

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.23323 OF 2022

Sanjib Kumar Mohanty

....

Petitioner

Mr.B.Bhuyan, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.P.Panda, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
13.10.2022**

Order No.

03.

1. Heard learned counsel for the Parties.
2. The Writ Petition involves the following prayer :-

“Under these circumstances the Petitioner prays that your Lordships would be graciously pleased to admit the writ petition, issue Rule NISI, calling upon the Opposite Party No.3 to show cause as to why the impugned order dtd.2.5.2022 vide Annexure-7 shall not be quashed and after hearing, the said Rule may be made absolute by issuing the writ of mandamus against the Opp.Party No.3 and thereby quashing the impugned order dtd.2.5.2022 vide Annexure-7 and the kisam of schedule land be brought back to “homestead” in accordance with the order dtd.24.01.2020 vide Annexure-5.

And further pleased to pass any other writ/writs, order/orders, direction/directions as would be deemed fit and proper to grant justice to the Petitioner and to allow the writ application with cost throughout..”

3. Learned counsel for the Petitioner submits, for the established practice and the procedure followed in the matter of

appeal, in case State is aggrieved by the order of the original authority, such appeals are required to be filed through the Collector, being the custodian of the property in the district. The Tahasildar, Puri filing OLR Appeal No.3 of 2022 is per se illegal. It is further urged by the learned counsel for the Petitioner that since the Tahasildar himself was the original authority, there is no room for the Tahasildar to file Appeal being the adjudicating authority already.

4. Learned Additional Government Advocate appearing for the State, however, in his attempt to support the order at Annexure-7 taking this Court to the reasonings contended, there is no room of entertaining the issues taken place and it is only the merit involving the order should be gone into. Learned Additional Government, however, has no dispute on the defective filing of the Writ Petition.

5. Considering the rival contentions of the Parties, this Court finds, in the initiation of OLR Case No.702/2019, the Tahasildar being the original authority, it appears, has ultimately approved the recommendation of the R.O., Puri. This Court ultimately finds force in the submission of the learned counsel for the Petitioner that the Tahasildar being the original authority and being the adjudicating authority had no scope for filing appeal himself and in no

circumstance, he can be treated as a person aggrieved to raise appeal. There may not be any doubt that the Tahasildar's order is appealable but in the event State is aggrieved, it has to file in appropriate format and through appropriate body. It is at this stage, looking to the OLR Appeal No.3 of 2022, vide Annexure-6, this Court finds, the Tahasildar, Puri became the Appellant in filing such Appeal, which is not permissible in the eye of law.

6. In view of the above, this Court further finds, the Tahasildar is incompetent to file such Appeal and in the circumstance, this Court declaring the initiation and entertainable of OLR Appeal No.3 of 2022 at the instance of the Tahasildar, Puri itself is bad also declares, the outcome involving such Appeal, vide Annexure-7 becomes illegal and the order at Annexure-7 is thus set aside.

7. The Writ Petition succeeds.

(Biswanath Rath)
Judge

M.K.Rout