

(2024) 06 OHC CK 0057
In the Orissa High Court
Case No : Writ Petition (C) No. 623 Of 2024

Jayashree Singhdeo

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 12-06-2024

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2024) 06 OHC CK 0057

Hon'ble Judges : K.R. Mohapatra, J;M.S. Raman, J

Bench : Single Bench

Advocate : Sushanta Kumar Dash, Ajodhya Ranjan Dash, Srinibash Satapathy

Final Decision : Disposed Of

Judgement

I.A. NO.7623 OF 2024, I.A. NO.571 OF 2024 & W.P.(C). NO.623 OF 2024

1. This matter is taken up through hybrid mode.
2. Consent memo filed by Mr. Sushanta Kumar Dash, learned Counsel appearing for the Petitioner is taken on record.
3. The Petitioner has filed IA No.7623 of 2024 as she apprehends dispossession from the land in question. While taking up the interim application for adjudication, this Court felt that the merit of the writ petition is to be gone into. Thus, on consent of learned counsel for the parties, this writ petition is taken up for final disposal.
4. This writ petition has been filed assailing the order dated 6th July, 2023 (Annexure-1) passed by the Additional District Magistrate, Dhenkanal–Opposite Party No.3 in OEA Appeal No.17 of 2021.
5. Mr. Dash, learned counsel for the Petitioner submits that Bebandobasta Case No.784 of 1997 (54) was disposed of by Additional Tahasildar, Dhenkanal directing to record Plot No.590 under Khata No.9 to an extent of Ac. 16.25 dec. situated in mouza Saptasajya under Dhenkanal Tahasil in the district of

Dhenkanal in the name of the Petitioner. OEA Appeal No. 17 of 2021 was filed by the Opposite Party Nos.5 to 18 assailing the order passed in Bebandobasta Case No.784 of 1997 (54). The appeal was filed with a delay of 6540 days. Although an application under Section 5 of the Limitation Act was filed for condonation of delay in filing the appeal, but without condoning the inordinate delay in filing the appeal and without considering the objection filed by the Petitioner, the appeal was disposed of vide order dated 6th July, 2023 (Annexure-1 series) and the matter was remitted to Additional Tahasildar, Dhenkanal for fresh adjudication of Bebandobasta Case No.784 of 1997 (54) keeping in mind the stipulation in the Notification No.7567/R dated 6th December, 2000 issued by the Revenue Department, Government of Odisha.

6. Mr. Dash, learned counsel for the Petitioner further submits that before condonation of delay, no appeal exists in the eye of law. Thus, the impugned order under Annexure-1 passed by Additional District Magistrate, Dhenkanal is without jurisdiction and is nonest in the eye of law. He, therefore, prays for setting aside the impugned order and to direct learned District Magistrate to consider the petition filed under Section 5 of the Limitation Act at the threshold before entertaining the appeal on merit.

7. Mr. Dash, learned Additional Government Advocate submits that the appeal was decided after receipt of the LCR and on perusal of the same. Thus, no fruitful purpose will be served by remitting the matter to Additional District Magistrate, Dhenkanal for fresh adjudication of the appeal. It will be an empty formality only. It is his submission that the land in question has been recorded as forest land. Thus, it could not have been settled in favour of the Petitioner as stipulated in the Notification dated 6th December, 2000 (supra). Hence, Additional District Magistrate, Dhenkanal has committed no error in remitting the matter to Additional Tahasildar, Dhenkanal for fresh consideration.

8. Mr. Satapathy, learned counsel for the contesting Opposite Parties submits that fraud has been practiced by the Petitioner in settling the land in her favour. When the fraud came to light, the villagers, namely, Opposite Party Nos.5 to 18 filed an appeal in OEA Appeal No.17 of 2021. There is, of course, a delay in filing the appeal. But, the delay will not stand on the way for disposal of the appeal when the Petitioner has played fraud with the authority in settling the land in her name. He also drew attention to Clause No.XIV of the Notification dated 6th December, 2000 (supra), which reads as under:

“(xiv) If evidence will forth come during local enquiry or otherwise that the land was forest land or communal land immediately prior to the vesting no settlement should be allowed in respect of the same.”

9. He, therefore, submits that the land in question being forest land could not have been settled in favour of the Petitioner. Thus, no fruitful purpose will be served in remitting the matter to Additional District Magistrate, Dhenkanal for consideration of petition under Section 5 of the Limitation Act and to entertain

the appeal on merit thereafter.

10. Heard learned counsel for the parties.

11. Perused the materials available on record.

12. On perusal of the order sheet of OEA Appeal No.17 of 2021 and materials available on record, this Court finds that an application under Section 5 of the Limitation Act though filed by the Opposite Party Nos.5 to 18 for condonation of delay in filing the said appeal, but the same was not considered before disposal of the appeal on merit. Law is well settled that before condonation of delay, the appeal cannot be entertained on merit. As submitted by Mr. Dash, learned counsel for the Petitioner, there is a delay of 6540 days in filing the appeal. Being conscious of the fact that the appeal is filed in delay, Opposite Party Nos.5 to 18 had also filed an application under Section 5 of the Limitation Act. Thus, Additional District Magistrate was under legal obligation to consider the petition for condonation of delay before taking of the appeal on merit. Hence, the entire proceeding in the appeal is vitiated. It further appears from the record that although the objection was filed by the Petitioner to the petition for condonation of delay and appeal memo, the same was not taken into consideration by Additional District Magistrate while adjudicating the appeal.

13. In that view of the matter, this Court feels that no fruitful purpose will be served by keeping the matter pending before this Court awaiting response from the Opposite Parties, who have not yet appeared. Moreover, it will cause further delay in disposal of the matter.

14. In view of the discussions made above, we have no hesitation to hold that the entire proceeding in appeal is vitiated and in consequence thereof the impugned order under Annexure-1 is not sustainable and is accordingly set aside. The matter is remitted to Additional District Magistrate, Dhenkanal to adjudicate the matter afresh by taking up the limitation petition for condonation of delay giving opportunity of hearing to the parties concerned at the threshold. In the event, the delay is condoned, the Court may proceed with the appeal on merit considering the objection and other materials to be produced and providing opportunity of hearing to the parties concerned.

15. This writ petition and the interim application are accordingly disposed of.

16. Since notice on Opposite Party Nos.7, 8, 10, 13, 15 and 17 is not sufficient, they are at liberty to seek for variation of this order, if they feel aggrieved.

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

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