

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.21419 OF 2017

Sunakar Sahu

....

Petitioner

Ms.P.Naidu, Adv.

-versus-

State of Orissa & ors.

....

Opposite Party(s)

Mr.S.Mishra, ASC
Mr.P.C.Acharya, Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
16.11.2022**

Order No.

7. 1. Heard learned counsel for the Parties.
2. On consent of the Parties, the matter is taken up for final hearing.
3. In course of hearing, reading through the order dated 24.6.2016 passed by the Director of Consolidation, Cuttack, it has been brought to the notice of the Court by the learned counsel for the Petitioner that based on intimation of death of so many Opposite Parties. It is alleged, even though the Director has taken note of such aspect but proceeded to decide the matter without bringing the substitution and further deciding the matter in absence of the Petitioner.

4. Mr.Acharya, learned counsel for the contesting O.P.3 taking this Court to the order-sheet attempted to submit that there is final hearing only after substation aspect gets completed and the disposal of proceeding was made recording non-cooperation of the Petitioner herein.

5. Reading the order-sheet on Record, this Court finds, by order dated 24.6.2016, the Director appears to have passed the following :-

“Case called. Both the parties are present & heard. The learned counsel for the O.Ps. filed power & submit that O.P. Nos.2, 6, 7 & 10 are dead. Hence the Petitioner is directed to file substitution petition in respect of the deceased O.Ps. and submit postal requisites for service of notices on them before the date of hearing.
Case to 02.09.2016.”

6. It appears the case was posted to 2.9.2016. There is Office Note that as per Resolution dated 1.9.2016, the case was adjourned to 25.11.2016. Office Note further shows on 25.11.2016, the case was posted to 16.12.2016 for orders. The Order-sheet under Annexure-1 nowhere discloses any order to have been passed by the Director on the question of substitution. Further looking to the impugned order, this Court finds, there has been ex parte disposal; may be in non-cooperation of some Parties contesting the matter. As a whole, this Court finds, there should not have been final hearing in absence of an order of the Competent Authority on the issue of

substitution. This Court here records the submission of Mr.Acharya, learned counsel for O.P.3, the Petitioner therein that his client has already taken steps for substitution. As a whole, this Court finds, in absence of any order on the substitution aspect being completed, there should not have been undertaking of hearing process.

7. In view of the above, this Court interfering with the impugned order under Annexure-2, sets aside the same but since there is requirement for fresh hearing, this Court remits the matter to the Director of Consolidation, Cuttack. Both the Parties are directed to appear before the Director on 25.11.2022 along with copy of this order. On production of a copy of this order, the Director of Consolidation shall do well in completing the formalities on the substitution aspect if there is no completion of such aspect as of now and then proceeding for final hearing of the matter and pass a fresh order in the involvement of the Parties by completing the entire exercise within a period of three months from the date of appearance of the Parties. Observation, if any vide the impugned order shall have no effect on the fresh hearing.

8. Learned counsel for the Petitioner undertakes on behalf of the Petitioner that there shall be no default on their part. Considering the further request of Mr.Acharya, learned counsel for O.P.3 that

there is normal posting of such case to Friday of the month, let a copy of this order be served on the Director of Consolidation on 25.11.2022.

9. With the above order, the Writ Petition stands disposed of.

(Biswanath Rath)
Judge

M.K.Rout

