

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.21253 OF 2022

K.Saraswati Rao & ors.

....

Petitioners

Mr.B.K.Behera, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.Mishra, ASC

CORAM:

JUSTICE BISWANATH RATH

ORDER

25.8.2022

Order

No.

1.

1. Heard learned counsel for the Parties.

2. Short grievance of the Petitioners involving the decision at Annexure-4 is that in dismissal of the Mutation Case involving a land situated in the Ganjam District in the order dated 6.10.2021, the Additional Tahasildar, Kanisi has relied on the Circular dated 5.3.2022 issued by the Government of Odisha in Revenue and Disaster Management Department at Annexure-5, more particularly, applying Clause-6 therein.

3. Mr.Behera, learned counsel for the Petitioners submits that so far as the Ganjam District is concerned, for the settled position of law, there is no requirement of Probate of Will involving this particular District. It is in this view of the matter, he contended that there is mechanical application of clause-6 of the Circular by the

Tahasildar and therefore, the impugned order should be interfered and set aside.

4. Sri Mishra, learned Additional Standing Counsel appearing for the State submitted that in the meantime, the correctness of Clause-6 of the Circular has been considered in W.P.(C) No.38058 of 2020 and by the disposal order passed in the Writ Petition, there is already direction to the concerned Department in the Government of Odisha for bringing suitable modification of Clause-6 keeping in view that some districts of the State of Odisha do not require Probate of Will. Learned State Counsel further bringing to the notice of this Court that dependent on the direction of this Court in the above disposed of Writ Petition, the State Government has already initiated a proceeding to make necessary amendment to Clause-6 of the Circular.

5. From the statement of the learned Additional Standing Counsel, it appears, there is no dispute to the settled position of law that there is no requirement of Probate of Will, particularly in the district of Ganjam. For the development through W.P.(C) No.38058 of 2020 and the attempt already taken by the State Government for bringing a clarification to Clause-6 of the Circular and for the settled position of law that there is no need of any Probate of Will, particularly, involving the land situated in Ganjam District, this

Court finds, there is mechanical disposal of the Mutation Case by the Additional Tahasildar, Kanisi.

6. It is in this view of the matter, the impugned order at Annexure-4 is declared bad and thus is set aside and mutation proceeding involved here is re-opened for fresh disposal. The matter is remitted to the Additional Tahasildar, Kanisi to dispose of the Mutation Case keeping in view the observations made by this Court in W.P.(C) No.38058 of 2020 but however without insisting the Probate of Will involved therein and by completing the entire exercise within a period of two months from the date of communication of this order.

7. The Writ Petition stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout