

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 18594 OF 2014

Prahallad Sahu

.... Petitioner

Mr. Biswajit Mohanty, Advocate
-versus-

Mahadev Sahu and others

.... Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate
(for Opp. Party Nos.2 and 3)
Mr. B. Sahoo, Advocate
(for Opp. Party No.1)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
28.03.2022**

Order No.

Misc. Case No.16376 Of 2016

- 4.
1. This matter is taken up through hybrid mode.
 2. This is an application for substitution of the deceased Opposite Party No. 4, who died on 22nd August, 2016 leaving behind his legal heirs more-fully described in the schedule of this petition.
 3. Taking into consideration the submission made and the fact that this petition has been filed in time, prayer for substitution is allowed. The legal heirs of the deceased Opposite Party No.4 more-fully described in the schedule of the petition be impleaded as Opposite Party Nos. 4(a) to 4(d) in his place. Consolidated cause title of the writ petition filed in Court today is taken on record.

4. The Misc. Case is accordingly disposed of.

(K.R. Mohapatra)
Judge

W.P.(C) No. 18594 OF 2014

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 12th August, 2014 (Annexure-1) passed in Revision Case No.959 of 2010 whereby the Commissioner, Consolidation, Odisha, Bhubaneswar dismissed the revision petition filed by the Petitioner under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972.
3. Mr. Mohanty, learned counsel submits that during pendency of Revision Case No.959 of 2010, the Petitioner filed an application for amendment of pleading, but the same was rejected vide order dated 22nd April, 2014. Assailing the same, the Petitioner preferred W.P.(C) No.15115 of 2014. During pendency of the said writ petition, the Petitioner sought for an adjournment of the revision case. The Commissioner, Consolidation, Odisha, Bhubaneswar, without considering such prayer, while dismissing the revision petition for default recorded that no further prayer for restoration of the case shall be entertained. Assailing the same, this writ petition has been filed.
4. Mr. Mohanty, learned counsel for the Petitioner submits that the observation of the Commissioner, Consolidation, Odisha, Bhubaneswar to the effect that no further prayer for restoration of revision of the case should be considered, is

against the spirit of law. Such an observation of the Commissioner cannot sustain in the eyes of law. He, therefore, submits that the observation to that effect may be set aside and the Petitioner may be permitted to file an application for restoration of the revision case and the same may be directed to be considered in accordance with law.

5. Mr. Sahoo, learned counsel for Opposite Party No.1 fairly concedes that such an observation should not have been made while dismissing the Revision Case No.959 of 2010 for default. He also concedes to the prayer for learned counsel for the Petitioner stating that in the event, the Petitioner files an application for restoration of revision case the same may be considered in accordance with law.

6. Mr. Mishra, learned Additional Government Advocate submits that on rejection of petition for amendment of the pleading, the Petitioner had moved this Court in W.P.(C) No.15115 of 2014. Taking advantage of the same, the Petitioner prayed for repeated adjournments for which the impugned order was passed. Hence, the impugned order needs no interference.

7. Taking into consideration the submissions made by learned counsel for the parties, this Court is of the considered opinion that the Commissioner, Consolidation, Odisha, Bhubaneswar, while dismissing the revision case for default, should not have made any observation, more particularly to the effect that, no further prayer for restoration of the case shall be considered. Since the Petitioner has a right to file an application for restoration of the revision case, the Commissioner, Consolidation, Odisha, Bhubaneswar is not justified in curtailing the right of the Petitioner provided under law.

8. In that view of the matter, the observation of the Commissioner, Consolidation, Odisha, Bhubaneswar to the effect '*No further prayer for restoration of the case shall be considered*' is illegal and the same is struck down.

9. The Petitioner is at liberty to file an application for restoration of Revision Case No.959 of 2010 and in that event, the Commissioner, Consolidation, Odisha, Bhubaneswar shall do well to consider the same in accordance with law giving opportunity of hearing to the parties concerned.

10. This writ petition is allowed to the aforesaid extent.

11. Case record in W.P.(C) No.15115 of 2014 shall be detached and returned to the concerned Section forthwith.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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