

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**W.P.(227) No.4957 of 2008**

1. Mangal Sahu S/o Parsadi Sahu, Aged About 60 Years
2. Ramdas Sahu S/o Parsadi Sahu, Aged About 55 Years
3. Ishwar Sahu S/o Parsadi Sahu, Aged About 50 Years

(All are R/o Village Thuha, Post Marod, Tehsil Bhakhara, District Dhamtari, Chhattisgarh)

**---- Petitioners**

***Versus***

1. Itwari S/o Halalkhor Nagarchi, Aged About 55 Years
2. (Deleted) Pyarelal As Per Hon'ble Court Order Dated 15.12.2009, Chhattisgarh
3. Ratanlal S/o Ramprasad Nagarchi, Aged About 50 Years
4. Ramlal S/o Ramprasad Nagarchi, Aged About 49 Years  
(all are R/o Village Thuha, Post Marod, Tehsil Bhakhara, District Dhamtari, Chhattisgarh)
5. State Of Chhattisgarh, Through The Collector District Dhamtari, Chhattisgarh

**---- Respondents**

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| For Petitioners | : Mr. B.P. Sharma, Advocate. |
| For State       | : Mr. D.P. Singh, Dy.A.G.    |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**  
**Order on Board**

**22-05-2020**

1. Heard this petition under Article 227 of Constitution of India has been brought being aggrieved by the orders of Collector- Dhamtari dated 22.05.2001 and of the Board of Revenue dated 25.01.2008, by which the application filed under Section 05 of Limitation Act was dismissed by the Collector in the appeal upheld by the Board in the revision petition.
2. It is submitted by the learned counsel for the petitioners that the petitioners have made purchase of the property in dispute with the permission of Collector, Raipur on 21.10.1970. The S.D.O. Dhamtari in

the year 1990 issued notice to the petitioners, the vendor of the sale deed, who were respondent in that proceeding did not appear, despite the notice. Thereafter, without making any inquiry, the order dated 21.03.1994 was passed by S.D.O. Dhamtari holding that the transfer of the disputed property belonging to member of Scheduled Tribe to the petitioners who are not a member of Scheduled tribe was not bona-fide. Therefore, the order passed for reversion of land purchased by the sale deed above mentioned in favour of the respondents No.1 to 4.

3. The petitioners then filed an appeal before the Collector- Dhamtari along with the application under Section 05 of Limitation Act on 04.04.2000. The reason for delay was explained, that the petitioners had no information regarding the passing of order dated 21.03.1994, as the order was passed in their absence. Subsequent to that, they have come to know and obtained the certified copy, then the appeal has been filed and the application for condonation of delay has also been filed. The learned Collector- Dhamtari has vide order dated 22.05.2020 without making any inquiry into the grounds raised for filing the delayed appeal has dismissed the application. The revision preferred before the Revenue Board C.G. has also been dismissed by the impugned order dated 25.01.2008.
4. It is further submitted by the learned counsel for the petitioners that the reasons mentioned for the delay in filing appeal must have been inquired. The petitioner was never given any opportunity to establish the case of delay, by bringing any evidence or affidavit and otherwise and the application for condonation of delay has been dismissed cursorily and arbitrarily by the Collector- Dhamtari, C.G. as well as by the Board. Therefore, the interference of this Court is required in the exercise of jurisdiction under Article 227 of Constitution of India.
5. Learned counsel for the State opposes the submissions made by the

learned counsel for the petitioner and submits that there is a clear delay of 06 years in filing the appeal by the petitioners before the Collector-Dhamtari and the delay has not been properly explained. Therefore, no error has been committed by the Collector as well as by the Board in dismissing the prayer made by the petitioners. Hence, the petition is without any substance.

6. Heard learned counsel for both the parties and perused the documents present.
7. On perusal of the order sheets of the proceedings before the S.D.M.-Dhamtari, it is found that petitioners gave appearance in the proceeding for sometime but subsequent to that, the proceedings continued and the petitioners were not represented at all. The other parties to the proceeding were never served with notices, which is found mentioned in the order dated 21.03.1994 itself and this order was passed.
8. In the application under Section 05 of Limitation Act filed along with the bail petition, the reasons has been given by the petitioners that they did not have knowledge of the order dated 21.03.1994 and they came to know of this in the year 2000 and then soon after, they have filed the appeal. An affidavit was also filed in support of this statement. There had been nothing stated contrary by the other party as they were not served with notices and it appears from the perusal of the order dated 22.05.2001 passed by the Collector- Dhamtari, that there had been no representation of the other party. It is also reflected from the same order that the statement made by the petitioners supported by an affidavit was nowhere contradicted or challenged. Even then, the same has been disregarded by the Collector- Dhamtari and further no opportunity ever was given for bringing any other evidence to the petitioners to establish the claim that they had no knowledge of the passing of order dated 21.03.1994. Therefore, I am of this view that the manner in which the

application under Section 05 of Limitation Act, which has been decided by the Collector- Dhamtari suffers from infirmity, is not in accordance with the established principles of law. Hence, the order passed is unsustainable. Similarly, the order of the Revenue Board which has been upheld by the order of the Collector- Dhamtari is also unsustainable.

9. On the basis of the these observations, the petition is allowed. The impugned order and the order of Collector- Dhamtari dated 22.05.2001 is hereby set aside. The case is remanded back to the Collector- Dhamtari with a direction to issue notice to the opposite party and provide opportunity to both the parties for bringing evidence on the ground raised in the application by the petitioners in their application in support as well as against for condonation of delay in filing appeal and decide the same thereafter in accordance with law.

10. Accordingly, the petition stands disposed off.

**Sd/-**

**(Rajendra Chandra Singh Samant)**

Judge

Monika