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IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.6332 OF 2003

Bansidhar Jena

....

Petitioner(s)

Mr.P.K.Routray,
Advocate

-versus-

***Land Reforms Commissioner and
others***

....

Opposite Party(s)

Mr.S.Mishra,
ASC

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
23.08.2022**

Order No.

03.

1. Heard learned counsel for the Parties.
2. Background involving the case is that the Petitioner preferring Revision Case No.2856 of 2001 came to be allowed vide Annexure-1. Private parties being aggrieved by the order allowing the said objection case preferred Appeal Case No. 55 of 2002. The appeal having been rejected by the Appellate Authority, a revision has been preferred under Section 37(2) of the O.C.H. & P.F.L Act. Again at the instance of the private Opposite Parties. Referring to the Provision of Section of the Act at Section 2(1) and 37(2) read together with Section 36 of the Act, learned counsel appearing for the Petitioner contested the order vide Annexure-3 on the premises that once the party was availing the Appeal provision nothing prevented the party in preferring the statutory revision prescribed under Section 36 of the Act. It is contended that once a party has abandoned the revision scope has no authority to bring the revision under Section 37(2) of the Act. It is in this view of the matter learned counsel appearing for the Petitioner opposes the order at Annexure-3.

3. Mr.Mishra, learned Additional Standing Counsel in his attempt to justify the impugned order takes this Court to the Provision of Section 37(2) of the Act and reading through the same attempted to justify the entertainability of the application herein decided under the provision of Section 37(2) of the Act. It is on the above view of the matter, Mr. Mishra, learned Additional Standing Counsel opposes the entertainability of the Writ Petition. Mr.Mishra, learned Additional Standing Counsel however has no dispute on the allegation of competency of the Director in undertaking the challenge involving exercise under Section 37(2) of the Act.

4. Considering the rival contentions of the Parties, this Court finds the provision under Section 36 & 37 of the O.C.H. & P.F.L Act reads as follows:-

“36. Revision – (1) The Consolidation Commissioner may, on an application by any person aggrieved by any decision of the Director of Consolidation within ninety days from the date of the decision, revise such decision and for the said purpose, he may call for and examine the records:

Provided that no such order shall be passed without giving the parties concerned a reasonable opportunity of being heard.

(2) All orders passed under this section shall be final and shall not be void in question in any Court of law.”

“37. Power to call for records- (1) The Consolidation Commissioner may call for and examine the records of any case decided or proceedings 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.

(2) The power under Sub-section (1) may be exercised by the Director of Consolidation in respect of authorities subordinate to him.”

No doubt Section 36 of the Act provides a revision scope after a party admittedly availed the Section 9 and Section 20 of the Act. For Appeal stage here over, undisputedly Petitioner abandoned the revision scope under Section 36 of the Act.

Reading through the provision at Section 37(1) this Court finds this is a provision enabling the aggrieved party to bring to the notice of the Consolidation Commissioner for his examining the order passed by the subordinate authorities. This provision also enables the Consolidation Commissioner to sou motu initiation of revisions but there is no applying of above provision to the case at hand, keeping in view that the Petitioner claimed provision at Section 37(2) of the Act and disposed by the impugned order.

Section 37(2) of the Act empowers the Director Consolidation to have revision exercise, when such orders are passed by the authority subordinate to him. Further question involved herein if the Director for there is already disposal of Appeal is justified in entertaining the 37(2) of the Act Proceeding?

5. For relevancy of definition at Section(2)(l), this Court takes into account the definition chapter of Odisha Consolidation Manual as provided in Section (2)(l) of the Act which reads as follows:-

(l) “Director of Consolidation” means a person notified as such by the State Government to exercise the powers and to perform the duties of the Director of Consolidation under this Act and the rules made thereunder and shall include an Additional Director of Consolidation, a Joint Director of Consolidation and a Deputy Director of Consolidation appointed by the State Government to discharge any of the functions of the Director under this Act.”

Reading the aforesaid provision, this Court finds the Deputy Director since authorized by way of notification to discharge the power of the Director and the Deputy Director deciding the Appeal in the capacity of Director herein in such event there can be no revision again before the Director to exercise his power under Section 37(2) of the Act.

6. In the circumstance, this Court finds exercise of power by the Director involving order at Annexure-3 is without jurisdiction. This Court thus interferes in Annexure-3 on the premises the revision remain not maintainable and sets aside the order at Annexure-3.

7. The Writ Petition succeeds. No order as to cost.

(Biswanath Rath)
Judge

Swarna

