

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 19-2-2018****Pronounced on 26-2-2018****WA No. 97 of 2018**

Ramlal S/o Late Shri Jagannath Koshta, Aged About 71 Years R/o
Village Kondagaon, Tehsil Kondagaon, District Bastar, CG.

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mantralaya, Raipur, District Raipur CG.
2. The Board Of Revenue, Bilaspur, Circuit Court Jagdalpur, District Bastar, CG.
3. The Commissioner, Bastar Division, Jagdalpur, District Bastar CG.
4. Phoolmati Wd/o Late Rajman
5. Lakhan, S/o Late Rajman
6. Laxman, S/o Late Rajman,

Respondents No. 4 to 6 R/o Village Newta, Tehsil Kondagaon, District Bastar, CG.

---- Respondents

For appellant	: Shri Mayank Kumar, Adv.
For State	: Shri UNS Deo, Govt. Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT**Sharad Kumar Gupta, Judge**

1. In this appeal challenge is levied to the order dated 20-10-2016 passed by learned Single Judge of this Court in W.P. No. 5076/2005 vide Annexure A-1 whereby and whereunder learned Single Judge has dismissed writ petition filed by the appellant along with one more Writ Petition No. 4624/2005 filed by one Tilaknath.
2. This is admitted by respondents No. 1 to 3 that on 19-8-1968, land bearing Khasra No. 1/100 area 10 acres situated at village Newta was allotted to the appellant; concerned Patwari

had submitted the report; the Tehsildar Kondagaon had also submitted his inquiry report dated 17-9-1996 to the Additional Collector, Jagdalpur vide Annexure P-1; the Commissioner Bastar quashed the allotment order vide his order dated 24-1-1998 Annexure P-3; and the respondent No. 2 upheld the order Annexure P-3 by order dated 26-5-2005 vide Annexure P-4.

3. In brief, case of the appellant is that on 21-9-1975 and 4-2-1976, Rajman sold the aforesaid land to the appellant; on 30-12-1980, the appellant sold the same land to one Tilaknath; in the year 1986, Tilaknath sold the aforesaid land to one Janki Bai; on 10-11-1989, Janki Bai again sold the aforesaid land to the appellant; both the Revenue Courts failed to consider that Sections 153 and 165(7-b) of the CG Land Revenue Code, 1959 (in brevity 'Code of 1959') were incorporated with effect from 28-10-1992, therefore, they were not applicable in the present case; by the executive order dated 26-6-1984 vide Annexure P-5, respondents No. 4 to 7 had acquired the Bhumiswami rights without any embargo; in the case is hand, and Section 158(3) of the Code of 1959 is not applicable.

4. In brief, the case of the respondents No. 1 to 3 is that the lease which was given to Rajman Kalar was a temporary lease; the land was shown as *BADE JHAD KA JUNGLE* at the time of allotment of temporary lease; purpose regarding the aforesaid land had not been changed under Section 237(2) of the Code of 1959 before the allotment; and provisions of Section 165(7-b) were not complied with.

5. Respondents No. 4, 5 and 6 had not filed any return to the

writ petition.

6. Being aggrieved by Annexure P-4, the appellant preferred the aforesaid writ petition which was also dismissed as aforesaid.

7. Shri Mayank Kumar, counsel for the appellant strenuously argued that amended provisions of the Code of 1959 have been applied retrospectively but actually it could not have been done. The allotment officer had made the detailed inquiry, thus impugned order Annexure A-1 may be set aside.

8. Shri UNS Deo, Government Advocate appearing for the respondents No. 1 to 3 argued that the impugned order is just and proper, is in accordance with the law, and no interference is called for by this Court while exercising appellate jurisdiction.

9. This is perceptible from the entries of the right of record of the year 1955-1956 that Khasra No. 1/2, 5 area 1835.05 acre was recorded as *BADE JHAD KA JUNGLE* and reserved for Jungle Nistar.

10. There is no dispute that the disputed land is the part and parcel of aforesaid Khasra No. 1/2, 5.

11. It would be pertinent to mention the provisions of Section 237(1) and (2) of the Code of 1959 which read as under:-

“237.Collector to set apart land for exercise of Nistar rights. (1) Subject to the rules made under this Code, the Collector may set apart unoccupied land for the following purposes, namely:-

(a) for timber or fuel reserve;

(b) for pasture, grass bir or fodder reserve;

(c) for burial ground and cremation ground;

for gaathan;

(e) for encamping ground;

(f) for threshing floor;

(g) for bazar;

(h) for skinning ground;

(i) for manure pits;

(j) for public purposes such as schools, playgrounds, parks, road, lanes, drains and the like; and

(k) for any other purposes which may be prescribed for the exercise of right of Nistar.

(2) Lands set apart specially for any purpose mentioned in sub-section (1), shall not otherwise be diverted without the sanction of the Collector.”

12. In the case in hand, the disputed land reserved for the Jungle Nistar had been diverted without permission of the Collector. The allotment authority was not competent to divert the nature of the land without obtaining the permission from the concerned Collector. Thus, there is a clear violation of Section 237(2) of the Code of 1959 in the case in hand. As per Annexure P-1 and Annexure R-1 it is clear that the lease given to Rajman was a temporary lease. As per the condition in Clause 7:1 of the lease, the lessee shall not transfer any right in the land and if it is transferred then the lease would be void from the date of the transfer. Thus, this is unequivocal that Rajman had no right to alienate any right in the disputed land to anyone, but he violating the aforesaid condition sold the disputed land to the appellant.

