NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.86 of 2008

Kumar Ram, S/o Chunni Lal Dhote, Aged About 54 Years, R/o Village - Semra, Tehsil - Nagri, District - Dhamtari Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Collector, Dhamtari, District Dhamtari (CG)
2. Smt. Rajmat Bai W/o Late Ramesh Kumar Halba Aged About 36 Years R/o Village Semra, Post Semra, Tahsil Nagari, District- Dhamtari, Chhattisgarh
3. Harku Ram S/o Raghram R/o Village Semra, Tahsil Nagri, District- Dhamtari, Chhattisgarh
4. The Sub Divisional Officer Dhamtari, District Dhamtari, Chhattisgarh
5. Additional Collector Raipur, District- Raipur, Chhattisgarh
6. Board Of Revenue Chhattisgarh At Raipur, Chhattisgarh **--- Respondents**

For Petitioner	:	Mr. Rajesh Kumar Sharma, Advocate
For Respondents No.2 & 3	:	Mr. Pallav Mishra, Advocate
For State	:	Ms. S. Harshita, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

04/12/2019

Heard.

1. This petition, under Article 227 of the Constitution of India, is preferred against order dated 07.11.2007 passed by the Board of Revenue, by which, the appellant's revision petition has been dismissed.

2. Land comprised in Khasra No.106 admeasuring 0.88 decimal situated in Patwari Halka No.95 Revenue Circle Sihava belonged to aboriginal tribe Pyarelal, S/o Ramsunder, Resident of Village Saneha.

3. After amendment in the Land Revenue Code, introducing a new provision under Section 170-B with effect from 24.10.1980, upon receipt of information that the petitioner, a non-tribal is enjoying possession of the land belonging to an aboriginal tribe, notices were issued to the petitioner by the Sub-Divisional Officer, initiating proceeding under Section 170-B for return of land. The proceedings before the Sub-Divisional Officer, in which the petitioner duly participated and was afforded an opportunity of hearing, culminated in passing of an order dated 19.10.1992, by which, the Sub-Divisional Officer directed return of the property in favour of the aboriginal tribe Pyarelal.

4. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Collector on 22.12.1992. The Collector, however, dismissed the appeal as barred by limitation taking into consideration that the order was passed by the Sub-Divisional Officer on 19.10.1992 and the appeal was filed on 22.12.1992 which was beyond the prescribed period of limitation and there was no application seeking condonation of delay in filing appeal. Learned Lower Appellate Authority in the ultimate paragraphs of its order recorded that the appellant was present in the Court and had full notice and knowledge of the order passed by the Sub-Divisional Officer. He had applied for grant of certified copy on 25.11.1992 and on that day itself, certified copy was supplied.

5. Aggrieved by the said order, the petitioner preferred a revision before the Board of Revenue. The Board of Revenue, relying on admitted facts that the order was passed by the Sub-Divisional Officer on 19.10.1992 in the presence of the petitioner and he had applied for certified copy on 25.11.1992, the date on which, he received copy and that the appellant, despite having been filed beyond period of limitation, was not supported by any application for condonation of delay, affirmed the order passed by the Lower Appellate Court.

6. Learned counsel for the petitioner would submit that the petitioner had a very good case on merits. He would submit that where the order passed by the Sub-Divisional Officer is found to be palpably illegal and unsustainable in law, even if the appeal is barred by limitation, the Court ought to have *suo motu* condoned the delay and entertained dispute on its own merit rather than dismissing the appeal only on the ground of delay in filing appeal.

7. On the other hand, learned counsel for respondents No.2 & 3 would

submit that the appeal could be entertained on merits by the Collector, only when appeal is filed within the period of limitation of 45 days, as prescribed under Section 44 of the Land Revenue Code. He would further submit that in case, the appeal is filed beyond the period of limitation, the petitioner was obliged under the law to seek condonation of delay by moving appropriate application under Section 5 of the Limitation Act along with affidavit stating sufficient cause for condonation of delay. The petitioner having neither filed any application nor prayed for condonation of delay, his appeal was rightly dismissed as barred by limitation.

8. Having heard learned counsel for the parties, irrespective of merits of the case, appeal of the petitioner which was filed before the Collector suffered from delay, the order passed by the Collector and by the Board of Revenue cannot be said to be suffering from any jurisdictional error or perversity. The order passed by the Collector apparently reveals that the order was passed by the Sub-Divisional Officer on 19.10.1992. and it also shows that the petitioner was not only present but also signed in the order sheet. He had applied for grant of certified copy on 25.11.1992 and on that day, itself, certified copy was supplied. Even if that day is excluded, filing of appeal on 22.12.1992 was clearly beyond the period of limitation of 45 days. Therefore, it was for the appellant to seek condonation of delay by moving appropriate application under Section 5 of the Limitation Act by showing sufficient cause as to why he could not file appeal within the period of limitation. The appellant did not move any application whatsoever seeking condonation of delay, much less filing any affidavit showing sufficient cause for condonation of delay.

9. There being no application for condonation of delay and the appeal barred by limitation, the Appellant Authority i.e. Collector was left with no option but to dismiss the appeal as barred by limitation.

10. The facts relating to date of passing of the order, date of filing of appeal and the time spent in obtaining certified copy being not in dispute, the Board of Revenue also committed no error of jurisdiction in holding that there is no illegality in the order of the Collector.

11. The Appellate jurisdiction could be invoked under Section 44 of the Land Revenue Code by filing appeal within a period of limitation as prescribed therein. As the appeal was not filed within a period of limitation, it was incumbent on the part of the petitioner to seek condonation of delay in filing

appeal by moving appropriate application under Section 5 of the Limitation Act supported by an affidavit and satisfying the Appellate Authority that he was prevented by sufficient cause from not filing appeal within the period of limitation.

12. An argument that even if the appeal is filed beyond the period of limitation, the Appellate Court ought to have examined appeal on merits cannot be accepted. The right to file appeal is circumscribed by statutory provision and it cannot be filed at any time. Once the period of limitation expires, the delay in filing appeal ought to be explained by moving application for condonation of delay showing sufficient cause supported by affidavit. This is not empty formality.

13. In the result, no case is made out warranting interference with the order of the Board of Revenue in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

14. The petition is, therefore, dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha