
(2022) 10 OHC CK 0028
In the Orissa High Court
Case No : Writ Appeal No. 465 Of 2016

Shiba Bhoi

APPELLANT

Vs

Additional Commissioner, Consolidation And Settlement,
Sambalpur And Another

RESPONDENT

Date of Decision : 11-10-2022

Acts Referred:

Citation : (2022) 10 OHC CK 0028

Hon'ble Judges : Dr. S. Muralidhar, CJ;Chittaranjan Dash, J

Bench : Division Bench

Advocate : B. Panigrahi

Final Decision : Allowed

Judgement

1. The challenge in the present writ appeal is to an order dated 15th September 2016, passed by the learned Single Judge dismissing the Appellant's W.P.(C) No.12994 of 2015, whereby the Appellant had assailed an order dated 23rd February 2015, passed by the Additional Commissioner, Consolidation and Settlement, Sambalpur (AC).
2. The aforementioned order had been passed by the AC recalling an earlier order dated 21st September, 2007 whereby Consolidation Revision Case No.SAM833 of 1988 (old No.1655 of 1986) dismissing the case for default was recalled.
3. Admittedly, the recall application was filed more than seven years after the case was dismissed for default. The learned AC appears to have allowed the recall application only because notification under Section 41(1) of the Act had not yet been published.
4. A perusal of the impugned order of the AC reveals that no reasons in particular have been given for entertaining the application for recall, seven years after the order of dismissal for default was passed. It was incumbent on the AC to have asked proper justification for the inordinate delay

5. The learned Single Judge appears to have viewed the above delay as being merely technical and, therefore, has declined to interfere with the impugned order of the AC. This Court, on the other hand, is of the view that the delay being inordinate, it was incumbent on the AC to have asked for a proper explanation.

6. Secondly, it is pointed out by learned counsel appearing for the Appellant that there is already a civil suit pending between the parties in relation to the same parcel of land in which the Respondent has appeared and is contesting the suit by filing a written statement. This is another ground why the AC ought not to have entertained the recall application to revive a revision petition concerning the same subject matter.

7. For the aforementioned reasons, the impugned order of the learned Single Judge is hereby set aside as is the order dated 23rd February, 2015 of the Additional Commissioner, Consolidation and Settlement.

8. Accordingly, the present writ appeal is allowed in the above terms but in the circumstances with no order as to costs.

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