

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17855 of 2022

Hari Kotia & Ors.

....

Petitioner(s)

Mr. S. Mohanty,
Advocate

-versus-

State of Orissa & Ors.

....

Opposite Parties

Mr. S.P. Panda,
Addl. Govt. Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
15.09.2022**

Order No.

01.

1. This Writ Petition involves a request for setting aside the impugned order under Annexure-11 passed by the Addl. Tahasildar, Mathili. While declining to entertain the request of the Petitioner, the Petitioner was advised to approach U/s.15(b) of the OSS Act, 1958.

2. Petitioner being aggrieved with the impugned order filing this Writ Petition takes shelter of the direction of this Court in disposal of the W.P.(C) No.31133 of 2022 at Annexure-9 then a Government directive dated 21.12.2018 vide Annexure-8 thereby directing the Collectors of the respective Districts for deciding the matters in the light of the observation made therein. It is taking this Court to all these documents learned counsel for the Petitioner attempted to claim that the Petitioner has already got a right/claim to be considered only by the Tahasildar.

3. In the circumstance learned counsel for the Petitioner contended that there has been illegal exercise of power by the Addl.

Tahasildar, Mathili in passing the impugned order and therefore, the impugned order requires to be interfered with.

4. In his opposition Mr. Panda, learned State Counsel submitted that there is a simple direction for considering the request of the Petitioner without expressing any opinion on the merit involved therein. Further taking this Court to the guideline in the Office Memorandum dated 21.12.2018 vide Annexure-8. Mr. Panda, learned State Counsel contended that the guideline does not cover the nature of the claim involved herein. Mr. Panda, learned State Counsel contended that these are simply direction to consider cases, in the category “Ehi Jami Hastantar Jogya Nuhen” which does not apply to the case at hand.

5. It is taking into consideration the rival contentions of the parties, this Court finds, in disposal of the Writ Petition vide Annexure-9 the High Court without expressing any opinion simply directed the Tahasildar to consider the pending application of the Petitioner. It is, at this stage of the matter, looking to the order at Annexures-8 & 12 this Court finds, there may not be any dispute that there have been some instructions directing the Tahasildar to consider the nature of litigation. Now coming to the impugned order this Court finds, there is no dispute that the Addl. Thasildar did not consider the case of the Petitioner, however, in the consideration process, it is observed, the Tahasildar finds difficulty in acceding the request of the Petitioner for the reason assigned therein. There is certain difficulty in taking a decision in the matter of settlement of the land involved in favour of the Petitioner.

6. In the circumstance, this Court finds, there is right advise by the Additional Tahasildar to the Petitioner for undertaking an

exercise U/s.15(b) of the O.S.S. Act, 1958. This Court finds, there is no infirmity in the impugned order requiring to be interfered with. Petitioners if so advised, may undertake Section 15(b) of the O.S.S. Act exercise forthwith.

7. This Court here records the further submission of the learned counsel for Petitioner that the proceeding U/s.15(b) of the O.S.S. Act, 1958 is a cumbersome proceeding and it will take longer time and the Petitioner's case ought to have been considered by the Tahasildar. This Court observes, once a statutory mechanism is there providing opportunity to cure particular defects, the submission of the Petitioner that it is a cumbersome proceeding and disposal of the same will take longer time, cannot be a valid ground to entertain a Writ Petition. This Court, therefore, does not like to entertain the Writ Petition. If the Petitioner is so advised, he may approach as per the direction of the Addl. Tahasildar.

8. The Writ Petition stands disposed of with the above order.

(Biswanath Rath)
Judge