

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1829 of 2011

In

Civil Writ Jurisdiction Case No.1257 of 1994

1. Baliram Rai, son of Late Ram Bilash Rai, resident of village-
Jigna Jagarnath Tola Takalpura, P. S. Meerganj, District-
Gopalganj (since deceased) through his heirs and legal
representatives:-

1A. Most Shushila Devi, Wife of Late Baliram Rai,

1B. Ajeet Kumar Roy

1C. Ashok Kumar Roy,

Both sons of Late Baliram Rai and all are resident of
Village- Jigna Jagarnath, P.S.- Mirganj, Dist- Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar.

2. The Additional Member Board of Revenue.

3. The Additional Collector, Gopalganj.

4. Deputy Collector Land Reforms Hathwah Gopalganj.

5. Sub-Divisional Magistrate, Hathwah, Gopalganj.

6. Manager Singh (since deceased) son of Raghuni Singh
through his legal heirs and representatives:-

6(a) Most. Kamla Devi, wife of Late Manager Singh

6(b) Bhola Singh

6(c) Guddu Singh, both sons of Late Manger Singh, and all are resident of
village-Jigna Jagarnath, Tola Takalpura, P.S.-Meerganj, District-Gopalganj.

7. Raghunath Rai, (since deceased), son of Late Rambilash Rai,
through his legal heirs and representatives:-

7 (i) Rameshwar Singh

7(ii) Rajshwar Singh,

Both are sons of late Raghunath Rai,

Both are resident of Village- Jigna Jagarnath Tola Takjalpura, P.S.- Meerganj,
District- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s

:

Mr. Md. Khurshid Alam, Advocate

Mr. Fakhruddin Ali Ahmad, Advocate

Mr. Arun Kumar Bhagat, Advocate

For the State

:

Mr. Ajay, G.A. V

Mr. Pratik Kr. Sinha, A.C. to G.A. V

For the Private respondents

:

Mr. Hemendra Pd. Singh, Senior Advocate



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 07-12-2018

The defect stands removed keeping in view the affidavit brought on record.

2. Heard learned counsel for the appellants Shri Md. Khurshid Alam, Shri Hemendra Pd. Singh, learned Senior Counsel for the contesting respondents and Shri Ajay, learned Government Advocate for the State.

3. The dispute lies in a very narrow compass, namely, as to whether the application for pre-emption could have been entertained by the authority in terms of the proviso to Section 16(3) (i) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the 'Act') on the admitted facts of the present case.

4. There is no dispute on facts which have been recorded by the authorities below or even by the learned Single Judge. The only dispute, that has been answered by the learned Single Judge by reversing the order of the Board of Revenue dated 18th January, 1994, is about the power of the competent authority to entertain the application for pre-emption which according to the respondents was beyond the period of three months and was not



accompanied by the requisite deposit of the purchase money together with 10% additional amount as required as per the aforesaid provision. To appreciate the controversy, Section 16(3) (i) of the Act is extracted here-in-under:-

“**16 (3) (i)** When any transfer of land is made after the commencement of the Act to any person other than a co-sharer or a *raiyat* of adjoining land, any co-sharer of the transferor or any *raiyat* holding land adjoining the land transferred, shall be entitled, **within three months** of the date of registration of the document, of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:

Provided that **no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.**”

5. Together with it, it is also necessary to bring on record Rule 19 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 (hereinafter referred to as the ‘Rules’) that is extracted here-in-under:-

19. Application by co-sharer or a raiyat of adjoining land for transfer of land under Section 16(3). - (1) Application by co-sharer or *raiyat* of adjoining land for transfer of land under Section 16(3) shall be in **Form L.C. 13** and the purchase money together with a sum equal to ten percent thereof shall be deposited in the



Treasury/Sub-treasury of the district within which the land transferred is situated.

(2) A copy of the Challan, showing deposit of the amount under sub-rule (1) together with a copy of the registered deed, shall be filed along with the application in which also a statement to his effect shall be made.

(3) A copy of the said application shall also be sent simultaneously by the applicant to the transferor and the transferee by registered post with acknowledgement due.

(4) The Collector shall issue a notice to the transferor, the transferee and the applicant to appear before him on a date to be specified in the notice and after giving the parties concerned a reasonable opportunity of showing cause, if any, and of being heard, shall by an order in writing, either allow the application in accordance with clause (iii) of sub-section (3) of Section 16, or reject it.

(5) If the application is allowed under item (iii) of sub-section (3) of Section 16 and the transferee is directed by the Collector by any order to convey the land in favour of the applicant by executing and registering a document of transfer, the applicant shall be required to pay the registration fee.

(6) Where the application is allowed and the transferee conveys the land in favour of the applicant under Section 16 (3) (iii), the transferee shall be allowed to withdraw the money deposited by the applicant.”

6. Learned counsel for the appellants has advanced his submissions contending that the Board of Revenue while



proceeding to consider the factual aspect relating to the application moved for condoning the delay and also the resultant deposit has taken into consideration a fact, namely, that the application was delayed as the applicant had been prevented from completing the formalities on account of an indefinite strike of the employees and consequently the delay deserved to be condoned.

7. It is not in dispute that the Sub-Divisional Officer, before whom the application had been filed, considered this aspect of delay and proceeded to condone the same and then entered upon an adjudication of the said application in terms of Section 16(3) of the Act. The matter was taken up in appeal and the appellate authority, namely, the Additional Collector, Gopalganj, reversed the said order and allowed the appeal on 22nd January, 1993 at the instance of the contesting respondents on the ground that the above quoted Section and the Rules read together did not allow the authority to condone the delay and consequently since neither the application had been moved within time nor the compulsory deposit had been made, the application had to fail. Aggrieved, the appellant before us preferred a revision before the Board of Revenue and the same was allowed on 18.1.1994 reversing the order of the appellate court and restoring the order of the Sub-Divisional officer. The contesting respondent No.6 aggrieved by



the order of the Board then preferred writ petition being CWJC No.1257 of 1994 that has given rise to the present appeal.

8. The learned Single Judge after having noted the judgments that were cited at the Bar came to the conclusion that the provisions being mandatory, the delay could not have been condoned and consequently if the appellant had failed to deposit as stipulated within the period referred to in the aforesaid provisions, then non-compliance of the provisions would be fatal and consequently reversed the order of the Board of Revenue restoring the order of the appellate authority. Consequently, the plea of the writ petitioner- respondent No.6 herein was accepted vide impugned judgement dated 29.4.2011.

9. Aggrieved, the appellant is before us and the learned counsel contends that firstly, the appellant had moved an application for condonation of delay and a supplementary affidavit has been filed bringing on record a copy of the said application which also finds mention in the order of the Sub-Divisional officer as well as the order of the Board of Revenue. The cause pleaded in order to explain the delay is categorical that since the period of limitation was expiring a day earlier which was a non-working day, the application had been filed on the following day and, therefore, the same was within time and so far as the deposit and the delay, if



any, was liable to be condoned on account of the indefinite strike of the employees of the office. This plea has been categorically recorded by the Sub-Divisional Officer and also the Board of Revenue.

10. It is urged that in view of the law laid down by the Apex Court in the case of **Krishna Kumar Choudhary Versus Alliance Agro. Industries (P) Ltd. & Ors. [1991 (1) PLJR (SC) 3]**, the right of the appellant to move an application and the power of the authority to condone the delay is preserved. The said judgement finds mention in the impugned judgement as well. Since the judgement is a very short judgement, the same is extracted here-in-under for proper appreciation of the arguments advanced on behalf of the either side:-

“Special leave granted.

2. We are of the opinion that Section 29 of the Limitation Act applies to the facts and circumstances of this case and that it is now for the Deputy Collector, Land Reforms and the Collector under the Act to consider whether the delay in filing the proceeding should be condoned. Thereafter the Deputy Collector Land Reforms and the Collector under the Act will dispose of the case on the remaining points in accordance with law.

3. The appeal is disposed of in these terms. There is no order as to costs.”



11. On the strength of the said judgement, learned counsel for the appellants submits that once it has been held that the power to condone the delay is available, then the discretion exercised by the authorities which is a judicious discretion on the facts of the present case, the same did not require any interference by the learned Single Judge. It is urged that the law stands settled and the learned Single Judge even though noticed the said judgment, yet relied on the judgement of this Court which for all intents and purposes stood reversed by the judgment extracted hereinabove.

12. Learned counsel then contends that another judgement of Apex Court has been relied on by the learned Single Judge in the case of **Hiralal Agrawal Versus Rampadarath Singh & Ors., AIR 1969 SC 244** which in no way comes to the aid of the respondents inasmuch as the said judgement was rendered keeping in view the requirement of the prescription of annexing a copy of the registered deed and as such the controversy raised therein and the ratio thereof would not be attracted, more so, when a three-Judges Bench in the case of **Krishna Kumar Choudhary** (supra) pronounced later on has answered the issue squarely. He, therefore, submits that applying the doctrine of precedence, the later decision which was directly in issue, as



involved in the present case, would be a binding precedent and the judgement in the case of **Hiralal Agrawal** (supra) would not be applicable.

13. Responding to the said submissions, learned Senior Counsel Shri Singh and the learned counsel for the State have urged that as a matter of fact, the appellant had moved the application for condonation of delay without there being any specific request for consideration of condoning the delay in the matter of deposit of the compulsory amount and in such circumstances, in the absence of any such attempt on the part of the appellant, there was no occasion for the authority to have condoned the delay for entertaining the application or even accepted the deposit beyond the prescription of the time as indicated in the proviso to Section 16(3) (i) of the Act. It is urged that the learned Single Judge has rightly relied on the ratio of the judgement of this Court of the learned Single Judge in the case of **Krishna Kumar Choudhary and another Versus Alliance Agro Ind. (P) Ltd. and others**, reported in **1986 PLJR 832**.

14. The same is sought to be supplemented by urging that the Apex Court while dealing with analogous provisions in other enactments has arrived at the conclusion that the provisions of the Limitation Act are nowhere applicable to such proceedings



and consequently the issue of condoning the delay and the power to be exercised by the authority stands settled by such pronouncements which makes it impermissible for the authority to entertain any such application for condoning the delay. Reliance has been placed on a judgment of the Apex Court in the case of **Sakuru Versus Tanaji**, reported in **AIR 1985 SC 1279, paragraph 3**. This was a case relating to proceedings under Andhra Pradesh (Telagana Area) Tenancy and Agricultural Lands Act, 1958 as amended in 1979 that went on to hold that the provisions of Limitation Act, 1963 apply only to proceedings in “Courts” and not to quasi judicial Tribunals or executive authorities, notwithstanding that they are vested with the powers of adjudication with reference to the provisions of the Civil Procedure Code. A further reference has been made to the Apex Court judgment in the case of **Gopal Sardar Versus Karuna Sardar**, reported in **(2004) 4 SCC 252**, arising out of West Bengal Land Reforms Act, 1955, paragraphas 13, 18 and 19, relying whereon the learned counsel contends that the prescription of the applicability of Section 5 of the Limitation Act is nowhere attracted and consequently, the authorities below committed a grave error in condoning the delay while entertaining the application which was impermissible in law.



15. Thus, it is urged that in view of the aforesaid pronouncements, the question of condoning the delay does not arise.

16. Learned Senior Counsel Sri Singh vehemently urged that the Apex Court judgment in the case of **Krishna Kumar Choudhary** (supra) does not lay down any law nor does the ratio thereof in any way dilute the impact of the statutory provision the prescription whereof is mandatory and in such circumstances, the order of the Sub-Divisional officer as well as the Board of Revenue did not adhere to the aforesaid statutory provisions and consequently, the learned Single Judge was justified in reversing the order of the Board of Revenue.

17. The contention, therefore, is that if the Act itself restricts the exercise of any such right or the exercise of power to entertain the application, then in view of the settled position of law, the judgement of the Apex Court in the case of **Krishna Kumar Choudhary** (supra) would not be an impediment as it is not a precedent on the said issue. He, therefore, submits that the impugned judgement of the learned Single Judge does not require any interference and the appeal deserves to be dismissed.

18. We have considered the submissions and perused the records.



19. The factual foundation being undisputed, the fact that there was an indefinite strike of subordinate employees paralysing the work of the Sub-Divisional Office also appears to have been established and could not be successfully challenged by any material on record. This was a situation of force majeure. It was a situation beyond the control of the appellant and therefore, apart from the issue of the rights and powers for condonation of delay, the fact remains that the aforesaid contingency which led to the delay of the deposit cannot be ignored. The aforesaid factual aspect having not been reversed or even controverted successfully on the basis of the material on record, we find that the said factual foundation stands established.

20. In the said backdrop, the issue that now crops up for consideration is about the legal proposition on which the parties have made their submissions. In this regard, we are of the clear opinion that the learned Single Judge while proceeding to allow the petition could not have ignored or omitted to consider the ratio of the judgement of the Apex Court in the case of **Krishna Kumar Choudhary** (supra) and simultaneously could not have relied on the ratio of the judgement of the High Court in the same case against which the appeal had been filed. A perusal of the judgment of the Apex Court extracted hereinabove leaves no room for doubt



that the Apex Court was dealing with the same very judgment of this Court where the issue of prescription of limitation was directly involved. The very opening words of the judgement categorically recites that the Apex Court was of the opinion that Section 29 of the Limitation Act applies on the facts of that case and, therefore, the delay in the filing the proceeding ought to be condoned. This clearly amounts to acknowledgment of the preservation of power with the authority to condone delay looking to the facts and circumstances of a particular case and the same amounts to a *ratio decidendi* and is not *obiter* so as to be ignored by this Court. The issue was directly under consideration before the Apex Court. The judgement of this Court on which reliance has been placed by the learned Single Judge for all practical purposes stood reversed on this issue by the Apex Court by the said pronouncement. The learned Single Judge, therefore, by adopting the reasoning of the judgement in the case of **Hiralal Agrawal** (supra) which was with regard to prescription of the filing of registration deed could not have proceeded to allow the petition without expressing any opinion about the impact of the judgement of the Apex Court in the case of **Krishna Kumar Choudhary** (supra). An omission to consider a direct pronouncement on the subject, therefore, impels us to hold that the learned Single Judge was not justified in



proceeding to allow the writ petition by overlooking the said judgement.

21. A decision on almost identical facts involving similar issue of the power of condonation of delay binds this Court. The judgment of the Apex Court in the case of **Krishna Kumar Choudhary** (supra) is not a mere judgment under Article 142 of the Constitution of India inasmuch as, as pointed out above, the Apex Court proceeded on the premise that Section 29 of the Limitation Act was attracted. A case is an authority for what it actually decides and not what logically flows from it. The judgment of the Apex Court has categorically held that the power to condone delay was available and this opinion of the Apex Court was expressed in an appeal filed against the same judgment of this Court that has been relied upon by the learned single Judge. The law, therefore, cannot be made uncertain on the ground that the Apex Court has not expressed a detail opinion on an issue involved. The judgment is a binding precedent by all norms and it is not for this Court to distinguish the same. The High Court cannot refuse to follow a binding decision of the Apex Court. The learned single Judge therefore erred in omitting to consider the impact of the aforesaid judgment of the Apex Court.



22. Contention raised by the learned counsel for the respondents that the said judgement does not lay down the law, for all the reasons aforesaid has to be rejected.

23. Even otherwise, we find that apart from the fact that the judgement of the Apex Court was binding, the authorities below have referred to the said judgment of the Apex Court. In such circumstances, it was impermissible for this Court to have ignored the same and to have proceeded to allow the writ petition without even having appreciated the facts of the case that reflected no deliberate default on the part of the appellant. In such circumstances, we have no reason to agree with the view expressed by the learned Single Judge which deserves reversal.

24. This appeal is, accordingly, allowed, the impugned judgement of the learned Single Judge dated 29th April, 2011 is set aside and the judgement of the Board of Revenue that was under challenge is restored.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	13.12.2018
Transmission Date	

