

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.25502 OF 2022

Himansu Bhusan Sahoo and another *Petitioner(s)*
Mr.S.P.Das,Adv.

-versus-

State of Odisha and others *Opposite Party(s)*
Mr.S.Mishra,ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER
12.10.2022

Order No.

01. 1. Heard learned counsel for the Parties.
2. Even though there is allegation that the proceeding involved herein has been decided without inclusion of the Petitioners, it is contended by Mr.Das, learned counsel for the Petitioner that provided there has been full opportunity, Petitioners would have been in a position to satisfy his case. A request is thus made to this Court for interfering in the impugned order at Annexure-5 and remitting the matter for fresh disposal. There is serious objection in entertaining the Writ Petition by the State Counsel on the premises that Petitioners have the clear statutory remedy of Appeal and the grounds raised herein can very well be agitated and adjudicated by the Appellate Authority in exercise of power under Section 12 of the Odisha Survey Settlement Act.
3. Considering the rival contention of the Parties, taking into challenge of the order vide Annexure-5, this Court finds Petitioners have so many grounds not placed on record for consideration of the

original authority. For the opinion of this Court Appellate Court cannot enter into new subjects as it is to simply go by the materials on record and thus observes appeal forums may not be appropriate forum at this stage of the matter. Further entering into the reasons in the impugned order vide Annexure-5 to find if the parties here have opportunity to contest, on perusal of the decision vide Annexure-5, this Court finds, the decision appears to have been passed in absence of the respondent on call as clearly borne at page-43. There is clear noting respondent is absent on call, this Court therefore finds, the decision is undoubtedly ex-parte. In the fitness and as there will be fresh necessity by the original authority to consider the objection of the Petitioners involving the Objection Case No.3858/3155 of 2013 and recording the statement of learned State Counsel that settlement operation in the locality is still going on, this Court interfering in the order at Annexure-5 and setting aside the same, remits the matter to the original authority for reconsideration of the whole issue.

4. As a consequence this Court interferes in the order at Annexure-5 setting aside the same and as a fresh consideration of the proceeding involved, this Court while directing the Petitioners to appear before the competent authority on 4th November, 2022 with his objection and materials support with service of copy of the same on the government pleader there, this Court further directs the competent authority to conclude the proceeding at least within a period of two months from the date of appearance of the Petitioner.

5. The Writ Petition thus stands disposed of.

(Biswanath Rath)
Judge