

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

W.P.(C). No.3063 of 2005

D.Kumar Swamy & Anr.

....

Petitioner(s)

Mr.B.M.Sahoo,
Advocate

-versus-

The Collector, Rayagada & Ors.

....

Opposite Party(s)

Mr. S.P.Panda, AGA

CORAM:

JUSTICE BISWANATH RATH

ORDER

12.07.2022

Order No.

7

1. Heard learned counsel appearing for the parties.
2. This writ petition involves a challenge to the notice at Annexure-3 and the order at Annexure-5 of the competent authority involving OSATIP Review Case No.01 of 2004 on the principal ground of limitation in entertaining such proceeding. Taking this Court to the factual background involved therein through the permission order at Annexure-1, page 12 of the brief, it is brought to the notice of the Court by Mr.Sahoo, learned counsel for the petitioner that permission was granted by the competent authority on 27.09.1997. Next taking this Court to the initiation of review proceeding under Annexure-3, a notice was issued to the petitioner to appear to have his response. Annexure-3 disclosed that initiation of such proceeding was in the year 2004. First notice was being issued on 02.09.2004. It is next taking to the provision authorizing the competent authority to initiate review. reading through the provision contained in Regulation [(3-a) (i) of Orissa Scheduled Area Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956, Mr.Sahoo, learned counsel for the petitioner argued once amended regulation provides for initiation of review within a period of 5 years from the date of order, order is required to be revised

initiating a review proceeding after 7 years, suffered by limitation. Mr.Sahoo, learned counsel thus contended that the reviewing authority failed in appreciating in entertaining the review application beyond the time prescribed in the regulation and thus sought for quashing of both the notice at Annexure-3 as well as the order at Annexure-5.

3. Mr.Panda, learned Additional Government Advocate appearing for the State though supported the impugned order for the reasoning therein however unable to respond to the ground of limitation in initiating such proceeding for there is clear provision of law in the Regulation [(3-a) (i) of Orissa Scheduled Area Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956.

4. Heard the submissions of respective counsel. Rule referred to hereinabove has a clear bearing in the decision involving the case. This Court finds (3-a) (i) of Orissa Scheduled Area Transfer of Immovable Property (By Scheduled Tribes) Regulations reads as follows:

“[(3-a) (i) Any order passed by the competent authority under Sub.sec.(1) or under Sub. sec.(2) may, within a period of five years from the date of such order, be revised, either on own motion or otherwise, by the Revenue Divisional Commissioner if the order was passed by the Collector and by the Collector if it was passed by any other competent authority, after giving the parties concerned a reasonable opportunity of being heard;”

5. Looking to the factual background discussed hereinabove, taking into account the date of grant of permission, initiation of proceeding and also the provision taken note hereinabove, this Court finds there should not be any doubt that the review proceeding involved at Annexures-3 was initiated in the year 2004 beyond the time stipulation in the above regulation.

6. In the circumstance, this Court finds the proceeding since initiated in the year 2004 vide Annexure-3 after 7 years of permission on 27.09.1997, suffers on account of delay. While declaring the

proceeding vide Annexure-3 suffers on account of delay as a consequence, this Court declares the order at Annexure-5 also bad.

7. In the result, the writ petition succeeds.

(Biswanath Rath)
Judge

Sks

