

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.17749 of 2009

Samson Das & Ors.

....

Petitioner(s)

Mr.P.K.Nanda , Adv.

-versus-

State of Orissa & Ors.

....

Opp.Party(s)

Mr.U.K.Sahoo, ASC.

Mr.N.P.Parija, Adv.

CORAM:

JUSTICE BISWANATH RATH

ORDER

13.12.2022

Order

No.

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1. This writ petition involves a challenge to the mutation order at Annexure-5, being an order in Mutation Case No,1420 of 2004 and Annexure-6, the order involving Mutation Appeal No. 8 of 2008. In course of argument, copy of the order in RSA No.275 of 2004 is brought to the notice of the Court and a claim is made that in the meantime the RSA involving very same property has come to be closed. Learned counsel for the petitioners thus requests for passing appropriate order keeping in view the development in the meantime.

2. Mr. Parija, learned counsel appearing for the contesting opposite party however contest to the submission of Mr.Nanda, and submits that there is Civil Proceeding still pending.

3. Considering the rival contentions of the parties and on perusal of the copy of the order dated 11.03.2022 passed in RSA No.275 of 2004, this Court finds there is clear recording in the above order in dismissal of the appeal but for non-prosecution. In the event the RSA no more survives. Pendency of a restoration application cannot automatically revive the second appeal.

3. Be that as it may, for the nature of dispute, this Court observes preparation of record through Mutation case neither

creates right nor extinguishes the right of party. It is at this stage, this Court taking note of Civil Dispute involving the party involving the very same property stood closed. For the settled position of law, the decision in Civil proceeding shall not only bind the parties involved but will also bind the mutation authorities in preparation of record of right. Preparation of mutation record shall be ultimately dependant on the final outcome in the Civil Proceeding.

4. With this observation, the writ petition stands disposed of.

(Biswanath Rath)
Judge

Sks

