

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.30243 OF 2022

Akshaya @ Akashya Kumar Sahoo ***Petitioner(s)***
Mr.B.Mohanty,Adv.

-versus-

Collector, Jajpur and others ***Opposite Party(s)***
Mr.S.Mishra,ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER
17.11.2022

Order No.

01.

1. Heard learned counsel for the Parties.
2. The Writ Petition is filed in challenging to the Appeal order at Annexure-6 solely on the ground that even though there is recording of hearing of both the parties at length, in fact, the Petitioner was not involved in the hearing and further the hearing was undertaken in continuance of the Covid-19 surge and there was no possibility on the part of the Petitioner to attend such hearing process at the relevant point of time.
3. It is at this stage of the matter, this Court also hearing the submission of Mr.Mishra, learned Additional Standing Counsel, finds, Mr.Mishra, learned Additional Standing Counsel opposes the entertainability of the Writ Petition on two grounds, such as firstly reading through the disclosures at Annexure-6, first paragraph, it becomes clear that the advocate for both the parties were involved. For this clear recording by the Collector, Jajpur, plea of the Petitioner cannot be entertained in the Writ Petition.

4. Further reading through the reasoning therein, Mr.Mishra, learned State Counsel also attempts to justify the reasons therein, keeping in view the settled position of law through the Hon'ble Apex Court that once a Court/Authority commits mistake in recording the involvement of the parties in the hearing process and one such party alleges, there is in fact, no involvement of such party, application has to be moved to the same Court/Authority for taking a decision on the allegation involved and no higher forum can entertain such application.

5. Keeping this cardinal principle of law, this Court stays the order at Annexure-6 for a period of two months, however subject to condition that the Petitioner go on paying the cost to the senior citizens involve at least a sum of Rs.3,000/- per month till the further decision is taken on the remand of the proceeding by this Court. The proceeding is remanded to the Collector, Jajpur to consider the objection to be submitted on the appearance of the Petitioner on 29.11.2022 with regard to his non-appearance in the final proceeding and the Collector, Jajpur going through the records to first observe as to whether the proceeding dated 22.4.2021 was passed in the involvement of the party, the Petitioner herein?

6. This Court further also observes, in the event the Collector, Jajpur comes to hold the proceeding was concluded in the involvement of the all Parties, the order may remain. In the event the Collector, Jajpur comes to hold, there was in fact no involvement of the Petitioner herein in final proceeding, he has to rehear the matter in Misc. Appeal Case no.23 of 2018 and pass fresh order involving all the parties involved therein and conclude such proceeding within a period of three months but however providing opportunity to the senior citizens involved therein. The matter will be reopened subject

to the Petitioner filing receipt of the payment of first month due at Rs.3,000/- for the time being along with his appearance. Payment in next month onwards shall be remitted in the first week of particular month.

7. The Writ Petition thus stands disposed of.

(Biswanath Rath)
Judge

Swarna

