

(2000) 07 OHC CK 0053

In the Orissa High Court

Case No : Original Jurisdiction Case No. 17781 of 1998

Mathuri Malik

APPELLANT

Vs

Commissioner of Consolidation and Others

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 2 OLR 296

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Ashok Tripathy, S. Muduli and A. Kanungo, for the Appellant; A.G.A. (O.Ps. 1 and 2) and S. Misra-2, S. Mantry and A.K. Sharma (OP-5), for the Respondent

Judgement

P.K. Misra, J.—Heard Mr. Tripathy, learned counsel for the petitioner, Mr. Misra, learned counsel for opposite party No. 5 and learned Additional Government Advocate for opposite parties 1 and 2. In spite of notice other opposite parties have not entered appearance.

2. This writ application is directed against the revisional order passed by the Commissioner, Consolidation, Orissa, Cuttack, in Consolidation Revision Case No. 1886 of 1997. Though several contentions have been raised by the petitioner and refuted by the learned counsel for opposite party No. 5, it is not necessary to notice such contentions, as in my opinion, the matter is required to be re-heard by the Consolidation Commissioner, in view of the defective procedure adopted by the said Commissioner.

3. It appears from the order sheet that the Consolidation Revision was heard ex parte on merit on 25.9.1998 as the other opposite parties had not appeared on the said date and the case was reserved for orders. Subsequently, the present petitioner filed a petition for stay. The order sheet reveals that such stay petition was posted to 6.11.1998 for "hearing on say". Thereafter, the matter was again adjourned to 9.11.1998 and 13.11.1998 specifically for hearing on the question

of stay, as apparent from the orders dated 6.11.1998 and 9.11.1998. The order dated 13.11.1998 is extracted hereunder :

"Counsel for both the parties are present. Heard. Ex parte order. is set aside. The counsel for opposite parties may file WNA (which is abbreviation of Written Notes of Argument) by 20.11.1998. Case to 27.11.1998 for orders on merit."

Subsequently, the revision was dismissed by order dated 27.11.1998. It appears from the L.C.R. that the counsel for the present opposite party No. 5 had filed a Written Notes of Argument on 20.11.1998. Copy of such Written Notes of Argument available at page 34 of the L.C.R. indicates that the Additional Standing Counsel attached to the Court of the Commissioner of Consolidation had endorsed to have "seen" such Written Notes of Argument. However, there is no endorsement that the copy of the Written Notes of Argument had been served on the counsel appearing for the present petitioner. Even the orders subsequent to 25.9.1998 indicate that only the petition for stay was being posted for hearing and the revision itself had not been posted for further hearing after 25.9.1998, when the orders were reserved. Of course, order dated 13.11.1999 shows that the ex pane order was set aside and the Commissioner permitted the opposite parties to file Written Notes of Argument. Though the Written Notes of Argument had been subsequently filed, copy of such Written Notes had not been filed. In other words, the contentions raised by the learned counsel for opposite parties in the Written Notes of Argument were not within the knowledge of the present petitioner, or his counsel. The order sheet also does not indicate that the counsel for the opposite parties in the revisional forum had argued the matter on merit in presence of learned counsel for the present petitioner.

4. It goes without saying that in a Court of law, or before a quasi-judicial authority, contentions of both the parties should be made in presence of each other so that each party can have opportunity of advancing or refuting any contention. Since principle of natural justice has been violated, it is necessary that the matter should be re-disposed of by the Commissioner by giving opportunity of hearing to both parties. Accordingly, the decision dated 27.11.1998 is set aside and the matter is remanded to the Commissioner for disposal in accordance with law. Both parties are directed to appear before the Commissioner on 7.8.2000.

The writ application is accordingly disposed of.