

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.32009 OF 2022

Bijay Kumar Agrawalla

....

Petitioner(s)

Mr.B.Bhuyan,Adv.

-versus-

Tahasildar, Boudh and another

....

Opposite Party(s)

Mr.U.K.Sahoo,ASC

CORAM:

JUSTICE BISWANATH RATH

ORDER

30.11.2022

Order No.

01.

1. Heard learned counsel for the Parties.
2. This Writ Petition involves an order of the Mutation Authority dated 05.11.2022 appearing to be rejecting Mutation Application of the Petitioner on the premises of claim being based on a Will having not been registered. Undisputedly, the proceeding involves Boudh district which is already a scheduled area, the entire Boudh district is exempted from probate of Will. Through the decision of this Court reported in **2022 (II) CLR- 874** discussions in para-7 finds as follows:-

“For the last 3-4 weeks, this Court finds, a number of litigations emanating from refusal of Mutation Cases on the premises that there is no probate of the Will involving the district already brought under the Administration of Orissa States Orders, 1948 and operating in the field even in the operation of such Notification and further after so many judgments came to exist, further even after a clarifying Circular dated 07.05.2018 already issued by the State in the Revenue and Disaster Management, which is undisputedly binding on all Public Authorities. This Court first of all finds, there is no application of legal mind by the Public Authority and passing orders even ignoring the order

brought for the purpose by the State Government and secondly non-application of mind even at least going through the decisions of this Court already rendered involving the Ganjam, Phulbani, Athagarh, Patnagarh, Koraput, Angul, Mayurbhanj thereby creating unnecessary litigations in High Court.”

Through another decision of this court, this Court finds in the case of ***Siba Sankar Sahoo vs. the State of Odisha & Others*** in disposal of W.P.(C) No.19001 of 2020 in taking into consideration the legal provision in a circular applying in the State and several other decisions on same issue have come to observe that there is no need for probate of Will in the areas mentioned therein including Boudh district.

3. In the circumstance this Court finds, the Tahasildar, Boudh has passed the order against law and without application of mind even not taking care of the instruction issued by the State on such issues and the rules governing the field. In the circumstance this Court sets aside the order at Annexure-3, remits the matter back to re-adjudicate the mutation proceeding on the basis of Will. Let the Tahasildar, Boudh- Opposite Party No.1 complete the entire exercise within a period of fifteen days from the date of communication of this order by the petitioner. Petitioner is directed to supply copy of this order along with copy of the judgment in W.P.(C) No.19001 of 2022 on 12.09.2022 also the judgment reported in ***2022(II) CLR- 874***.

(Biswanath Rath)
Judge

Swarna