

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.19869 of 2022

*An application under Article 226 & 227 of
the Constitution of India, 1950*

Chakradhara Sahoo

: Petitioner

-Versus-

Ramesh Chandra Nayak & Ors.

: Opposite Parties

For Petitioner

: M/s. S. Mohanty,
G.Das, N. Mohanty,
S. Jena, A. Garnayak,
S. Satapathy

For Opposite Party No.1(a)

: Mr. G.N. Mishra

For Opposite Party Nos.3 & 4

: Mr. S.P. Panda,
Addl. Govt. Adv.

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 07.09.2022

1. On consent of all the parties this matter is taken up for final disposal.
2. For the undisputed background involved herein this Court finds, in the earlier round of litigation in disposal of W.P.(C) No.13419 of 2017 this High Court in paragraph No.7 therein on the ground of violation of

principle of natural justice interfered in the impugned order therein and remitted the matter back to the Sub-Collector, Jagatsinghpur-O.P.7 to adjudicate the matter afresh giving opportunity of hearing to the parties concerned. To avoid any further delay this Court through paragraph no.8 therein also directed the parties to appear before the Sub-Collector on 11th April, 2022 to have opportunity of hearing and appeal was also directed to be disposed of within a period of four months. Undisputedly the present Petitioner was Opposite Party and the Writ Petition therein was disposed of on contest of the Petitioner.

3. Mr. Mohanty, learned counsel for the Petitioner taking this Court to the nature of disposal of the remand proceeding vide Mutation Appeal No.33 of 2014, learned counsel for the Petitioner reading through the same, contested the impugned order on the ground of violation of natural justice and accordingly prayed for setting aside of such order and also a direction thereby to the appellate authority for fresh disposal of the appeal.

4. Mr. Mishra, learned counsel for the contesting Opposite Party-the Petitioner in the earlier round of litigation, taking this Court to the direction in disposal of the earlier writ petition contended that once the writ petition is decided in presence of such party and the present Petitioner is aware of the direction therein, it becomes the duty of such party to work-out accordingly. Mr. Mishra, learned counsel for the contesting Opposite Party not only alleged that there is deliberate latches on the part of the Petitioner, but also taking this Court to the reason of giving of *ex parte* order by the appellate authority as disclosed at the end part of the paragraph, contended that even though the Petitioner did not appear as per the direction of the High Court in disposal of the earlier

Writ Petition; the appellate authority had gone further in accommodating the Petitioner by issuing a notice through registered post, which appears to have been duly served on the Petitioner. It is, in this background of the matter, Mr. Mishra, learned counsel for the contesting Opposite Party taking this Court to the history of the case submitted that the litigation is pending for over several decades and there should not be showing of any sympathy to any of the parties and in the event this Court entertains such matter, the party succeeded in appeal will suffer immensely for no fault of him and will be deprived of the benefit of same for sole laches of the Petitioner.

It is, in the above circumstance, Mr. Mishra, learned counsel for the contesting Opposite Party prayed for dismissal of the Writ Petition.

5. Mr. Panda, learned State Counsel in advancing his submission supporting the submission of Mr. Mishra, learned counsel for the contesting private Opposite Party also urged for dismissal of the Writ Petition as there is no lacuna on the part of the Sub-Collector in disposing the appeal in deliberate non-cooperation of the Petitioner.

6. Considering the rival contentions of the parties this Court finds, there is no dispute that in the earlier disposal of the Writ Petition there is already a direction for disposal of the appeal involved herein on participation of the parties and such Writ Petition got disposed of involving the present Petitioner. No doubt that in spite of giving the date of appearance to the parties including the Petitioner, the Petitioner failed in appearing. Further this Court again finds, to avoid any further complications the appellate Court was also careful enough even in giving further notice to the Petitioner through registered post, which appears to have already been duly served on the Petitioner.

In the circumstance this Court finds, there has been deliberate latches by the Petitioner and serious noncooperation even after participating in the previous round of litigation and there is absence of any satisfaction for such noncooperation, further there has been unnecessary protraction of the litigation for the fault of the Petitioner and for no fault of the private Opposite Parties, they are unable to enjoy the benefit of such judgments twice. Be that as it may, since in earlier Writ Petition there is a direction for disposal of the matter on contest of the parties and as it appears, the proceeding has been concluded *ex parte* only because of non-cooperation of the Petitioner even after service of notice through registered post, this Court while interfering in the impugned order observes, there should be exemplary cost as against the Petitioner to avoid such contingency in future.

7. In the circumstance, this Court interfering in the impugned order at Annexure-2 on technical ground and setting aside the same, remits the matter to the Sub-Collector, Jagatsinghpur to rehear and redispense of the Mutation Appeal without being prejudiced by his observation already there. In the process this Court also directs both the parties to appear before the appellate authority along with a certified copy of this order on 15th September, 2022, 2022. To compensate the Private Opposite Parties for their unnecessary suffering, this Court also imposes a cost of Rs.15,000/- (Rupees fifteen thousand) only on the Petitioner to be paid to the private Opposite Parties in the authority below on the date of appearance itself. This Court makes it clear that in the event the Petitioner fails to appear on the date fixed, the order dated 7.06.2022 will be restored automatically and the cost imposed on the Petitioner will be realized as civil cost by applying the provision under the O.P.D.R. Act.

8. The Writ Petition succeeds, however, with award of costs.

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(*Biswanath Rath*)
Judge

Orissa High Court, Cuttack.
The 07th day of September 2022//
Ayaskanta Jena,
Senior Stenographer

