

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC NO.14953 OF 2022

Bidyadhar Patra

....

Petitioner

Mr.N.Lenka, Adv.

-versus-

State of Odisha & ors.

....

Opposite Parties

Mr.S.Mishra, ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER
20.6.2022

Order No.

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1. Heard learned counsel for the Parties.
2. The Writ Petition involves alleged unlawful decision of the Competent Authority involving Encroachment Case No.106 of 2021.
3. Referring to the documents at Annexure-1 & 2 of the Brief upon receipt of the notice involving the above Encroachment Case for appearance and objection by 17.9.2021, the Petitioner, vide Annexure-2 on his appearance has already filed his objection along with request for settling the land in his favour in exercise of power under Section 8-A of the OPLE Act. It is alleged, there has been disposal of the above Encroachment Proceeding without consideration of the request of the Petitioner, vide Annexure-2. Learned counsel for the Petitioner thus claims, the matter should be

remitted to the Tahasildar for re-consideration of the issue involving the request of the Petitioner, vide Annexure-2.

4. Mr.S.Mishra, learned Additional Standing Counsel appearing for the O.Ps. in his objection submitted that there is no proof establishing the submission in Annexure-2. Mr.Mishra further contended that even assuming there is submission of the claim, vide Annexure-2 and in the event the Tahasildar has misdirected in disposing of the dispute in non-consideration of the settlement aspect, there is ample scope of agitating the issue before the appellate forum. For availability of statutory appeal forum, Mr.Mishra, learned Additional Standing Counsel resisted for entertaining the Writ Petition at this stage.

5. Learned counsel for the Petitioner however did not dispute for having the statutory remedy of appeal. Learned counsel for the Petitioner referring to the pleading in the Writ Petition asserted the position of the Party already in the matter of settlement of claim, vide Annexure-2.

6. Keeping in view the rival contentions of the Parties and as this Court finds, the Petitioner has a clear remedy of statutory appeal, it is open to the Petitioner to agitate the grounds raised here

also in the Appeal for consideration of the Appellate Authority. It will be open to the Appellate Authority to visit the File of the Tahasildar to find if the Tahasildar's proceeding already involved such consideration and to proceed accordingly. In the process, this Court finds, the Writ Petition is not entertainable at this stage. However, in disposal of the Writ Petition, this Court grants liberty to the Petitioner to prefer Appeal at least within a period of two weeks from the date of this order. In such event the Appeal shall be heard on its own merit and decided keeping in view the observation made herein above. In the event the Petitioner is still in possession of the property, he is protected for six weeks, within which time, the Appellate Authority shall consider and dispose of the Interlocutory Application, if any.

(Biswanath Rath)
Judge

M.K.Rout