

**(1976) 07 OHC CK 0007**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 1102 of 1974**

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|------------------------------|----|------------|
| Haripriya Dibya and Others   | Vs | APPELLANT  |
| Pranabandhu Karan and Others |    | RESPONDENT |

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**Date of Decision :** 13-07-1976

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Orissa Land Reforms Act, 1960 — Section 26(2)

**Citation :** AIR 1977 Ori 25 : (1976) 42 CLT 949

**Hon'ble Judges :** R.N. Misra, J;P.K. Mohanti, J

**Bench :** Division Bench

**Advocate :** P. Kar, for the Appellant; B. Pai, N. Prusty and A. Mohanty and Addl. Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.N. Misra, J.—This is an application by a land owner and asks for a writ of certiorari to quash the order of the Board of Revenue passed in a revision application. During the pendency of the writ application, the original petitioner having died the present petitioners who are the legal representatives have been substituted in his place.

2. The tenant made an application u/s 26 (2) of the Orissa Land Reforms Act (hereinafter referred to as the "Act") which was posted to 5-8-1965 before the Revenue Officer. As there was a talk of settlement, the tenant submitted to the Revenue Officer that the case may be dropped. On 1-11-1966, the tenant again applied to the Revenue Officer to reopen the matter as there was no settlement. The Revenue Officer directed notice to the landlord fixing the matter to 16-11-1966, and reposted the matter to 2-1-1967 as by 16th November, the landlord had not been served with notice. In the meantime, on 24-12-1966, the Revenue Officer held a spot inquiry to ascertain if the tenant was actually a Bhag Chasi and examined three witnesses. On 2nd January, 1967, though the landlord had been served with notice as would appear from the service report, he

remained absent. The Revenue Officer reposted the matter to 16th January, 1967. On that date, the landlord did not appear and after the proceeding had closed, his son by about the closing hour of the court applied for adjournment. The same was rejected and on the following day the Revenue Officer passed final orders in the application.

3. The landlord appealed and that appeal was dismissed in the absence of the landlord. On a review application, the appellate authority remanded the matter. The tenant carried a revision against the order of remand. The Additional District Magistrate found that sufficient opportunity had been afforded to the landlord and since he had not availed of it at the trial stage, there was no need for a remand. Accordingly he vacated the direction for a fresh inquiry. The landlord moved the Board of Revenue and the Member, declined to interfere.

4. Two questions have been canvassed by Mr. Kar for the landlord-petitioner in support of the application:--

(i) Once the proceeding had been dropped, it could not be revived without the landlord being heard and

(ii) The reception of evidence from the tenant behind the back of the landlord was contrary to natural justice.

5. Both these contentions appear to us to be without any force. So far as the revival of the application is concerned, it is conceded that an original application if filed on 1-11-1966 (when the application was directed to stand revived) would have been in time. Therefore, the application of the tenant could be taken to be a fresh application. As the landlord had been directed to be noticed in the matter, the objection against revival is without any basis.

6. Undoubtedly, evidence was collected on the 24th of December, 1966 at the spot by the Revenue Officer. It appears, the Revenue Officer had gone to the locality and had sent for the landlord but he was not available, Mr. Kar does not dispute the authority of the Revenue Officer to hold local enquiry. If the landlord had appeared in the proceeding when noticed, he could have asked the Revenue Officer to recall the witnesses for cross-examination. He could have even asked the Revenue Officer to hold another local inspection in his presence and if such prayers were made and were rejected there may have been such basis for feeling aggrieved. Two dates were given to the landlord, namely 2nd of January 1967 and 16th of January, 1967. From the service report available on the record, we find that the landlord-petitioner knew of the posting of the case to 2-1-1967 though he refused to receive the notice. Admittedly before the 16th January, 1967, he had notice of the fresh date, Yet he took no steps. In these circumstances, we do not think, the Additional District Magistrate went wrong when he came to hold that sufficient opportunity had been given to the landlord and he had not availed of the same. The Board of Revenue was, therefore, justified in refusing to give any relief to the petitioner, We are not inclined to interfere in the matter particularly because petitioner's conduct exhibits laches;

he has not been able to impress the two authorities that any injustice has been done to him and our jurisdiction is not to be invoked in a case of this nature.

7. We accordingly dismiss the writ application, but do not make any direction as to costs.

Mohanti, J.

I agree.