

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC NO.41064 OF 2021

Bikash Mohapatra @ Patra

....

Petitioner

Mr.B.Sahoo, Adv.

-versus-

Chandra Mohapatra & ors.

....

Opposite Party(s)

R.P.Mohapatra, AGA

CORAM:

JUSTICE BISWANATH RATH

ORDER

1.2.2022

Order No.

01.

1. This matter is taken up through video conference mode.
2. Heard learned counsel for the Petitioner.
3. Writ Petition involves a challenge to the order of the Competent Authority in deciding finally the Mutation Appeal in Annexure-5.
4. Taking this Court to the order portion appearing at Page-40 of the Brief, learned counsel for the Petitioner contended that once the hearing process involving the Appeal was undertaken by the Predecessor and there was no pronouncement of order, by him atleast till his transfer, there is no scope for the Officer joining

subsequent to transfer of the Predecessor to simply get into the judgment and/or order. It is also contended that in the event the subsequent Officer desires to finally dispose of the Appeal, he ought to freshly hear the matter and decide the matter accordingly. It is in the circumstance and the order being passed by the subsequent Officer without getting into hearing of the matter, learned counsel for the Petitioner urged, the impugned order becomes bad and should be interfered with and set aside.

5. Mr.Mohapatra, learned Additional Government Advocate, however, while not disputing to the allegation that the subsequent incumbent passed the final order even without entering into hearing the appeal proceeding but however taking this Court to the discussions therein attempted to support the impugned order and accordingly prayed for dismissal of the Writ Petition for having no illegality in the impugned order.

6. Considering the rival contentions of the Parties, this Court from the order dated 27.8.2016 passed in the Appeal, finds, the order-sheet reflects as follows :-

“CR taken up today on call. This case was posted to 7.7.15 for orders. But no order has been pronounced in

this case by my predecessor. Hence this case is posted to 22.9.2016 for order.

Case to 22.9.16”

Reading the aforesaid order it becomes clear that the Appeal was finally posted to 7.7.2015 for orders by the predecessor. This order further reveals, the case was posted to 7.7.2015 after hearing is concluded by the same office and there has been no delivery of order. In the circumstance, this Court finds, on transfer of the competent officer and on joining of the new Officer in his post, in the event the Appeal was required to be finally disposed of, the new incumbent was required to have a fresh hearing of the matter and getting into the final order. In the circumstance, this Court finds force in the submission of the learned counsel for the Petitioner to the extent that once an Officer has not heard the appeal proceeding, he has no right to pass judgment simply based on argument before his predecessor. For the matter taken up at admission stage, this Court since finds, there is gross illegality in the Order besides abuse of power by Competent Authority for the opinion of this Court even if notice is issued to contesting opposite parties, there is no possibility of a different view. Thus, while declining to issue notice this Court feels it appropriate to dispose of the matter finally. This Court, however observes, in the further proceeding the private

opposite party ought to be heard. For the reason assigned this Court declares the judgment/order impugned herein dated 22.9.2016 becomes bad in law. This Court accordingly sets aside the order dated 22.9.2016 passed by the Sub-Collector, Jharsuguda in Mutation Appeal Case No.56 of 2013. However since the Mutation Appeal Case is required to be freshly heard and disposed of, the Appeal Proceeding is remitted to the Sub-Collector, Jharsuguda for fresh hearing involving all the Parties involved herein and dispose of accordingly.

7. Let the petitioner produce a copy of this order before the Appellate Authority and upon service of a copy of this order, the Appellate Authority shall do well in giving notice to the contesting opposite parties and disposing of the Appeal afresh after providing opportunity of contest to all concerned.

8. The Writ Petition stands disposed of with an order of remand.

9. As 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.

(Biswanath Rath)
Judge

M.K.Rout

