

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5789 of 2005

Baman Charan Panda and others ***Petitioners***
Mr. K.M.Mishra, Advocate

-versus-

Narayan Panda and others ***Opp. Parties***
Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party Nos.3 & 4)
Mr. T.R. Meher, Advocate
(For Opposite Party No.1)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
18.05.2022**

Order No.

3.
 1. This matter is taken up through Hybrid mode.
 2. Though this matter was listed today under the heading 'For Orders', however, on the consent of learned counsel for the parties, the same is taken up for hearing and final disposal.
 3. Petitioners in this writ petition seek to assail the order dated 29th January, 1999 (Annexure-3) passed in Consolidation Revision No.2262 of 1992/849 of 1994, whereby the Joint Commissioner, Consolidation and Settlement, Odisha, Cuttack, allowed the Revision by setting aside the order passed by the Deputy Director in Consolidation Appeal Nos.104/91 and 111/91.
 4. Mr. Mishra, learned counsel for the Petitioners submits that by the time the impugned order under Annexure-3 was passed, one Paramananda Panda, who was arrayed as Opposite Party No.1 to the Revision Petition, had already died. It is his

submission that the legal heirs of said Paramananda Panda (Petitioner Nos.1 to 3 in the writ petition) were not substituted. In support of his contention, he has enclosed the death certificate of said Paramananda Panda (Annexure-1), which disclosed that Paramananda died on 9th June, 1998. He further submits that pursuant to order under Annexure-3, Tahasildar, Jajpur directed to settle the land in question in favour of Banchhanidhi Panda and Agani Devi (Panda), who were Petitioners in the aforesaid Revision Petition. During pendency of the proceeding before Tahasildar, Jajpur, Hadibandhu Panda, who was Opposite Party No.2 in the revision, died on 10th December, 1999. In support of his case, Mr. Mishra, learned counsel for the Petitioners referred to the death certificate as at Annexure-2. He, therefore submits that the impugned order under Annexures-3 and 4 being passed against dead persons, are null and void.

5. In order to test the veracity of the submission made by Mr. Mishra, learned counsel for the Petitioners, this Court, vide order dated 2nd March, 2015 directed as under :-

“ In such state of affairs, in the fitness of things, and in the interest of justice, this Court directs Tahasildar, Jajpur to cause an enquiry with regard to the date of death of Paramananda Panda, S/o Shyam Sundar Panda as well as Hadibandhu Panda, S/o Ramachandra Panda of village Jahanpur, PS/Dist: Jajpur and place the same in the Court through learned counsel for the State within a period of a month hence.”

6. Mr. Mishra, learned ASC submits that although he has received instructions, but could not file affidavit in compliance of order dated 2nd March, 2015. He, however, submits that the dates of death as at Annexures-1 and 2 to the writ petition are correct.

7. Mr. Meher, learned counsel for the contesting Opposite Party No.1 submits that he has no instruction with regard to the above.

8. Taking into consideration the rival contentions of the parties, this Court is of the considered opinion that since the impugned orders under Annexures-3 and 4 have been passed against dead persons those are not sustainable and accordingly the same are set aside. The matter is remanded back to Joint Commissioner, Consolidation and Settlement, Odisha, Cuttack for fresh adjudication of the matter in accordance with law after substitution of legal heirs of Opposite Party Nos.1 and 2 therein. It is made clear that this Court has not expressed any opinion on the merits of the impugned orders.

9. In order to avoid delay, parties are directed to appear before the Joint Commissioner, Consolidation and Settlement, Cuttack on 20th June, 2022 along with certified copy of this order to receive further instruction in the matter.

10. With the aforesaid observation and direction, the writ petition is disposed of. Consequently, all the Interlocutory Applications are also disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge