

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 28710 of 2022

M/s B.K. Crusher Unit, Keonjhar

.....

Petitioner

Mr. T. Mishra, Adv.

Vs.

State of Orissa and others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

01.11.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. T. Mishra, learned counsel appearing for the petitioner and Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order for payment of royalty and penalty in TMC Case No.85/2022-23 under Annexure-5.

4. Mr. T. Mishra, learned counsel appearing for the petitioner contended that the demand so raised against the petitioner by the authority is without following due procedure and without complying the principles of natural justice. It is further contended that had opportunity of hearing been given, the petitioner could have clarified the position of demand raised against it and, as such, the same could not have been demanded.

5. Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties vehemently contended that the order passed by the authority is appealable one and, therefore, the petitioner should have preferred appeal before the appropriate forum in accordance with law instead of filing the present writ petition.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the order impugned has been passed on a field inquiry and at the relevant point of time, the Sub-

Collector, Anandpur and Tahasildar, Ghasipura were present. Therefore, against the order impugned even if appeal lies, it should be filed before the Sub-Collector, Anandpur. But the petitioner raises preliminary objection that without giving opportunity of hearing and without complying the principles of natural justice, the order impugned has been passed. Therefore, this Court is not inclined to relegate the matter to the appellate authority, as stated by Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties to prefer the appeal before the Collector. As such, this Court cannot create a jurisdiction beyond the statute to prefer appeal before any other forum. In any case, since the order of demand in Annexure-5 has been passed without giving opportunity of hearing and without complying the principles of natural justice, the same cannot sustain in the eye of law and is liable to be quashed and is hereby quashed. The matter is remitted back to the Tahasildar, Ghasipura to pass a fresh order in accordance with law by affording opportunity of hearing to the petitioner, as expeditiously as possible. Needless to say, the petitioner shall appear before the Tahasildar, Ghasipura on 15.11.2022, on which date the Tahasildar shall fix a date for hearing of the case of the petitioner.

7. The writ petition is accordingly disposed of.
8. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Ashok/Sangita