

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4347/2010 & CM No.8622/2010 (for interim relief)**

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Date of decision: 2nd July, 2010

HAZARI LAL & ANR.

..... Petitioners

Through: Mr. K.T.S. Tulsi, Sr. Advocate & Mr.
Ravinder Singh, Advocates.

Versus

FINANCIAL COMMISSIONER & ANR.

..... Respondents

Through: Notice not issued.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioners by this writ petition impugn the order dated 14th May, 2010 of the Financial Commissioner allowing the Revision Petitions of the respondent no.2 and thereby condoning the delay (stated to be of about seven and half years) on the part of the respondent no.2 in preferring the appeal before the Deputy Commissioner/Revenue Assistant against the order dated 11th February, 1983 and other orders of the Naib Tehsildar mutating the land in favour of the petitioners.

2. It is relevant to set out the facts.

3. One Shri Rattan Singh was the original Owner/Bhoomidhar of the

land in question. It is the case of the respondent no.2 that the said Shri Rattan Singh had agreed to sell the said land to Shri Gopal Singh (father of the respondent no.2) and as a part of the said transaction also executed a will bequeathing the said land to Shri Gopal Singh. Shri Rattan Singh died on 3rd March, 1974 leaving five sons who, immediately after his demise applied for mutation of the said land in their own names and which mutation is stated to have been carried out on 29th June, 1974. The sons of Shri Rattan Singh thereafter proceeded to sell the land to the petitioner who now claim to be the owners/Bhoomidhar of the land and got the mutation in their favour vide order dated 11th February, 1983 (supra) and other orders of the Naib Tehsildar.

4. Shri Gopal Singh aforesaid, on the demise of Sri Rattan Singh applied for letters of administration of the land aforesaid on the basis of the will of Shri Rattan Singh in his favour. Letter of administration was so granted in or about the year 1986-87 and on the basis whereof Shri Gopal Singh also applied to the Naib Tehsildar for mutation of the land in his own name. During the pendency of the said proceedings Shri Gopal Singh died and the respondent no.2 being one of his legal heirs applied for substitution of the legal heirs of Shri Rattan Singh but the said application was not pursued and the proceedings so initiated by Shri Gopal Singh for mutation in his favour were ultimately dismissed in default on 13th February, 1991.

5. The respondent no.2 thereafter filed the appeals aforesaid before

the Deputy Commissioner/Revenue Assistant, challenging the order dated 11th February, 1983 (supra) and other orders of mutation in favour of the petitioners. The appeals having been preferred beyond the prescribed time were accompanied with application for condonation of delay. It was stated therein that the respondent no.2 had learnt of the will aforesaid of Shri Rattan Singh in favour of Shri Gopal Singh and of letter of administration then only on finding the old papers during white washing in the house and had accordingly immediately appealed against the mutation illegally got done by petitioners in their name. The petitioners opposed the said application for condonation of delay by pleading that the respondent no.2 was fully aware of all the facts in as much as he had appeared in the proceedings lodged by Shri Gopal Singh for mutation in his own favour and after the death of Shri Gopal Singh also applied for substitution in these proceedings. The Deputy Commissioner/Revenue Assistant however dismissed the application for condonation of delay holding that respondent no.2 had falsely stated that he was earlier not aware of will of Shri Rattan Singh and of letter of administration issued to Shri Gopal Singh on basis of said will.

6. Against the said order of the Deputy Commissioner/Revenue Assistant the respondent no.2 preferred Revision Petitions before the Financial Commissioner. The Financial Commissioner vide order dated 17th January, 2003 set aside the order of the Deputy Commissioner/Revenue Assistant and allowed the application of the

respondent no.2 for condonation of delay in filing the appeal and remanded the matter to the Deputy Commissioner/Revenue Assistant for decision of the appeal on merits.

7. The petitioners herein preferred W.P.(C) No.1068/2003 and other connected writs to this Court against the order dated 17th January, 2003 of the Financial Commissioner. The said writ petition was disposed of by this Court vide order dated 2nd August, 2004. It was the contention of counsel for the petitioners before this Court that the order of the Financial Commissioner amounted to setting aside of the mutation in their favour, without even decision of the appeal on merits by the Sub Divisional Magistrate/ Revenue Assistant. This Court acting on the said contention of the petitioners, set aside the order dated 17th January, 2003 of the Financial Commissioner and remanded the matter to the Financial Commissioner for decision only on the aspect whether the delay in preferring the appeals before the court of Sub Divisional Magistrate/ Revenue Assistant was condonable or not.

8. It is pursuant to the remand aforesaid that the order dated 14th May, 2010 impugned in this writ petition condoning the delay, has been made.

9. The power to condone delay or not is a discretionary power, of course to be exercised not in any arbitrary, vague or fanciful manner but on judicial principles. It is a well settled principle of law that even an appellate court will not interfere with the discretion exercised by the lower court unless the discretion appears to have been not exercised at all

or when discretion has not been exercised in accordance with judicial principles. In *Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Deb* AIR 1978 SC 537 it was held that if after keeping in view relevant principles the Court has exercised discretion in condoning the delay, unless it is shown to be manifestly unjust or perverse, the superior Court would be loathe to interfere with it. Several courts have held that Revision against the order on an application under Section 5 Limitation Act does not lie. The scope for interference in exercise of jurisdiction under Article 226 of courts would be much narrower and confined to only these cases where discretion condoning delay is shown to have been exercised perversely or arbitrarily or capriciously.

10. The senior counsel for the petitioners contends that from the facts aforesaid, it is borne out that the respondent no.2 was fully aware of the proceedings initiated by his father Shri Gopal Singh for mutation in his own name and falsely stated in the application for condonation of delay for preferring the appeal before the Deputy Commissioner/Revenue Assistant that he had acquired knowledge of the same from the old papers of his father found during whitewashing in the house immediately before preferring the appeal. The senior counsel for the petitioners contends that the pleadings of the respondent no.2 in seeking condonation of delay being false, the application should be dismissed. Attention is invited to proceedings dated 30th October, 1987, 12th January, 1988 in the proceedings aforesaid filed by Shri Gopal Singh and the application for

substitution of legal heirs filed in the said proceedings and wherefrom it is demonstrated that respondent no.2 was aware of the entire matter and had resorted to falsehood in seeking condonation of delay and the delay ought not to have been condoned.

11. It is not as if the Financial Commissioner in the impugned order has not dealt with the said factual aspect. The Financial Commissioner admitted the aforesaid factual position, however has held that the same is irrelevant inasmuch as the appeals in preferring which the condonation of delay was sought, were against the orders of mutation in favour of the petitioners and not with respect to the order of dismissal in default of the proceedings initiated by Shri Gopal Singh.

12. The Financial Commissioner has given yet another reason for condoning the delay. The Financial Commissioner has found and it is not disputed that two of the sons of Sri Rattan Singh were witnesses to the Will executed by Shri Rattan Singh in favour of Shri Gopal Singh. The Financial Commissioner has found such conduct of the sons of Shri Rattan Singh, who were the predecessors in interest of the petitioners to be fraudulent. It has been held that the predecessors in interest of the petitioners having inspite of sale of the property in the favour of Shri Gopal Singh got the property mutated in their names and thereafter having sold the same, were not entitled to oppose the condonation of delay sought by the respondent no.2 and that it was in interest of justice that the *inter se* rights in the land be adjudicated on merits. It is also noted in the

order that the sons of Sri Rattan Singh did not oppose the proceedings for Letter of Administration of the Will in case of Sri Rattan Singh sought by Shri Gopal Singh.

13. The senior counsel for the petitioners has contended that the order of the Financial Commissioner is bad inasmuch as the appeals (in filing which condonation was sought) were filed after the sons of Shri Rattan Singh were allowed to change the position by selling the property to the petitioners. Reliance in this regard is placed on:-

(i) ***U.P. Jal Nigam Vs. Jaswant Singh*** (2006) 11 SCC 464 laying down the principles of acquiescence and holding that it is unjust to give a claimant the remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver.

(ii) ***Virender Chaudhary Vs. Bharat Petroleum Corporation*** (2009) 1 SCC 297 where the Supreme Court allowed the appeal against the order of the High Court allowing the writ petition and holding the writ petition to be barred on the principles of laches. The Supreme Court observed that where no steps have been taken to challenge the issuance of the letter of intent, the same ought not to be permitted to be taken after long delay.

(iii) ***Government of A.P. Vs. Kollutta Obi Reddy*** (2005) 6 SCC 493 where also the writ petitions preferred after considerable delay challenging the notification under Section 4 & 6 of the Land Acquisition

Act, 1894 were held to be not maintainable.

(iv) *Star Wire (India) Ltd. Vs. State of Haryana* (1996) 11 SCC 698 holding that a person who approaches the Court belatedly will be told that laches close the gates of the Court for him.

14. None of the aforesaid judgments are on the aspect of interference in the discretion exercised in condoning the delay and do not apply to the facts of the present case. The orders of mutation in favour of petitioners in the present case are of 1983. The knowledge of the respondent no.2 of the proceedings initiated by Shri Gopal Singh is of a date thereafter. It is thus not as if, the rights in favour of the petitioners have been created in interregnum. The rights which the petitioners assert, were created prior even to grant of letter of administration in favour of father of respondent no.2. It thus cannot be said that the respondent no.2 by delay allowed the sons of Shri Rattan Singh to create rights in favour of petitioners.

15. Else the reasons given by the Financial Commissioner for condoning the delay are found cogent. With the grant of letter of administration, the factum of execution of Will with respect to the land by Shri Rattan Singh in favour of father of respondent no.2 and the factum of at least two of the sons of Shri Rattan Singh having knowledge of the same has attained finality. The Supreme Court way back in *Ram Lal Vs. Rewa Coal Fields Ltd.* AIR 1962 SC 361 held that the discretion to excuse delay is to be exercised to advance substantial justice. The Financial Commissioner, in view of fraud by predecessor in title of petitioners in

having mutation done in their own names in spite of knowledge of sale and Will in favour of father of respondent no.2 held it to be just that the delay be condoned and rights adjudicated on merits. Such reasoning for condoning delay cannot be said to be perverse or capricious or arbitrary to invite interference under Article 226.

16. The senior counsel for the petitioners at this stage seeks time to place before this Court the order dated 11th February, 1983 (*supra*) to show that the respondent no.2 had knowledge also of mutation order in favour of petitioners. However, the matter having been heard, it is not deemed appropriate to adjourn the matter at this stage. Moreover, there being no reasoning on that aspect in order of Financial Commissioner, it is not appropriate to allow the same at this stage, particularly when the appeal remains to be argued on merits.

17. No case for entertaining the writ petition or issuing notice thereof is made out. The petition is dismissed *in limine*.

No order as to costs.

CM No.8623/2010 (For Exemption)

Allowed, subject to just exception.

**RAJIV SAHAI ENDLAW
(JUDGE)**

2nd July, 2010
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