

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 39743 OF 2021

Mukesh Bag @ Khadia and others* *Petitioners

Mr. Byomokesh Sahoo, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Swayambhu Mishra,

Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.01.2022

Order No.

1. This matter is taken up through video conferencing mode.
2. The Petitioners in this writ petition seek to assail the order dated 24th June, 2006 (Annexure-4) passed by the Joint Commissioner, Settlement and Consolidation, Sambalpur in R.C. No. 1787 of 2005 filed under Section 37 (1) of the O.C.H. & P.F.L. Act, 1972 (for short 'the Act').
3. Mr. Sahoo, learned counsel for the Petitioners submits that R.C. No. 1787 of 2005 was filed under Section 37(1) of the Act impleading Budhram Khadia as the sole Opposite Party, who happens to be the grand-father of the Petitioner No.4. Said Budhram Khadia died on 8th January, 2004. In support of his case, he has also filed a copy of death certificate of the said Budhram Khadia. He, therefore, submits that the impugned order under Annexure-4 is a nullity being passed against a dead person. The Petitioners came to know about the said order when the Opposite Party Nos. 4 to 8 created disturbances in the peaceful possession of the Petitioners over the land in question. Hence, finding no other

alternative, the Petitioners have filed this writ petition for the aforesaid relief.

4. Mr. Mishra, learned Additional Standing Counsel for the State submits that he has no instruction in the matter. However, the impugned order was passed in the year, 2006. The writ petition has been filed in the year, 2021 without explaining the delay. He, therefore, prays for dismissal of the writ petition.

5. Taking into consideration the submissions of learned counsel for the parties, this Court is of the considered opinion that the allegation of the Petitioners needs factual adjudication. Hence, the Joint Commissioner, Settlement and Consolidation, Sambalpur-Opposite Party No.2 will be in a proper position to take a decision on the allegation of the Petitioners verifying the records of R.C. No. 1787 of 2005 and documents to be produced before him.

6. In view of the above, this writ petition is disposed of with a direction that in the event the Petitioners file an application for recall of the order dated 24th June, 2006 under Annexure-4 passed by the Joint Commissioner, Settlement and Consolidation, Sambalpur in R.C. No. 1787 of 2005 within a period of two weeks hence along with an authenticated copy of this order, he shall do well to entertain the same and pass a reasoned order thereon in accordance with law giving opportunity of hearing to the parties concerned.

7. It is made clear that this Court has not expressed any opinion on the merits of the case of the Petitioner.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website at par with certified copy subject to attestation by the concerned Advocate in the manner prescribed vide Court's Notice No.4587 dated 25th

March, 2020, modified by Notice No.4798 dated 15th April, 2021 and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(K.R. Mohapatra)
Judge

bks

