

ORISSA HIGH COURT : C U T T A C K

RVWPET NO.81 OF 2013

(Arising out of W.A.No.534/2011 disposed of on 13.12.2012.)

Ramkinkar Singh Deo

: Petitioner

-Versus-

The Collector, Nuapada & ors.

: Opposite Parties

For Petitioner

: M/s.C.A.Rao, Sr.Adv.
Mr.S.K.Behera, A.K.Rath,
G.B.Panda & S.K.Parida

For O.Ps.1 to 4

: Mr.S.P.Panda, AGA

For O.P.6

: M/s.R.K.Mohanty, Sr.Adv.
& A.Mohanty

J U D G M E N T

CORAM :  **सत्यमेव जयते**

JUSTICE BISWANATH RATH

JUSTICE GOURI SATAPATHY

Date of Hearing & Judgment : 7.12.2022

1. This Review Petition is taken up for admission with the following prayer :-

“It is, therefore, prayed that Your Lordships would be graciously pleased to consider the facts stated above, admit the review petition, and issue notice to the LR's of Respondent No.5 and after hearing the counsel for parties and on consideration on the materials on record, recall the order in W.A. No.534/2011 dated 13.12.2012 and pass order afresh, as per pleading of the

parties and point/question involved in W.A. No.534/2011 for adjudication.

And any other order passed as may be deemed fit and proper for which the petitioner shall as in duty bound ever pray.”

2. Background involving the Case is, Writ Appeal No.534/2011 came to be disposed of by judgment of this Court dated 13.12.2012. There was filing of SLP(C) No.9325/2013 before the Hon’ble apex Court involving the following substantial questions of law :-

“A. Whether an order/judgment is null and void and non est in the eye of law if the same is passed against a dead person ? If so, whether the present impugned order of the High Court rendered null and void as the same has been passed against the Opp.Party No.5, who died much prior to final hearing ?

B. Whether a suit or appeal is allowed to continue only when an application U/o-22 Rule-3 for substitution of legal heirs is made and allowed on that behalf ?

C. Whether a court is powerless to hear a suit or appeal on merit when the said suit or appeal is abated due to non-substitution of legal heirs of deceased appellant if he is a sole and only party to the appeal/suit ?

D. Whether confirmation of the High Court in settling the tenancy right as Bhag Chasi U/s.-36-A of the OLR Act in favour of dead party is totally illegal, wrong and contrary to law where mandatory requirements/procedures stipulated in Rule 27-B and 27-C of the Rules are not complied with ?

E. Whether the High Court was error to say that no further enquiry is required as the landlord himself admitted the respondent as tenant in his affidavit in a Ceiling proceedings when the Revenue Officer himself reported that such admission was not correct, after making due enquiry as the respondent was not a genuine tenant ?

F. Whether an application U/s-36-A is maintainable in the eye of law when the said application has to be made in Form 19 as per Rule 27-A of the Rules.”

3. On the SLP being taken for admission, it appears, finding prima facie satisfied through the substantial questions of law framed at Paragraph-A herein above, the Hon'ble apex Court came to dispose of the SLP by its order dated 8.3.2013 directing as follows :-

“Heard learned senior counsel for the petitioners and perused the relevant material.

According to the learned counsel for the petitioner on the date of passing of the impugned order, the sole appellant therein was no more and he died on 19.2.2012. If the above statement is correct, the petitioners are free to approach the High Court by way of filing a review petition.

With the above observation, the special leave petition is disposed of.”

From the nature of dispute in the Hon'ble apex Court direction in disposal of the SLP involved herein, this Court finds, the sole question required to be determined as to when the death of the sole appellant took place on 19.2.2012 and in the existence of application for substitution, vide Misc. Case No.187/2012 filed on 24.4.2012 keeping such application pending, if the Division Bench deciding the Writ Appeal on merit is justified ?

4. Undisputed fact remains to be the Writ Appeal was filed on 17.10.2011, the death of the sole Appellant took place on 19.2.2012, Misc. Case No.187/2012 for substitution of the sole Appellant having been filed on 24.4.2012 remained undisposed of and Writ Appeal No.534/2011 got disposed of on 13.12.2012. There is no dispute at the Bar that the Writ Appeal involved herein got disposed of in non-

consideration of the substitution of sole Appellant, who admittedly died during pendency of the Appeal and even during pendency of Misc. Case No.187/2012. There is also no dispute at the Bar that the Writ Appeal judgment was passed against a dead person, more particularly, the Appellant.

5. There is support of law in taking out such judgment in the case of *Amba Bai & ors. vrs. Gopal & ors.* reported in 2001 (II) OLR (SC)-261. In the settled position of law, the judgment against the dead person remains void. This Court finds, the Writ Appeal judgment is not sustainable in the eye of law. In the process, this Court allowing the Review Petition sets aside the judgment dated 13.12.2012 passed in Writ Appeal No.534/2011. Writ Appeal No.534/2011 should go to the stage of consideration of Misc. Case No.187/2012.

6. The Review Petition succeeds. No order as to cost.

(Biswanath Rath)
Judge

(Gouri Satapathy)
Judge

Orissa High Court, Cuttack.
The 7th December, 2022/M.K.Rout, A.R.-cum-Sr.Secy.