

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.16637 OF 2022

Gyana Ranjan Ghadei

....

Petitioner

Mr.J.Panda, Adv.

-versus-

The Collector, Nayagarh & ors.

....

Opposite Party(s)

Mr.S.Mishra, ASC

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
11.7.2022**

Order No.

01. 1. Heard learned counsel for the Parties.
2. The Writ Petition involves a challenge to the order at Annexure-3 thereby rejecting Mutation Case No.913/2020.
3. Learned counsel for the Petitioner alleges that Mutation Case No.913/2020 was moved on the basis of an unregistered Will. Learned counsel for the Petitioner further advances his submission to the extent that for the death of brother of the Petitioner, a co-sharer in the meantime, the Petitioner becomes the sole owner of the property involved in the Will. Taking recourse to the decision of this Court in *Miss Rajashree Mohanty vrs. Mrs. Amita Mohanty & ors* reported in 2014(Supp.II) OLR-812, learned counsel for the Petitioner claims, the reasoning in rejecting the Mutation Case

remains contrary to the law of land settled through this Court. In the circumstance, learned counsel for the Petitioner makes a request to this Court for interfering with the impugned order at Annexure-3 and for remanding the Mutation Case Proceeding to the Tahasildar, Nuagaon to consider the case of the Petitioner keeping in view the direction of this Court in disposal of the aforesaid reported case.

4. Mr.S.Mishra, learned Additional Standing Counsel for the O.Ps. however bringing to the notice of the Court the observation of the Tahasildar in dismissal of the Mutation Case submits that the impugned order is dependent on the report of the Revenue Inspector, Mahitama and there is no placing of such ground or case before the Tahasildar requiring him to consider such aspect and the Petitioner makes a surprise ground in this Court, which remains unentertainable.

5. Considering the rival contentions of the Parties, this Court finds, there is no doubt that the Petitioner has not taken recourse to any such decision in the decision process by the Tahasildar. Be that as it may, once the matter is decided by this Court observing no requirement of probate of Will in the particular District, the decision governs the filed. For the opinion of this Court, there should be re-consideration of the request of the Petitioner involving Mutation

Case No.913/2020 also taking into consideration the decision in Miss Rajashree Mohanty (supra).

6. In the process, this Court interferes with the impugned order at Annexure-3 and remands the Proceeding to the Tahasildar, Nuagaon with direction to the Tahasildar, Nuagaon to consider the case of the Petitioner afresh while also keeping in view the decision settled through this Court in the above reported decision, copy of which shall be supplied by the Petitioner involved along with copy of the order of this Court to the Tahasildar at least within a period of seven working days. After receipt of copy of this order along with the citation indicated herein above, the Tahasildar shall do well in disposing of Mutation Case No.913/2020 at least within a period of one and half months from the date of communication of this order.

7. The Writ Petition stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout