

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.23931 OF 2022

Dillip Kumar Mishra and others ***Petitioner(s)***
Mr.P.K.Satapathy,Adv.

-versus-

State of Odisha and others ***Opposite Party(s)***
Mr.S.Ghose,AGA
Mr.R.K.Swain,Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
19.10.2022

Order No.

03.

1. Heard learned counsel for the Parties.
2. This matter involves a challenge to the final order of in an application under Section-6-D, 15(b) read with Section 25 of the Orissa Survey & Settlement Act, 1958 on two counts. One is considering a limitation Petition and disposing of the same in absence of the opportunity to the parties in contest. The other one is even after condoning the delay ex-parte, there is no service of notice on the Opposite Parties therein, the Petitioner's herein and this matter has been decided ex-parte.
3. Mr.Satapathy, learned counsel for the Petitioners taking this Court to the entire order-sheet filed at page-18 onwards attempted to establish in fact there is condonation of delay in absence of the Petitioner. Further, there is no establishment of service of notice to the Petitioners.
4. To the contrary learned counsel appearing for private Opposite Parties again taking this Court to the entire order-sheet however

without controverting the allegation of ex-parte disposal of the limitation application and also on ex-parte disposal of main application but for the reason assigned in the impugned order submitted impugned order appears to be justified one requiring no interference. Learned State Counsel attempted to support the case of the private Opposite Parties.

5. Considering the rival contentions of the Parties, this Court finds from the order-sheet dated 19.12.18, 19.12.18, 4.12.19 and lastly 22.09.21, the Additional Commissioner Settlement & Consolidation, Cuttack passed the following order:-

19.12.18 This RP case filed U/s/ 15(b) of the OS & S Act, 1958 is put up today. Case to 19.12.18 for hearing and admission on Limitation.

19.12.18 This Case is taken up today. The learned Advocate(s) for the petitioner(s) and Learned S.C. are present. Heard the Advocate on the application U/s. 15(b) of the OS & S Act, 1958 and Petition U/s. 5 of Limitation Act. Case is admitted condoning delay. Issue notice to OP(s) for hearing.
Case posted to 30.1.19.

04.12.19 This case is taken up today. The learned counsel for the Petitioner/ Petitioner is found absent. Case to 15.4.20.

22.09.21 Counsel for the Petitioner is present and directed to submit the substantiate documents. Case is reserved for order.”

Entire reading of the order, this Court is satisfied that not only the limitation application involving a proceeding under Section 15(b) has been allowed without involvement of the Petitioners herein and the Opposite Parties therein, the final proceeding has also been concluded without service of notice of the Opposite Parties therein, the Petitioners herein.

6. In the circumstance this Court finds, there is illegal disposal of R.P. Case No.398 of 2018 and as such the impugned order is

interfered herein. This Court sets aside the order at Annexure-1 and remits the matter to the Additional Commissioner, Consolidation & Settlement, Board of Revenue, Odisha, Cuttack for re-disposal of Revision Petition No.398 of 2018 in the involvement of both parties but from the stage of consideration of Section 5 application. Since the matter is disposed of in the involvement of both the contestants, both the contestants herein are also directed to appear before the competent authority on 4th November, 2022 and take the date of hearing in Section 5 application. Learned counsel for the Private Opposite Parties herein are directed to serve copy of limitation Petition on the learned counsel for the Petitioner. On the date of appearance Petitioner, if so advised may file their objection on Section 5 application also on the date of appearance.

7. The Writ Petition thus stands disposed of.

(Biswanath Rath)
Judge

Swarna