

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.17145 of 2022

Fikara Naik

.... ***Petitioner(s)***

Mr. M.K. Panda,
Advocate

-versus-

State of Odisha & Ors.

.... ***Opposite Party(s)***

Mr. S. Ghose,
Addl. Govt. Adv. for O.Ps.1 to 3
Mr. B.S. Panigrahi,
Advocate for O.P.4

CORAM:
JUSTICE BISWANATH RATH

ORDER
29.07.2022

Order No.

02.

1.

This writ petition involves the following prayer:-

“The Petitioner therefore humbly prayed that this Hon’ble Court may graciously be pleased to admit this Writ application, call for the records, issue rule Nisi calling upon the Opp. Parties to show cause as to why the impugned orders under Annexure-4 and the consequential orders and actions such as annexure-6 and 7 shall not be quash in the interest of justice;

And if the Opp. Parties fail to show-cause or show insufficient cause to make the said rule absolute by issuing an appropriate writ(s)/order(s)/direction(s) as this Hon’ble Court deems just and proper in the facts and circumstances of the present case;

And/or to pass such other order/orders as this Hon’ble Court deemed just and expedient in the interest of justice.”

2. On commencement of argument for fresh admission of the matter Mr. Pahigrahi, learned counsel files a 'VAKALATNAMA' on behalf of the Opposite Party No.4. The same be kept on record.

3. On consent of the parties and for the involvement of small issue the case is taken up for final disposal.

4. This writ petition involves a challenge to the impugned order at Annexure-4.

5. Learned counsel for the Petitioner challenges the impugned order on the premises that not only the impugned order is an *ex parte* one, but the same also involves a direction against dead persons particularly involving the Opposite Party Nos.4, 5 & 7 therein, who have all died long since.

6. Considering the second ground of attack to the impugned order, this Court on perusal of the death certificate and comparing the same with the date of order in deciding the SRP No.86-2019 finds, the Opposite Party No.5 therein died on 9.09.2020. The Opposite Party No.7 therein died on 30.11.2019 and the Opposite Party No.4 therein died on 14.12.2009 here the death is occurred even prior to the institution of the proceeding. It appears, parties have no dispute with regard to the death certificate of the Opposite Party Nos.4, 5 & 7. In comparison of the impugned order with the date of death of the above parties, this Court finds, all these parties indicated hereinabove appearing as Opposite Parties in the proceeding below, have all died much prior to the date of order at Annexure-4. One of the contesting Opposite Party even died prior to initiation of proceeding involved.

7. In the circumstance this Court finds, the proceeding involved a number of dead person, for the opinion of this Court, no order involving the dead person is sustainable in the eye of law. This Court, accordingly, interfering in the order at Annexure-4, sets aside the same.

For the setting aside of the order at Annexure-4, the proceeding SRP No.86-2019 shall be revived and shall also be freshly adjudicated in the involvement of the parties surviving. It is also open to the Petitioner therein, if so advised, to bring substitution petition in respect of the dead person.

8. Learned counsel for the Opposite Party No.4 attempted to raise some ground with regard to the merit in the SRP No.86-2019. This Court since finds, the matter will be adjudicated afresh by the Collector & District Magistrate, Kalahandi, it is open to the parties involved to raise all such contentions raised herein for consideration of the Collector & District Magistrate, Kalahandi.

9. Both the parties are directed to appear before the Collector & District Magistrate, Kalahandi alongwith a certified copy of this order on 11th August, 2022 and take the date of hearing. The SRP No.86-2019 is directed to be disposed of afresh within a period of three months thereafter.

10. The writ petition stands disposed of with the above order.

(Biswanath Rath)
Judge