

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17690 & 32379 of 2022

In W.P.C.No.17690 of 2022

Susanta Kumar Das

.....

Petitioner

Ms. D.Mohapatra, Advocate

- Versus-

State of Odisha & Ors.

.....

Opposite parties

*Mr.S.P.Panda.AGA,
Mr.A.K.Mohapatra, ADV.
Mr.H.B.Das, ADV*

In W.P.(C).No.32379 of 2022

Jyotsnarani Das

...

Petitioner(s)

Mr.H.B.Das, ADV

State of Odisha & Ors.

-Versus-

...

Opp.Parties

Mr.S.P.Panda.AGA

CORAM:

JUSTICE BISWANATH RATH

ORDER

30.11.2022

Order No.

09

1. Heard the learned counsel appearing for the parties.
2. W.P.C.No.17690 of 2022 involves a challenge to the order in disposal of R.P. Case No.783 of 2015 on the premises that when the power is conferred on the Commissioner under Section 15(b) of the O.S. & S. Act, 1958 authorizing him to take up the issue himself and passing the final order on a request for correction of record-of-right and in the involvement of a joint possession and ownership involving the disputed property, it was left with the

Commissioner to decide on his own without aid and advice of anybody else in completing such exercise. W.P.(C). No.32379 of 2022 though involves a challenge to the same order but on the allegation that even though a notice was issued to the opposite parties therein, the petitioner in W.P.(C).No.32379 of 2022, but condonation of delay has been made before the appearance of the opposite parties therein and the present petitioner. This writ petition involves a challenge to condonation of delay as well as subsequent proceeding also in finality of the proceeding

3. This Court also records the submission of learned State Counsel that he has no disagreement with the proposition of law by stating that Section 15(b) exercise is an independent exercise of the Commissioner and dependant on the material and the claim he himself has to pass an order without taking aid and advise of the Tahasildar more particularly if there is request involving joint ownership. The proceeding has nothing to do with possession of party or not.

4. Considering the rival contentions of the parties on the allegation that once there is involvement of delay, party likely to be affected ought to be heard before condonation of delay, this Court finds law has been settled long since providing opportunity to the party likely to be affected even in the case of condonation of delay.

5. In the circumstance, this Court finds condonation of delay before appearance of party became bad. Thus, while declaring the order on condonation of delay in the impugned order bad, this Court further finds the further proceeding in the finalization of the proceeding also involves illegal procedure adopted therein. Not only there is no involvement of petitioner in the second writ petition but the Commissioner illegally involved the Tahasildar in the matter in spite of clear authority conferred upon him through Section 15(b)

of the O.S. & S. Act. As a consequence, the impugned order at Annexure-3 in the first writ petition which again appears to be Annexure-7 in the second writ petition is set aside. The matter is remitted back to the state of consideration of limitation petition by the Commissioner involving R.P. Case No.783 of 2015 on the allegation that the Commissioner adopting a illegal process in undertaking the proceeding under Section 15(B) exercise, this Court observes for a power conferred on the Commissioner to exercise on its own involving a proceeding under Section 15(b) of the Act, the Commissioner is debarred from taking any aid from the Tahasildar so far it relates to preparation of record-of-right as possession of the parties, if any, has nothing to do herewith and is required to take a decision on the merit involving the case dependant only on the material produced and submission of the parties alone. For there is re-exercise of the revision proceeding, both the parties are directed to appear before the Revisional Court on 12.12.2022 on which date the petitioner in the subsequent writ petition is also directed to file his objection to the limitation petition. In the meantime, copy of the revision as well as limitation petition, if not served, be served on the counsel appearing for the petitioner in the second writ petition.

6. With this observation, both the writ petition succeeds

(BISWANATH RATH)
JUDGE