

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 276 of 2020

(Arising out of order dated 04/03/2020 passed by learned Single Judge in WPC No. 820 of 2020)

Judgment reserved on 18.06.2020

Judgment delivered on 26.06.2020

- Amrut Lal @ Amrit Lal S/o Shri Baliram, aged about 55 years, R/o Village Barekel Khurd, Tahsil Pithora, District Mahasamund C.G.

-----Appellant/Petitioner

VERSUS

1. State of Chhattisgarh, through Collector Mahasamund, District Mahasamund C.G.
2. Sub-Divisional Officer (Revenue) Pithora, District Mahasamund C.G.
3. Hardayal Singh S/o Shri Hanuman Singh, aged about 49 years R/o Village Lahroud, Tahsil-Pithora, District Mahasamund C.G.

-----Respondents

For Appellant	:	Mr. Surfaraj Khan, Advocate
For Respondents	:	Mr. Gagan Tiwari, Deputy Government Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

CAV Order

Per Parth Prateem Sahu, J.

1. Challenge in this appeal is to the order dated 04-03-2020 passed in WPC No. 820/2020 whereby the writ petition filed by the appellant was dismissed on the ground of delay and laches.
2. Facts of the case give rise to this appeal are that Respondent 2 has registered a case under Section 170(B) of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code'), mentioning therein that the sale deed of land of Tribals has been executed by fake permission. Respondent 2 has conducted an enquiry and

passed final order under Section 170(B) of the Act on 29-12-2017 and declared the sale deed executed by Respondent 3 in favour of the appellant of the land bearing Khasra No. 618 admeasuring Rakba 0.13 hectare situated at Village Lahroud, to be null and void. Order of the 2nd Respondent dated 29-12-2017 was put to challenge by the appellant in a writ petition bearing Writ Petition (C) no. 820/2020 which was filed only on 21-02-2020. The writ petition came to be dismissed by an impugned order.

3. Learned counsel for the appellant submits that the learned Single Judge erred in not considering the facts and circumstances of the case and the grounds raised therein in its entirety. It is also contended that the 2nd Respondent is not having the jurisdiction to declare the sale deed to be null and void but it is only for the Civil Court having the jurisdiction to declare the sale deed to be null and void. He also points out that the 3rd Respondent is not a person belonging to the Schedule Tribe community and therefore, the case under Section 170(B) of the Code ought not to have been registered and entertained by the 2nd Respondent. With respect to the reason and the ground on which the writ petition was dismissed by the learned Single Judge, he submits that there was reason for delay for filing the petition as the certified copy of the order, part of Annexure P-1, passed by the 2nd Respondent, has not been supplied immediately, therefore, the said order could not be challenged within time. He also points out that the appeal is not a proper remedy as it is like ***“caesar to caesar's wife”*** because the proceeding before the SDO was without jurisdiction.
4. Learned counsel appearing for Respondent 1 and 2 submits that the petitioner/appellant has not mentioned any reason for the delay in paragraph 7 of the writ petition, in fact, it is only mentioned that “there is no delay in filing the writ petition”. He submits that the argument raised with respect to the delay was afterthought and that cannot be considered by this Court in its appellate jurisdiction. He points out that there is inordinate delay of about more than 2

years in challenging the impugned order dated 29-12-2017. It is also contended by the learned counsel that the 2nd Respondent had exercised the jurisdiction vested on him as provided under Section 170(B) of the Act and the order has been passed after conducting an enquiry in which the appellant appeared and was aware of the proceedings before the Sub Divisional Officer (SDO). He submits that the appellant was having the remedy of the appeal before the Collector but he has not filed any appeal and directly approached to this Court by filing writ petition.

5. The writ petition came to be dismissed on delay and laches. To appreciate the submission made by the learned counsel for the appellant with respect to the delay and laches, we have perused the writ petition, particularly, paragraph 7 of the writ petition in which the petitioner was required to mention whether the petition filed is in time or there is delay and if there is delay, the reasons for the delay are required to be mentioned by explaining it. In writ petition, the appellant has not mentioned about the delay in filing the writ petition assigning reasons to it but it has only been mentioned that there is no delay in filing the writ petition.
6. Admittedly, the writ petition is filed on 21-02-2020 challenging the order of the 2nd Respondent dated 27-12-2017. The petition was filed after inordinate delay of about more than 2 years from the date of passing the order by the 2nd Respondent. The learned Single Judge of this Court has assigned reasons in paragraph 5 and 6 of the order for dismissing the petition on the ground of delay and laches which are extracted below for easy understanding.

“5. The very fact that the petitioner has neither preferred an appeal nor promptly approached this court is sufficient to infer that the petitioner did not intend to challenge the same at that point of time and in the process the order passed by the SDO under Section 170-B of the Code has attained its finality. Under the circumstances, this court is of the opinion that the writ petition suffers from delay and laches.

6. It has been repeatedly held by the Hon'ble Supreme Court that against the impugned order, if a person wishes to approach the Court invoking writ jurisdiction,

he should approach the Court within a reasonable period.”

Learned Single Judge has also taken into consideration the law laid down by the Hon'ble Supreme Court on the issue of delay and laches in the cases of **State of Uttaranchal and another v. Shiv Charan Singh Bhandari and others** reported in **2013 (12) SCC 179**, **Uttaranchal Forest Development Corpn. And another v. Jabar Singh and others** reported in **(2007) 2 SCC 112**, **New Delhi Municipal Council v. Pan Singh and others** reported in **(2007) 9 SCC 278**, **P.S. Sadasivaswamy v. State of Tamilnadu** reported in **(1975) 1 SCC 152**, **Bhoop Singh v. Union of India** reported in **(1992) 2 SCC 136** and **Chennai Metropolitan Water Supply and Sewarage Board and others v. T.T. Murali Babu** reported in **2014 (4) SCC 108**.

7. So far as the submission made by the learned counsel for the appellant that the 2nd Respondent is not having the jurisdiction to declare the sale deed as null and void is concerned. Case was registered under Section 170(B) of the Code. Section 170(B) of the Code is for Reversion of land of members of aboriginal tribe which was transferred by fraud under sub section 3 of Section 170(B). Perusal of sub section 3 of Section 170(B) would show that the authority prescribed under the Land Revenue Code for passing order under Section 170(B) is SDO who is the 2nd Respondent here. It also prescribes that the authority shall declare the transaction to be null and void if he finds the members of aboriginal tribe were defrauded. This being the position, the jurisdiction of SDO under Section 170(B) of the Code, the submission of the appellant with regard to question the jurisdiction of the 2nd Respondent is not sustainable. The other submission made by the learned counsel for the appellant that there is no proper remedy of the appeal available to him is concerned. Section 44 of the Code provides for the Appeal and Appellate Authorities and Section 44(1)(b) provides that any order passed by the SDO, the appellate authority has been shown as the Collector.

Land Revenue Code provides for statutory appeal against the order passed by the SDO. In view of the above, prima facie, the submissions made by the learned counsel for the appellant are also not sustainable.

8. We do not find any infirmity in the view taken by the learned Single Judge in dismissing the writ petition on the ground of delay and laches, particularly, when the petitioner has not mentioned that there is delay and avoided to give its explanation. In view of the aforementioned facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court, we do not find any good ground to interfere with the impugned order. The appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly. No order as to cost.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge