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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2868 of 2016**

1. Sharda Prasad Shukla S/o Late Shri Badri Prasad Shukla Aged About 86 Years R/o Sharda Sadan, In Front of Ambe Provision Store Lane, 27 Kholi, Bilaspur, Police Station & District Bilaspur, Chhattisgarh
2. Smt. Manju Shukla W/o Late Ramesh Prasad Shukla Aged About 50 Years
3. Rahul Shukla S/o Late Ramesh Prasad Shukla Aged About 28 Years
4. Rohit Shukla S/o Late Ramesh Shukla Aged About 25 Years

Petitioner No. 2 to 4 are R/o In Front of Ambe Provision Store Lane, 27 Kholi, Bilaspur, Police Station & District Bilaspur, Chhattisgarh

---- **Petitioners****Versus**

1. Dinesh Shukla S/o Sharda Prasad Shukla Aged About 54 Years R/o 27 Koli, Main Road, Bilaspur, Police Station-Civil Lines, District Bilaspur, Chhattisgarh
2. Rajesh Shukla S/o Sharda Prasad Shukla Aged About 52 Years R/o Mig-4, Shailendra Nagar, Ameri, Bilaspur, Police Station-Civil Lines, District Bilaspur, Chhattisgarh
3. Smt. Annapurna Tiwari D/o Sharda Prasad Shukla Aged About 47 Years R/o Ganga Nagar, Sector-1, Mangala Road, Bilaspur, P.S.- Civil Lines, District Bilaspur, Chhattisgarh
4. Suresh Shukla S/o Sharda Prasad Shukla Aged About 52 Years R/o Mangala Chouk, Post- Mangala, Police Station- Civil Lines, Tahsil & District- Bilaspur, Chhattisgarh
5. Sudama Prasad Shukla S/o Sharda Prasad Shukla Aged About 64 Years R/o Green Park Colony, Jarhabhata, Police Station-Civil Lines, Bilaspur, District- Bilaspur, Chhattisgarh
6. Smt. Anupama Mishra S/o Sharda Prasad Shukla Aged About 45 Years W/o Dinesh Gupta, R/o Annapurna Bhawan, Near Gupta Dairy, Jabdapara, Police Station-
7. State of Chhattisgarh, Through-Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, Civil And Revenue District- Raipur, Chhattisgarh
8. The Collector, Bilaspur, Police Station, Civil Lines, District- Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Vaibhav A. Goverdhan, Advocate
For Respondents-State	:	Shri AS Kachchwaha, Addl. AG for the State

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/11/2016

1. Petitioners would assail the order passed by the Board of Revenue on 28.08.2015, which in turn, was preferred to challenge the order passed by the Additional Collector, Bilaspur on 31.12.2014 condoning the delay of 14 years, 4 months and 8 days in preferring the appeal by Dinesh Shukla, Rajesh Shukla & Smt. Annapurna Tiwari.
2. It appears, Sub-Divisional Officer (R), Bilaspur passed an order on 31.07.1999 in revenue case No.653/A-2/98-99 in favour of petitioner Sharda Prasad Shukla and two others for an area ad-measuring 6585.5 sq. feet bearing Kasra No.265/54 situated at village Kududand, Bilaspur directing diversion of the land for residential purposes. Bare perusal of the said order dated 31.07.1999 (Annexure P-4) would reveal that while passing the order, the respondents were neither issued any notice nor were afforded any opportunity of hearing. Challenging this order, the respondents No.1 to 3 preferred an appeal before the Additional Collector, Bilaspur in January, 2014 along with an application under Section 5 of the Limitation Act specifically pleading that they had no knowledge about the order which came to their notice on 07.01.2014 when property papers were demanded from respondent No.1 about the deletion of the name of Suniti Devi. They immediately verified the revenue records on 08.01.2014 to become aware about the order.

3. Prayer for condonation of delay was objected by the petitioners on the ground that in the registered deed of partition dated 12.10.2001 as also in the agreement between the parties on 10.03.1999, the subject property was mentioned, therefore, the respondents No.1 to 3 were aware of the order and the enormous delay of 14 years, 4 months and 8 days does not deserve to be condoned.
4. While deciding prayer for condonation of delay, the Additional Collector has observed that the subject land was recorded in the joint name of Suniti Devi and two other share holders, however, without impleadment of name of all the legal heirs, application for diversion was moved and was allowed without notice to the other legal heirs. It was specifically observed by the Additional Collector that since all the interested parties were not noticed before passing the order, therefore, the question of appeal being barred by limitation does not arise and the appellant has demonstrated bona fide reasons. The Additional Collector eventually condoned the delay.
5. The Board of Revenue has dismissed the revision application preferred by the petitioners on similar grounds that since all the interested parties were not heard, the delay in preferring the appeal deserves to be condoned. The main plank of argument raised by learned counsel for the petitioner is the availability of the respondents' signature on the consent deed Annexure P-3 and the deed of partition Annexure P-5, however, bare perusal of the documents would reveal that in the consent deed the land was stated to be recorded in the name of Suniti Devi bearing area of 1793 3/4th sq. feet and in the deed of partition the property No.6 concerning the subject property is mentioned to have area 2971.25 sq. feet. Contrary to this the order dated 31.07.1999 (Annexure P-4) which has been assailed before Additional Collector bears area admeasuring 6585.5 sq. feet. Thus, not only the area

is different but in the deed of consent name of Suniti Devi is mentioned and not name of petitioners. Similarly if the deed of partition mentions about the subject property, it will not validate the order of diversion, which has been passed without noticing all the legal heirs of Suniti Devi. Whether or not the respondent No.1 to 3 would be entitled to call in question the deed of partition in the pending appeal before the Additional Collector is an issue to be considered by appropriate authority or Court at appropriate time when such dispute is brought. For the present, the Additional Collector is hearing an appeal against the order dated 31.07.1999 and the said Additional Collector would hopefully restrict his order to the order dated 31.07.1999 only. Since the petitioners would get opportunity to argue the pending appeal on merits, they are not prejudiced by allowing of application for condonation of delay.

6. There is no substance in the writ petition. It fails and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Ashu