

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 12539 OF 2022

Pradeep Kumar Patra and others* *Petitioners

Mr. Pabitra Kumar Nayak, Advocate

-versus-

The Collector and District Magistrate, Mayurbhanj and others* *Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
20.05.2022

1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 11th March, 2022 (Annexure-5) passed by learned Additional District Magistrate, Mayurbhanj in Regulation-II Appeal Case No.01 of 2020, whereby he dismissed the appeal filed by the mother of the Petitioners under Section 3(3) of the Orissa Schedule Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956.
3. Mr. Nayak, learned counsel for the Petitioners submits that the matter was posted to 17th April, 2020 on which date no court was held due to precautionary measure taken for COVID-19 and the case was adjourned to 29th May, 2020. However, the matter was never taken up on 29th May, 2020 due to continuance of lockdown. Thus, the Petitioners could not know the date of posting of the case. However, the case was taken up on 17th September, 2021 without serving any notice on the Petitioners. Thereafter, the case was adjourned to several dates and ultimately the impugned order has been passed without affording opportunity of hearing to

the Petitioners. He further submits that during pendency of the appeal, the mother of the Petitioners, who was the appellant in Regulation-II (Appeal) Case No.01 of 2020, died on 9th August, 2020. The Petitioners have fair chance of success in the appeal. Had the Petitioners been given opportunity to participate in the hearing of the appeal, the result would have been different. In that view of the matter, he prays for setting aside the impugned order and to remit the matter back to the Additional District Magistrate, Mayurbhanj to adjudicate the Regulation-II (Appeal) Case No.01 of 2020 afresh giving opportunity of hearing to the parties concerned.

4. Mr. Mishra, learned Additional Standing Counsel submits that lack of knowledge of the Petitioners about the proceeding of the case is doubtful. It appears from the order sheet that on the final date of hearing, the Respondent No.3 had participated in the hearing of the appeal. If he could know about the date, there is no reason as to why the Petitioners could not know about the date of posting of the appeal. He, therefore, submits that there is no substance in the submission of learned counsel for the Petitioners and prays for dismissal of the writ petition.

5. Taking into consideration the rival contentions of the parties, this Court finds that the grievance made by the Petitioners requires factual adjudication and the appellate authority, namely, Additional District Magistrate, Mayurbhanj is competent to take a decision on the same. It further appears that the impugned order has been passed against a dead person.

6. In view of the above, this writ petition is disposed of with a direction that in the event the Petitioners make an application for recall of the order dated 11th March, 2022 under Annexure-5 within a period of two weeks hence along with certified copy of this order stating the grounds therein, the Additional District Magistrate,

Mayurbhanj-Opposite Party No.2 shall do well to consider the same in accordance with law and pass a reasoned order thereon giving opportunity of hearing to the parties concerned.

7. Till a decision is taken on the petition for recall of the order under Annexure-5, if filed within the time stipulated as above, the order under Annexure-5 shall not be given effect to, if not implemented in the meantime.

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

(K.R. Mohapatra)
Judge

bks

