

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.19848 of 2022

Nidhi Parida

....

Petitioner(s).

Miss. Deepali Mahapatra, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr.S.Ghose, AGA

CORAM:

JUSTICE BISWANATH RATH

ORDER

22.09.2022

Order No.

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1. Heard learned counsel appearing for the parties
2. Miss.Mahapatra, learned counsel appearing for the petitioner taking this Court to the entire order involved involving the disputed land involved herein so also parties even involving State Authority in all the stages, such as proceeding under Section 9, 12, 36, writ petition and lastly ended in W.A.No.364 of 2019. It is in this circumstance, Miss.Mahapatra, learned counsel appearing for the petitioner objects even initiation of 37(1) proceeding is not to be allowed to continue for one day, as the order dated 23.03.1999 passed in Objection Case No.849 of 1993 is not only been tested at the instance of the Tahasildar, Astaranga representing the State in Appeal No.61 of 1999 appearing to be an appeal under Section 12 of the O.C.H. & P.F.L. Act, 1972. Not only that the Appellate Authority in allowing the Appeal setting aside the order of the Original Authority in the objection case involved herein, further, it appears, petitioner being aggrieved by allowing the appeal, preferred revision under Section 36 of the O.C.H. & P.F.L. Act, 1972 registered as Revision Petition No.610 of 1999, which came to be disposed of vide Annexure-3 on 28.05.2001. Page- 25 there is clear disclosures

that the revision was involved the very same Objection Case No.849 of 1993 as well as Appeal No.61 of 1999 decided through Annexures-1 and 2 herein. This revision appears to have been dismissed finally vide Annexure-3. It appears, petitioner being aggrieved by the appeal order and revision order preferred a writ petition bearing O.J.C.No.13164 of 2001. Paragraph-2 of the judgment at Annexure-4 clearly discloses very same objection case number as well as appeal and revision numbers also and the appeal and revision order remained in test in the writ petition appears to have been disposed of on contest of learned State Counsel. This writ petition appears to have been allowed on setting aside the appeal order and revision order involved herein and thereby restoring the order passed by the original authority in Objection Case No.849 of 1993. Matter did not end there. Private parties being aggrieved by the Single Bench order at Annexure-4 appears to have preferred Writ Appeal No.364 of 2019. The Division Bench of this Court came to dismiss the appeal in affirmation of the order of the Single Bench. After litigation involving Objection Case No.849 of 1993 ended in a judgment of this Court in Single bench and affirmation of such judgment in a Division Bench, surprisingly State of Odisha through Collector, Puri brings Consolidation Revision No.49 of 2021 appearing to be a Revision under Section 37(1) of the O.C.H. & P.F.L. Act, 1972. Looking to the entire gamut of grounds narrated hereinabove and for the affirmation of the order in the Objection Case No.849 of 1993, for the opinion of this Court there was no occasion of initiating even a proceeding under Section 37(1) of the O.C.H. & P.F.L. Act, 1972. This Court finds the competent authority is in his attempt to sit over the judgment of the writ court not only

passed by the Single Bench but also affirmed in the Division Bench. This Court is of the view there is already serious abuse of process of law by the public authority and such proceeding should not have allowed to continue for a single day even. Mr. Ghose, learned counsel for the State made an attempt in justification of the 37(1) proceeding on the footing that it is simply an attempt of the State to safeguard its interest. This Court here observes in the event State was feeling aggrieved by order in Writ Appeal, there is room for again seeking an exercise under Section 37(1) of O.C.H. & P.F.L. Act.

2. For the material support of the case of the petitioner, this Court finds State Counsel practically has no submission to be made as there is no dispute at Bar that after a proceeding under Section 9 of the O.C.H. & P.F.L. Act concluded in a writ appeal also getting into touching the proceeding under Section 12 and Section 36 of the O.C.H. & P.F.L. Act, Single Bench order and a writ appeal order, there cannot be no bizarre affairs at the instance of public authority in reopening the matter in a clandestine manner.

3. In the circumstance and for the detail narration made hereinabove and as this Court finds there involves serious abuse of power by the public authority, this Court declares the proceeding in Consolidation Revision No., 49 of 2021 as bad in law and accordingly declares such proceeding to be quashed as not entertainable.

4. In the result, the writ petition succeeds.

(Biswanath Rath)
Judge

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