

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 817 of 2019

- Ferhuraam (Died) Through Son - Ghanshyam Singh Dhidhi, Aged About 55 Years, S/o Late Ferhuraam, R/o - Bhathali, Post Office Bhakhara, Tahsil - Kurud, District - Dhamtari Chhattisgarh.

---- Applicant

Versus

1. State of Chhattisgarh Through Secretary, General Administrative Department Mantralaya, Shashtri Chowk, Raipur, District Raipur Chhattisgarh.
2. Commissioner, Raipur Division Raipur, District - Raipur Chhattisgarh..
3. Collector, Raipur, District Raipur Chhattisgarh.
4. Shri Narayan Singh Verma, R/o Bhathali, Post Office - Bhakhara Tahsil - Kurud, District - Dhamtari Chhattisgarh.

---- Respondents

For Applicant : Mr. Sachin Nidhi, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

09-09-2019

1. The instant MCC has been filed for restoration of Writ Petition No. 1164 of 2002 which was dismissed in default on 19-6-2007. The original applicant namely Ferhuraam who is father of Ghanshyam Singh Dhidhi filed Writ Petition No. 1164 of 2002 before this court to issue writ of certiorari for quashing of the order contained in Annexure P/5 of the writ petition and also for seeking issue of writ of mandamus to direct the

respondents to release 10 acres of land as early as possible to the petitioner.

2. As per the applicant, the original petitioner was a freedom fighter as well as the member of Scheduled Caste, therefore, he filed an application before the Revenue Authorities for getting the benefit of scheme (Annexure P/1). As per the order of respondent No.2, the original petitioner was entitled to get 1.38 hectares of land because he is not the landless person and having 0.62 hectares of land. The petition was filed for direction for getting more land i.e., ten acres of land.
3. On 2-1-2007 this court ordered for removal of default by the original petitioner with peremptory order. Since the order of this court is not complied within four weeks, the petition was dismissed on 19-6-2007. Present petition is filed for restoration on 13-8-2019 i.e., after 12 years and two months of dismissal.
4. Learned counsel for the applicant would submit that on 2-1-2007 this court granted four weeks time to make good the default failing which the writ petition shall stand dismissed automatically without further reference to the court. He would further submit that clerk of the counsel gave assurance to the original petitioner that the matter is pending for kind consideration before this court but when the applicant came

to the High Court after death of his father for enquiry about the case, then only he came to know about the disposal of Writ Petition No.1164 of 2002 on 2-1-2007.

5. I have heard, learned counsel for the applicant.
6. The question for consideration of this Court is whether the applicant has shown sufficient cause for restoration of the said appeal. That test which is applied is whether the applicant honestly and sincerely intended to prosecute the appeal. On account of peremptory order the writ petition was dismissed on 19-6-2007 and the restoration application is filed on 13-8-2019 i.e. after 12 years and 2 months. It is not a case that the applicant had no knowledge about the order of this Court. Filing of an application after 12 years and 2 months shows that the applicant is not acted diligently and remained inactive for a long. It can be said that the applicant has acted in negligent manner and there was want of bona fide on its part. It is not the case where applicant sincerely intended to contest the case and did its best to do so, therefore, it is the applicant who could be blamed for non-prosecution of the case. The applicant had knowledge of all the proceeding of this Court on 2-1-2007 and application is filed after 12 years and 2 months which is clearly after expiry

of the period of limitation, in other words the application is hopelessly time barred.

7. This Court in the facts and circumstances of the case cannot ignore the period of limitation because no court shall have jurisdiction to entertain any application if the same has been filed after expiry of the period of the limitation. The application is evidently time barred and looking to the gross negligence of the applicant this Court has no reason to restore the said appeal.
8. Accordingly, the instant MCC is liable to be and hereby dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju