

32 **28.03.
2022**
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WPLRT 23 of 2022

Hemanta Kumar Ghosh and another
Vs.
State of West Bengal and others.

Mr. Nirbanesh Chatterjee.
... for the petitioners.

The affidavit of service filed in Court today is kept with the record.

A proceeding against the dead persons is incompetent, as any order against the dead person is a nullity.

We find from the cause title of the instant writ petition that despite having aware of the fact that the respondent nos. 4 and 5 are dead yet they are arraigned as party respondents in the instant writ petition.

A plea is sought to be raised that despite having aware that the aforesaid respondents are dead, the tribunal forced the petitioners to implead them as party, which, in fact, has been done. After the service returned came with the remarks 'deceased', the impugned order is passed for taking appropriate steps as those party respondents are dead by this time.

We are unable to appreciate the aforesaid submission of the learned Advocate for the petitioners. If the petitioners were all along aware that the persons are dead and one of the issues raised in the writ petition was that during pandemic, the record of rights were corrected and/or modified by inserting the name of the

dead persons, there is no occasion to implead the dead persons as party to the said proceeding.

If the tribunal was of the view that the dead persons are to be made party, it could have exercised its *suo motu* power in this regard and the petitioners are not expected to succumb to such observation when the same is not reflected from the record. Once the dead persons are made party, it is the duty of the petitioners to take appropriate steps, which, in fact, has been passed in the impugned order.

Since the writ petition is filed by impleading the dead persons, which was well within the knowledge of the petitioners, the same is not maintainable.

The writ petition is, thus, dismissed.

There shall, however, be no order as costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)