

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.5526 of 2015

Md.Harun Rasid

.... ***Petitioner(s).***

Mr.H.K.Mund, Advocate

-versus-

Md.Zakir Hussain & Ors.

.... ***Opposite Party(s)***

Mr.S.Mishra, ASC

Mr.S.K.Rath, Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
27.09.2022**

Order No.

09

1. Heard learned counsel appearing for the parties.
2. This matter involves a decision of the competent authority in exercise of power under the provision of Orissa Survey & Settlement Act particularly under Section 15(b) of the Orissa Survey & Settlement Act, 1958. There is no dispute at Bar that opposite parties have taken clear stand to support their case on the basis of Civil Court decree finalized even in R.S.A. No.315 of 2004. It is thus accepted that once Civil Court judgment and decree has brought on record and coming to the rescue of the opposite parties, competent authority should have first decided whether he still has any scope to interfere in the matter? Thus in absence of consideration of material aspects, there is no proper consideration involved herein.
3. Mr.S.K.Rath, learned counsel appearing for the private opposite parties in his opposition to move of the petitioner contended that there is no dispute that there has been reference of Civil Court

decree by the petitioner. Taking this Court to the discussions at page 33 and 40 of the brief, Mr. Rath, learned counsel attempted to submit that once lower authority has taken into consideration, there is presumption that there is consideration on this aspect. Mr. Rath, learned counsel however also submitted that the judgment and decree involving Civil proceedings have no bearing in the dispute itself, he thus objects the entertainability of the writ petition. Mr. Mishra, learned Additional Standing Counsel taking support of the stand of Mr. Rath, learned counsel also objects the entertainability of the writ petition.

4. Considering the rival contentions of the parties, this Court finds there is no dispute at the Bar that private opposite parties in the lower appellate proceeding have clear indication of Civil Court judgment & decree supporting. Apart from other documents also appearing at page 39 & 40 of the brief. In the entire reading of the of the impugned order, this Court finds there is absolutely no consideration of the relevancy or irrelevancy of the Civil Court judgment and decree involved by the authority concerned.

5. In the circumstance, this Court finds once a party take a plea in the rescuing of his cases on the basis of some existing materials the authority is duty bound to take into consideration of such plea and give its finding either side but in accordance with law. In the circumstance and for no dealing with the plea of the opposite parties therein, this Court finds the impugned order at Annexure-5 is not sustainable and thus ought to be interfered with. In the circumstance, this Court interfering in the order at Annexure-5 sets aside the same and remits the matter to the Additional

Commissioner, Settlement & Consolidation, Sambalpur for re-adjudication of the proceeding involved herein only to the limited aspect, if the petitioner herein and the opposite party therein has any right flowing through the Civil Court judgment and decree. Both parties are directed to appear before the authority concerned on 12.10.2022 along with certified copy of this order to take date of hearing. The fresh adjudication of the R.P.Case No.182 of 2013 in the light of observation hereinabove shall be also completed at least within a period of two months thereafter.

sks



(Biswanath Rath)
Judge