/92 and in dismissal of Objection Case No.582/92. O.P.4 being aggrieved by the order at Annexure-2 in allowing Objection Case of the Petitioners and dismissing his Objection Case preferred two Appeals bearing Appeal Nos.92/93 & 93/93, which appear to have been dismissed in confirmation of the order of the Original Authority resulting O.P.4 preferring Revision Case No.799/95 decided ex parte, vide Annexure-4. Through Annexure-5 on the same date the

Petitioners filed an application to recall the ex parte order, vide Annexure-5 and proceeding for contesting disposal involving Revision Case No.799/95. This Application appears to have been rejected, vide Annexure-6.

3. Learned counsel for the Petitioners taking this Court to the nature of order at Annexure-4 passed by the Revisional Authority purely ex parte and the application for restoration of such Revision being filed on the same date taking to the reasoning by the Revisional Authority rejecting the Application under Annexure-5 contended, there has been no lawful consideration of the issue involved therein. For the nature of dispute, learned counsel for the Petitioners prayed for at least a contest disposal of the Revision involved.

4. In spite of a set of Counsel appearing for the private O.Ps., nobody is participating in the hearing.

5. Mr.U.K.Sahoo, learned Additional Standing Counsel attempted to justify the impugned orders under Annexure-4 and 6.

6. However, there is no dispute that Annexure-4 was an ex parte order and Annexure-5 is an Application to recall the ex parte order on the date the Revision was disposed of ex parte.

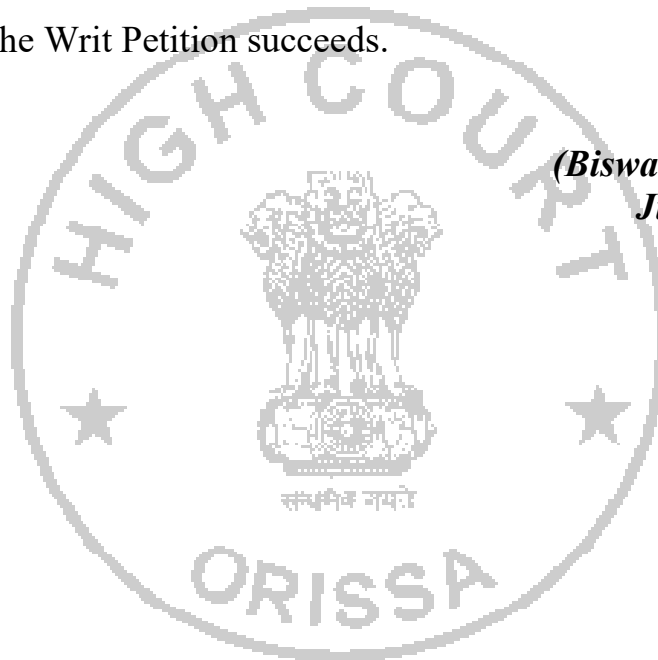
7. Considering the rival contentions of the Parties and on perusal of Annexure-4 impugned herein, this Court finds, undisputedly in ex parte disposal of the Revision, the contested orders in favour of the present Petitioners, vide Annexure-2 & 3 have been taken away. There is great level of prejudice to the Petitioners as a consequence of ex parte disposal of the Revision. Reading through the grounds stated in Annexure-5 and the reasoning in rejecting such Application, this Court finds, there has been mechanical approach adopted by the Commissioner in rejecting the Application at Annexure-5, vide Annexure-6. The Commissioner failed in appreciating the nature of dispute involved herein and the suffering to the Parties in contest for the ex parte disposal of such proceedings.

8. In the result, this Court interferes with the order at Annexure-6 and as this Court finds, the Petitioners suffer on account of ex parte disposal of the Revision, vide Annexure-4, Annexure-4 is also hereby interfered with and set aside. However, since the Revision is required for fresh disposal, the matter is remitted to the Commissioner, Consolidation for hearing of R.C. No.76/83 & 799/95. Since this matter is disposed of in contest of the Petitioners, the Petitioners are directed to appear before the Commissioner,

Consolidation on 27th October, 2022 along with a copy of this order. Since there is no appearance on behalf of the contesting O.Ps., the Commissioner shall do well in giving notice to the Revision Petitioners to provide opportunity of hearing and dependent on appearance of the Petitioners there, shall proceed to conclude the Revision but on merit and in involvement of the Parties at least within a period of four months thereafter.

9. The Writ Petition succeeds.

M.K.Rout



(Biswanath Rath)
Judge