

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 3270 OF 2022

Umakanta Panda and another ***Petitioners***
Mr. Umesh Chandra Behura,
Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. Dillip Kumar Mishra,
Additional Government Advocate
(For Opp. Party Nos.1 and 2)
Mr. Ashok Kumar Mohapatra,
Advocate
(For Opp. Party No.3)

CORAM:
JUSTICE K.R.MOHAPATRA

ORDER
22.02.2022

Order No.

I.A. No. 2321 of 2022

3.
 1. This matter is taken up through hybrid mode.
 2. This is an application for leave to prosecute the writ petition.
 3. Taking into consideration the submission made by learned counsel for the Petitioner, prayer is allowed. The Petitioners are permitted to prosecute the writ petition.
 4. The I.A. is accordingly disposed of.

(K.R. Mohapatra)
Judge

W.P.(C) NO. 3270 OF 2022

4.
 1. This matter is taken up through hybrid mode.
 2. The Petitioners in this writ petition seek for a direction to set aside the order dated 16th August, 2021 (Annexure-1) passed by the

Tahasildar, Pipili in Misc. Case Nos. 31 and 32 of 2021, whereby he allowed an application under Section 152 C.P.C. by correcting the final order passed in Misc. Case No. 50 of 2016 incorporating the Chaka of the Petitioners without affording them an opportunity of hearing.

3. Mr. Behura, learned counsel for the Petitioners submits that although Misc. Case No. 50 of 2016 was initiated pursuant to the order of this Court in W.P.(C) No. 12194 of 2014 upholding the order passed by the Consolidation Officer in Misc. Case No. 1 of 1995, the Petitioners being the affected persons were not given an opportunity of hearing and the impugned order under Annexure-1 was passed behind their back. Thus, they are highly prejudiced. Hence, this writ petition has been filed to set aside the order under Annexure-1.

4. Mr. Mohapatra, learned counsel appearing for the private Opposite Party No.3 vehemently objected to the same and contended that assailing the order passed by the Consolidation Officer in Misc. Case No. 1 of 1995, which includes the Chaka of the Petitioners, Appeal No.32 of 2021 along with an application for condonation of delay has already been filed by the Petitioners. However, such contention is strongly refuted by learned counsel for the Petitioners.

5. The contention of Mr. Mohapatra, learned counsel for the private Opposite Party No.3 is that Misc. Case No. 50 of 2016 was initiated only to give effect to the order passed in Misc. Case No.1 of 1995, which was approved by the Deputy Director, Consolidation vide order dated 12th July, 1996. Thus, the Petitioners can work out their remedy in the appeal already filed by them. Hence, this writ petition is not maintainable.

6. Taking into consideration the submissions made by learned counsel for the parties, this Court finds that the rival contentions of learned counsel for the parties involve serious disputed questions of fact. However, there is no dispute to the fact that the Petitioners were not served with any notice, when Misc. Case Nos.31 and 32 of 2021 arising out of Misc. Case No.50 of 2016 were taken up incorporating the Chaka of the Petitioners in the final order passed in Misc. Case No. 50 of 2016.

7. In that view of the matter, this Court disposes of this writ petition with a direction that in the event the Petitioners file an application for recall of the order under Annexure-1 and to give them an opportunity of hearing, the Tahasildar, Pipili-Opposite Party No.2 shall do well to consider the same in accordance with law at an early date giving opportunity of hearing to the parties concerned. Learned counsel for the parties submit that they will inform the parties to appear before the Tahasildar, Pipili on 3rd March, 2022 along with certified copy of this order to receive further instruction in the matter. Application, if any, for recall shall be filed by that date as undertaken by learned counsel for the Petitioners. In such event, the Tahasildar, Pipili-Opposite Party No.2 shall do well to consider and dispose of the application in accordance with law, as expeditiously as possible, preferably within a period of one month therefrom.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks