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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 138 of 2016

1. Vijay Kumar Tiwari S/o Vashishth Narayan Tiwari, Aged About 60 Years (Wrongly Mentioned In Order Sheet As Vijay Kumar Agrawal) R/o Village Bahinga, Tahsil Berala, District Bemetara (Chhattisgarh) At Present R/o Handi Para Raipur, Tahsil & District Raipur (Chhattisgarh)

---- Petitioner

Versus

1. Board Of Revenue Thorugh Its President Bilaspur, District Bilaspur Chhattisgarh
2. Commissioner, Raipur, Division, Raipur, District Raipur Chhattisgarh
3. The Collector, Bemetara, District Bemetara, (Chhattisgarh)
4. Sub Divisional Officer, Saja, District Bemetara (Chhattisgarh)
5. Dwarika Prashad, S/o Late Shri Mohan Lal Dubey, Aged About 60 Years
6. Sourabh Sharma, S/o Late Shri Manharan Lal Dubey, Aged About 35 Years

Respondents No.5 & 6 are R/o Village Bahinga, P.H. No.10, Tahsil Berala, District Bemetara (Chhattisgarh)

---- Respondent

For Petitioner	:	Shri Yogesh Pandey, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State

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Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

21/01/2016

1. Petitioner would assail the order passed by the Board of Revenue, dismissing his revision application, which in turn, was preferred challenging the order dated 1-5-12, passed by the Additional Commissioner, Raipur Division, Raipur, the order dated 24-9-09, passed by the Additional Collector, Bemetara and the order dated 15-1-08 passed by the

Sub-Divisional Officer (R), Saja (for short 'the SDO'). By order dated 15-1-08, the SDO allowed the application preferred by the respondents No.5 & 6 to condone the delay in filing the appeal.

2. It is argued that the appeal before the SDO was barred by about 10 years and the respondents No.5 & 6 had utterly failed in showing sufficient cause for condonation of delay, therefore, the delay should not have been condoned and the authorities have committed serious error of law by dismissing the appeal and revision application preferred by the petitioner.

3. Perusal of the orders passed by the Additional Collector, Additional Commissioner and the Board of Revenue would manifest that on the basis of some deed of arrangement, the Tehsildar passed an order on 1-11-96 mutating the name of the petitioner in the revenue record pertaining to the subject land. The said order was passed without issuing proclamation as required under Rule 27 of the Mutation Rules. The authorities were satisfied that the respondents No.5 & 6 have shown sufficient cause for condonation of delay, thus, the delay was treated to be *bona fide* and eventually the same was condoned.

4. It has been argued that while passing the impugned order, the Board of Revenue has dealt with the merit of the case which shall prejudice the case of the petitioner when the appeal is heard by the SDO.

5. Having heard learned counsel for the petitioner and learned State counsel as well, it appears while hearing the revision application, the Board of Revenue should not have observed about the merits of the matter because the appeal is yet to be heard on merits by the SDO. At the same time, there is concurrent finding by the SDO, Additional Collector, Additional Commissioner and the Board of Revenue that respondents No.5 & 6 have

shown sufficient cause for condonation of delay.

6. In such matters when the authorities have exercised judicial discretion under Section 5 of the Limitation Act for condoning the delay, this Court while exercising jurisdiction under Article 226 of the Constitution of India is not entitled to re-appreciate the entire issue and unsettle the findings concurrently recorded by four different revenue authorities, as if this Court is sitting in appeal over the said orders.

7. In view of the above, the writ petition is dismissed subject however, to the direction that the SDO shall decide the appeal preferred by respondents No.5 & 6, on its own merits without being influenced by any observation made by the Board of Revenue on merits of the case.

Sd/-

Judge

Prashant Kumar Mishra

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