

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 171 of 2022

1. Snigdharani Nayak
2. Sumanta Kumar Acharya **Appellants**

Ms. Deepali Mahapatra,
Advocate

-versus-

State of Odisha **Respondent**

Mr. J. P. Patra,
Addl. Standing Counsel

CORAM:
JUSTICE S.K. SAHOO

ORDER
28.03.2022

Order No.

01. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

The appellants have filed this appeal challenging the order dated 04.02.2022 passed by the learned Presiding Officer, Designated Court under the OPID Act, Cuttack in I.A. No. 03 of 2019 whereby the petition filed by the State of Odisha has been allowed and the ad-interim order of attachment made by the Government vide Notification No. 39167 dated 15.12.2018 in respect of the property as per Schedule 'A' and 'B' attached to Ext.2 has been made absolute and further direction has been made to the competent authority to sell the immovable property as per Schedule 'A' in public auction and realize the amount

of money kept in the frozen account and on realization of the said amount, both in respect of movable and immovable, the same shall be distributed among the investors/depositors equitably.

Learned counsel for the appellants strenuously urged that before passing the impugned order, the appellants have not been served with notices and were not given opportunity to file their show cause and thus, the principle of natural justice has been violated. It is further argued that the impugned order has been passed against a dead person i.e. respondent no.5 and thus, the impugned order is not sustainable. Learned counsel further submitted that as per the charge sheet, the husband of appellant no.1, namely, Jagat Jiban Nayak, who was the Managing Director of M/s. Orissa Homes Pvt. Ltd., M/s. Trisate Estates and Construction Pvt. Ltd. and Sudestna Educational Orissa and Today's +2 Science and Commerce College, Odisha collected Rs.7,54,39,568/- from 153 intending buyers. He has invested Rs.5,21,30,327/- for construction of flats and the land over which the flats have been constructed have not been assessed by the investigating agency and if the same would have been taken into consideration, the entire money invested by the husband of appellant no.1 would be more than the deposits accepted.

On perusal of the impugned order, the learned trial Court in paragraph 3 has observed as follows:

"3. Notices issued to O.P.No.1 M/s. Odisha Homes Pvt. Ltd., O.P.No.2 Trisat Estates and Construction Pvt. Ltd. and O.P.No.7 Sudustna Educational Trust represented by its Managing Director Jagatjiban Nayak and O.P.No.3, Jagatjiban Nayak himself returned after personal service and those Ops. remained absent and no steps had been taken on their behalf and no show cause has been filed on their behalf for which O.Ps. no.1,2,3 and 7 were set ex parte. Similarly, although notice was served on O.P.No.6 Snigdharani Nayak, personally but she neither appeared nor filed the show cause for which she was also set ex parte. Similarly, as notices issued against O.P.No.4 and 5 returned unserved on the prayer of the applicant, paper publication was made for those two O.Ps. and in spite of such paper publication in daily newspaper Samaj dated 21.07.2019, they did not appear and they were held set ex-parte. Thus, all the O.Ps. held ex parte and the case is heard ex parte against them."

From the above observation of the learned trial Court, it reveals that so far as appellant no.1 Snigdharani Nayak is concerned, notice was duly served on her, but she neither appeared nor filed show cause and so far as appellant no.2 Sumanta Kumar Acharya is concerned, though notice issued to him was returned unserved, paper publication was made on 21.07.2019, but he also did not appear for which he was set ex parte. Thus, the submission made by the learned counsel for the appellants that the appellants have not been served with the notices before passing the impugned order, cannot be accepted. Steps as provided under law were taken for

service of notices on the appellants and since they did not avail the opportunity, did not come forward to file objection and participate in the proceeding, they cannot claim any prejudice. Principle of natural justice is known as 'divine justice' and 'fair play in action. When opportunity of being heard is offered to the person against whom the action is sought to be taken, but he did not avail himself of that opportunity, he cannot make complain on irrelevant grounds.

The submission of the learned counsel for the appellants that the opposite party no.5 before the learned Designated Court is dead and therefore, the impugned order having been passed against a dead person, is not sustainable. Except taking the averments in paragraph 7 of the appeal memo that the opposite party no.5 died on 16.05.2021, no documentary evidence has been adduced in that respect. Not only the opposite party no.5, but all the opposite parties in the I.A. proceeding before the learned Designated Court were set ex-parte.

In the case of **Bhagirath Mal -Vrs.- Bhagwan Dutt, reported in A.I.R. 1996 Rajasthan 27**, a Single Judge of Rajasthan High Court held that decree passed against a dead person is not a nullity when the deceased defendant had not filed written statement and had not made legal appearance during pendency of the trial and in fact the trial has proceeded against him ex parte. The appeal against such decree cannot be dismissed for not

bringing legal representatives of deceased on record.

In the case of **Jarnail Singh & Ors. -Vrs.- Saudagar Singh, reported in 2003(3) RCR (Civil) 625**, a Single Judge of Punjab and Haryana High Court held that where the Court proceeds with the case of ignorance of the fact of death of a person and passes a decree, that decree cannot be treated as a nullity. Similar view was taken by a Single Judge of Madras High Court in the case of **Abdul Azeez Sahib -Vrs.- Dhana-bagiammal& Ors. reported in A.I.R. 1983 Madras 5**.

In the case in hand, there was no material before the learned Designated Court that the opposite party no5. was dead. Therefore, the contention of the learned counsel for the appellants is not accepted.

The contentions raised by the learned counsel for the appellants relating to the invested amount by the husband of the appellant no.1 in the construction of flats so also the value of the land was not brought on record by filing show cause and bringing any material on record before the learned Designated Court. On the other hand, in paragraph 11, the learned Designated Court has held that the amount to be realized from the property attached is very less from the collected money on behalf of the opposite parties.

In view of the foregoing reasons, I do not find any merit in the appeal, which is accordingly dismissed.

With the disposal of the appeal, the pending interim application stands disposed of.

(S.K. Sahoo)
Judge

PKSahoo

