

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.205 of 2012

Director of Estate, General Appellants
Administration Department,
Bhubaneswar and others

Mr. Debakanta Mohanty, AGA
-versus-

Vishnu Kumar Gupta Respondent
None

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
27.07.2022

Order No.

07. 1. Despite service of notice, none appears for the Respondent.
2. The challenge in the present appeal by the Director of Estate as well as the Tahasildar and the Estate Officer, Bhubaneswar is to an order dated 17th March, 2011 passed by the learned Single Judge allowing Writ Petition (Civil) No.9033 of 2008 filed by the Respondent.
3. The background facts are that the present Respondent had filed the aforementioned writ petition aggrieved by an order dated 8th November, 2007 passed by the Settlement Officer, Cuttack-Puri Major Settlement, Camp Court at Bhubaneswar in Appeal Case No.371 of 2004. The Petitioner's father was the Respondent in the said appeal, which was filed challenging the record of rights (RoR) published under Section 12 of the Orissa Survey and Settlement Act ('Act') for seeking correction in the entries made

in the RoR in favour of the father of the Petitioner. One question that was raised before the learned Single Judge was whether the order in appeal could have been passed against the Petitioner's father, who had expired by the time the order came to be passed. In other words, could such order be passed without substituting the Respondent i.e. (Writ Petitioner) in place of his father, who was the Respondent in the said appeal.

4. Two objections were raised before the learned Single Judge—one was that the writ petitioner had in fact been served with copy of the notice in the appeal. Learned Single Judge noted that there had in fact not any substitution of the Respondent in the appeal by the writ petitioner in his capacity as son.

5. The second objection was that the remedy by way of revision was available under Section 25 of the Act against the order in appeal. However, learned Single Judge rejected that plea on the ground that the order in appeal was entirely without jurisdiction.

6. The only plea raised here is that even while quashing the order in appeal, the matter should have been remanded by the learned Single Judge to the Appellate Authority to proceed afresh after issuing notice to the present Respondent. Indeed, the failure to carry out a substitution of the Respondent in appeal by the present Respondent, who was the legal heir, is a procedural error. Therefore, while the order passed by the learned Single Judge quashing the order passed in the appeal cannot be faulted, there is merit in the contention that the appeal should thereafter have been restored to the file of the Appellate Authority for being proceeded with afresh after issuing notice to the legal heirs of the

Respondent by first substituting the deceased Respondent with his legal heirs. The learned Single Judge, in the impugned order, appears to have overlooked this aspect of the matter.

7. Consequently, while not interfering with the quashing of the order in appeal by the learned Single Judge, the Court directs that the said Appeal Case No.371 of 2004 shall stand restored to the file of the Settlement Officer, Cuttack-Puri Major Settlement, Camp Court at Bhubaneswar for being proceeded with in accordance with law. The case will now be listed before the said authority on 26th September, 2022 and the said authority will proceed only after carrying out the substitution of the Respondent in the Appeal with his legal heir i.e. the present Respondent and after issuing notice to the present Respondent.

8. Till the disposal of the said appeal by the authority, i.e. Settlement Officer, status quo as of today shall be maintained. The Settlement Officer will proceed afresh uninfluenced by the observation on merits by the learned Single Judge.

9. The appeal is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge