

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.15682 OF 2008

Subarna Mohapatra

....

Petitioner(s)
Mr.N.P.Parija,Adv.

-versus-

State of Orissa and others

....

Opposite Party(s)
Mr.S.Ghosh,AGA

CORAM:
JUSTICE BISWANATH RATH

ORDER
29.11.2022

Order No.

04.

1. Heard learned counsel for the Parties.

2. The Writ Petition involves the following prayer:-

“The petitioner therefore prays that your lordships will be graciously pleased to admit the writ application.

AND

Issue Rule Nisi to the opp. Parties to show cause why Annexure 7, 8, 10 and 10(b) will not be quashed.

AND

If the opp. Parties do not show cause or show insufficient case the said rule be made absolute.

AND

Issue any other writ/writs direction/directions order/orders which deems fit and proper to quash Annexure-7, 8, 10 and 10(b).

AND

For this Act of your kindness the petitioner shall ever pray.”

3. The Writ Petition involves the orders at Annexures-7, 8, 10 and 10(b). Taking this Court to the conclusion of the proceeding by the Commissioner in exercise of power under Section 37(1) of the O.C.H. & P.F.L. Act in disposal of R.C. No.419 of 2006, reading through the observations of the impugned order, Mr.Parija, learned counsel for

the Petitioner claims that there is no dispute in the Joint Commissioner Settlement and Consolidation, Balasore leaving Petitioner to file Appeal, since he was aggrieved by the order of the Consolidation Officer but taking this Court to the direction later part Mr.Parija, learned counsel objected when the permission above has been made, the Tahasildar should not have proceeded in passing orders vide Annexure-10 and consequential publication vide Annexure-10(b) are all bad.

4. Mr.Ghosh, learned counsel appearing in his opposition to the claim of Mr.Parija, learned counsel submitted that the actions both Annexure-10 and 10(b) are as a consequence of the direction given in Annexure-7 required no interference in the same.

5. Considering the rival contentions of the parties and looking to the challenge to orders at Annexures-7, 8, 10 and 10(b) coming to consideration of the challenge involving Annexure-7, this Court finds, Petitioner being aggrieved by the order of the Consolidation Officer passed in Objection Case No.1515 of 1982 under Section 11 of the O.C.H. & P.F.L. Act instead of preferring an Appeal preferred the revision before the Commissioner under Section 37(1) of the Act.

6. Considering the contentions raised by the Petitioner since this Court finds the order of the Consolidation Officer not challenged and straightway 37(1) proceeding was initiated, it would have been better if the order involved was challenged in Appeal. In the process, the Commissioner appears to have rightly given permission to the Petitioner to prefer Appeal. As a consequential of advice given therein the Revisional Authority in the conclusion of the proceeding directed the Tahasildar to maintain the records in terms of the order in objection case.

7. Taking into account the challenge by Mr.Parija, learned counsel for the Petitioner involving the Revisional order, this Court

observes, through the revisional exercise, the Commissioner since found the order of the Consolidation Officer was required to be challenge in Appeal has rightly left the matter to the Petitioner to prefer Appeal. It is at these stage order of Consolidation Officer remained intact. Even though the Revision is stated to have been allowed and allowing the Revision is subject to opportunity to the Petitioner to prefer Appeal only. In such situation this Court finds, order of the Consolidation Officer remains intact, if permission is granted to file Appeal, such order is however subject to final outcome in the Appeal. This Court from the further pleading finds there is undisputedly preferring Consolidation Appeal No.04 of 2007.

8. It is unfortunate to note that even though the matter has been argued at length, learned counsel for the Petitioner is not provided with information as to the decision involving the Appeal, if any. Be that as it may for the observation of this Court hereinabove and for the Petitioner already preferred an Appeal, the Tahasildar passing the order at Annexure-10 and consequential preparation of record of right vide Annexure-10(b) are as a consequence of the direction of the revisional authority in the latter part of order at Annexure-7 cannot be held to be illegal in exercise of power. This Court declines to interfere any of the orders hereinabove but while dismissing the Writ Petition this Court observes, the development through Annexure-10 and 10(b) shall remain abided in the ultimate outcome in Consolidation Appeal No.4 of 2007.

8. The Writ Petition thus stands disposed of.

(Biswanath Rath)
Judge

Swarna