

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.5434 of 2007

Smt. Basanti Kumari Swain

....

Petitioner(s)

Mr. P.Ku. Routray,
Mr. J. Bhuyan,
Advocates

-versus-

***Land Reforms Commissioner, Orissa
& Ors.***

....

Opposite Party(s)

Mr. S. Mishra,
ASC for O.Ps.1 to 4

CORAM:

JUSTICE BISWANATH RATH

ORDER

31.10.2022

Order No.

04.

1. Heard Mr. Bhuyan, learned counsel for Petitioner and Mr. Mishra, learned State Counsel for the Opposite Party Nos.1 to 4. In spite of sufficiency of notice, nobody appears for the private Opposite Parties.

2. This Writ Petition involves a challenge to the order at Annexures-1 to 5. All the proceedings appear to have been disposed of by the competent authorities under the O.L.R. Act. The proceedings involved at the threshold come under the provision of Section 15(b) as well as Section 9 of the O.L.R. Act.

3. Mr. Bhuyan, learned counsel for the Petitioner taking this Court to the development taken place in disposal of the OLR Case No.23/1981 and the pleadings in the Appeal as well as in the Revision contended that on the effective date the Petitioner though filed a petition for adjournment, the same was ignored and there has

been *ex parte* disposal of the O.L.R. Case No.23/1981. The Petitioner next filed a petition under Order 9 Rule 13 of C.P.C. It has also been rejected. Thereafter the Petitioner filed appeal. It is alleged that the appellate authority failed in appreciating such aspect and for the appeal involved herein being dismissed there has been filing of revision. It is contended that the revisional authority also failed in appreciating that the original proceeding was decided *ex parte* and not in the involvement of the private Opposite Parties, who had serious contest in the matter. For failure of appreciating the reason of absence by all forums resulting a great level of suffering to the Petitioners, Mr. Bhuyan, learned counsel for Petitioner seeks indulgence of this Court in all the orders at Annexures-1 to 5.

4. Mr. Mishra, learned State Counsel through the observation of the Original Authority and the Appellate Authority as well as the Revisional Authority attempted to justify the impugned order.

5. Considering the rival contentions of the parties, this Court finds, there is no denial to the fact that on the effective date the O.L.R. Case No.23/1981 was finally disposed and there was also an attempt of the Petitioner for adjournment. Petitioner herein also filed a petition U/o.9 Rule 13 of C.P.C. seeking recalling of the *ex parte* decree. This Court here observes, it may be true, all the provision of C.P.C. are not applicable, but there should not be any doubt that the petition for restoration is not entertainable and in the circumstance there should not have been much attachment to the provision of law noted therein.

It is, in the circumstance, this Court finds, the Original Authority instead of giving much attachment to the nomenclature of the petition, should have gone to the pleadings and the prayer sought for therein and thereafter decided the matter in accordance with law. Looking to the order passed by the competent authority in rejection

of the application U/o.9 Rule 13 of C.P.C. technically this Court finds, there is mechanical application of mind by the Original Authority. As the original proceeding involves the very contentious issue, this Court on perusal of the appeal order as well as the revisional order finds, there is no proper application of mind by the next Forums. As this Court finds, there is mechanical disposal of the original proceedings further also by the rest Forums, this Court interfering in all the orders at Annexures-1 to 5, sets aside the same. However considering that the O.L.R. Case No.23/1981 needs fresh adjudication, this Court remits the matter to the Additional Tahasildar or the present competent authority and directs the Petitioner to appear before the competent authority along with a certified copy of this order on 10th November, 2022 for fresh disposal of the Original Proceeding.

6. Since this matter is decided in non-cooperation of the contesting Opposite Parties, the Original Authority shall do well in issuing notice to the Petitioner therein and dependent on the service of notice on the Petitioner therein and also their response, further proceeding shall be undertaken. All-out attempt shall be made to conclude the proceeding at least within a period of six months thereafter.

7. The Writ Petition stands disposed of with the above order.

(Biswanath Rath)
Judge