

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.32484 OF 2022

Prakash Kumar Mohapatra

....

Petitioner

Mr.K.N.Das, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.P.Panda, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
7.12.2022**

Order No.

02.

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

“In view of the facts and circumstances as detailed above, it is humbly prayed that the Hon’ble Court may graciously be pleased to admit the writ petition and call for the record and issue rule NISI calling upon the Opp.Parties to show cause as to why the impugned orders dtd.24.1.2021 and 30.01.2022 under Annexure-1 & 2 respectively shall not be quashed and as to why the said land in question shall not be restored to its previous status...”

3. Taking this Court to the recording in the third un-number paragraph-3 of the impugned order at Annexure-1, learned counsel for the Petitioner claims, the matter involves therein has been decided in absence of notice to the Party, particularly the Petitioner, who is seriously affected by the impugned direction.

4. Learned State Counsel submits, as the proceeding was re-initiated on the basis of direction of the Appellate Authority, it becomes the responsibility of the Party concerned to attend the Court. It is in the circumstance, learned State Counsel claims, there is no illegality in the same.

5. Considering the rival contentions of the Parties, this Court finds, there is no dispute that by virtue of the direction of the Appellate Authority in disposal of Revenue Appeal No.2/2020, B.B.Case No.60/1999 got revived. Paragraph-3 of the impugned order at Annexure-1 disclosed as follows :-

“In obedience to the order of Appellate Authority in Revenue Appeal No.02/2020 & basnig on the attached documents i.e. affidavit submitted, fresh notice was issued to Sri Prakash Kumar Mohapatra on 4.10.2021, who was legal heir of the BBRT Smt. Sakuntala Mohapatra. But notice could not be served as there was none to receive the notice. However, notice was served by way of affixing the notice on the wall in presence of witnesses. The Noticee was absent on the day of hearing though the notice was served properly.”

6. Reading the above, this Court finds, for there is involvement of notice prospect there should not be any doubt that the proceeding has been undertaken without sufficiency of notice on the Petitioner. In the circumstance, this Court finds, the ex parte impugned order at Annexure-1 remains unsustainable, which is hereby interfered with and set aside. The appellate order since did not take into

consideration the ex parte aspect properly also remained unsustainable and Annexure-7 thus also interfered with and set aside. As a consequence, the order at Annexure-2 is also set aside. The matter is remitted to the Competent Authority for determination in B.B. Case No.60/1999 but in the involvement of the Petitioner and concluding such proceeding within a period of two months from the date of appearance of the Petitioner. The Petitioner is directed to appear before the Competent Authority in B.B.Case No.60/1999 on 19.12.2022. Fresh disposal involving B.B.Case No.60/1999 shall have nothing to do with the observation in the impugned orders at Annexure-1 & 2.

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

(Biswanath Rath)
Judge

M.K.Rout