13. Looking to the above facts, circumstances and material placed on record, this Court finds that learned Single Judge has not committed any illegality or jurisdictional error while passing

the impugned order Annexure A-1 dismissing the writ petition. Thus, we agree with the order of dismissal of the learned Single Judge and affirm the Annexure A-1 to the extent as mentioned above.

14. There is delay of 397 days in filing this appeal. Appellant has filed an application I.A. No. 1/2018 for condonation of the delay in filing the writ appeal on the ground that he is a patient of asthmatic bronchitis and was under regular medical check-up and treatment, therefore he could not come to Bilaspur to file the appeal in time. He also submitted medical certificate Annexure C-1.

15. In **Ajit Singh Thakur Singh -v- State of Gujarat** (AIR 1981 SC 733), Hon'ble Supreme Court has held that **in case of an appeal against acquittal filed beyond period of limitation, the sufficient cause must be shown for condonation of delay.** The cause shown must refer to the period prior to the expiry of the Limitation. Events or circumstance arising after the expiry of limitation cannot be termed to be sufficient cause for condoning delay.

16. In **Esha Bhattacharjee -v- Managing Committee of Raghunathpur Nafar Academy and others** [(2013) 12 SCC 649], Hon'ble Supreme Court while dealing with the matter relating to condonation of delay has laid down the following principles :-

“(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
- (xi) It is to be borne in mind that no one gets away with fraud,

misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

Some more guidelines taking note of the present day scenario are:

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchallant manner requires to be curbed, of course, within legal parameters.”

17. In **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another** [2010) 5 SCC 459], Hon'ble Supreme Court has observed that :-

“Section 5- Application for condonation of more than four years' delay in filing of appeal by espondents against judgment and decree passed by trial Court in Special Civil Suit No. 32 of 2001. Appeal was allowed by High Court.

Plea of appellants that appeal against judgment and decree dated 30.10.2004 was filed on 24-11-2008 i.e. after more than four years, but by scoring out the figures and words "4 years and 28 days" in paragraphs 2 and 3 of the application and substituting the same with figure "1067", the respondents misled the High Court in believing that delay was of 1067 days. A reading of the impugned order shows that the High Court did make a bald reference to the application for condonation of delay filed by the respondents but allowed the same without advert to the averments contained therein and the reply filed on behalf of the appellant. Not only this, the High Court erroneously assumed that the delay was of 1067 days, though, as a matter of fact, the appeal was filed after more than four years. Another erroneous assumption made by the High Court was that the appellant had not filed reply to controvert the averments contained in the application for condonation of delay. It may have been possible for this Court to ignore the first error in the impugned order because by deleting the figures and words "4 years and 28" in paragraphs 2 and 3 of the application and substituting the same with the figure 1067, the respondents misled the High Court in believing that the delay was of 1067 days only but it is not possible to fathom any reason why the Division Bench of the High Court omitted to consider the detailed reply which had been filed on behalf of the appellant to contest the prayer for condonation of delay. Notwithstanding this, case could have been remitted back to High Court for fresh disposal of application filed by the respondents under Section 5 of the Limitation Act but, adoption of that course held not proper, as respondents did not approach High Court with clean hands. Even though Law Department of respondent No. 1 was very much aware of the proceedings of the first as well as the second suit but none of the officers is shown to have personally contacted either of the advocates for the purpose of filing written statement and preparation of the case and none bothered

to appear before the trial Court on any of the dates of hearing. High Court committed grave error by condoning more than four years' delay in filing of appeal ignoring the judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act. Impugned order of High Court set aside and application for condonation of delay filed by respondents dismissed. Appeal allowed.”

18. In Ex. C-1, it has not been mentioned that from the date of the impugned order i.e. 20-10-2016 and before 1-12-2016, the appellant was under medical check-up and treatment. Moreover Ex. C-1 does not indicate that it was not possible for the appellant to travel Bilaspur for filing the appeal. Thus, the reasons assigned by the appellant are not natural and plausible. In other words, these reasons are not acceptable. Thus, we hold that the appellant has failed to show sufficient cause for aforesaid delay. Thus, the aforesaid judicial precedents laid down by Hon'ble Apex Court go against the appellant.

19. As noticed in paragraphs 9 and 10 above, the land in question is BADE JHAD KA JUNGLE and reserved for Jungle Nistar. That land has been found to have been diverted without permission of the Collector. That finding has been rendered by the statutory authority on the basis of relevant records. The learned Single Judge did not find any way to disturb that finding of fact. The violation of the conditions of the temporary lease have also been found on the basis of materials. Such findings of fact by the statutory authority have been affirmed by the learned Single Judge. Those findings cannot be held as illegal or unavailable on record. There is, therefore, no ground to entertain the appeal on the merits as well. Looking to the aforesaid facts

and circumstances of the case, we find that appeal is devoid of merit. Also, there is no sufficient cause for the enormous delay in filing the appeal.

20. Consequently, the appeal is dismissed and I.A. No. 1 is also rejected.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge