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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 11.01.2021

Order Passed on : 03/03/2021

W.P.(227) No. 3588 of 2011

1. Rajendra Kumar, S/o. Dataram, Aged About 40 Years.
2. Sushila Bai, W/o. Dataram, Aged About 65 Years
3. Uttam, S/o. Sadhram, Aged About 50 Years
4. Firtin Bai, W/o. Chhedilal, Aged About 65 Years
5. Lalit Kumar, S/o Ramsanehi, Aged About 50 Years
6. Jamuna Prasad, S/o. Banshilal, Aged About 42 Years
7. Khemlal, S/o. Sadhuram, Aged About 40 Years
8. Bhajoram, S/o. Ghasiram, Aged About 50 Years
9. Narmada Bai, W/o. Dholram, Aged About 65 Years
10. Jhagru, S/o. Midhu, Aged About 60 Years
11. Baraturam, S/o. Daniram, Aged About 60 Years
12. Ravi, S/o. Shankarlal, Aged About 35 Years
13. Joseph, S/o. Ledwaram, Aged About 50 Years
14. Rameshwar, S/o. Budlu, Aged About 47 Years
15. Janiram, S/o. Latanga, Aged About 58 Years
16. Amrika Prasad, S/o. Munuram, Aged About 40 Years
17. Sukdev, S/o. Samaru, Aged About 60 Years
18. Bharat, S/o. Dudhawaran, Aged About 35 Years
19. Shyamlal, S/o. Paharu, Aged About 52 Years
20. Manohar, S/o. Chheduram, Aged About 45 Years

All are R/o. Village Malkharod, Tehsil Malkharod, District Janjgir-Champa, Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh, Through : The Collector, Bilaspur, Chhattisgarh.
2. Board of Revenue, Chhattisgarh, Raipur, Chhattisgarh.
3. Sub Divisional Officer, (Revenue), Sakti, District Bilaspur, Chhattisgarh.
4. (Deleted) Lal Bhupal Bahadur Singh, as per Honble Court Order Dated- 16-01-2018 And 25-07-2018 On 30-07-2018
5. Lal Bhupendra Bahadur Singh, S/o. Lal Udit Narayan Singh,
6. Smt. Rajkumari, Wd/o Late Surendra Bahadur Singh,
7. Vijayendra Singh, S/o. Late Surendra Bahadur Singh,
8. Babu Bahadur Singh, S/o. Late Surendra Bahadur Singh
9. Smt. Durgesh Nandani @ Bhuri Bai, Wd/o. Of Late Gajendra Bahadur Singh,
10. Amit Vikram Kumar Singh, S/o. Gajendra Bahadur Singh
11. Jitendra Bahadur Singh, S/o Lal Udit Narayan Singh,
12. (Deleted) Smt. Shanti Kumari Devi As Per Honble Court Order Dated- 16-01-2018 And 25-07-2018 On 30-07-2018

No.4 to 12 all are R/o Village Malkharoda, Tahsil Malkharoda (Sakti), District Janjgir-Champa, Chhattisgarh.

---- Respondents

For Petitioners : Mr. Rajeev Shrivastava, Advocate

For State/Respondents No.1 to 3 : Mr. Adil Minhaj, Govt. Advocate

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Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

03/03/2021

1. This present petition has been brought being aggrieved by the order dated 29.10.1997, passed by the respondent No.2/Board of Revenue in Revision No. RN/3-1/CG/576/93, dismissing the appeal of the petitioners on the ground that it was barred by limitation.

2. The facts presented in the case are this that the respondents No. 4 to 12 were Malgujars of Malkharauda Jagirdari, who were holders of the land in question. The petitioners are the persons, who were in possession of the land in question on the ground of grant or purchase or by sikhmi rights or by registered sale deed. Proceeding was drawn against the respondents No.4 to 12 under the M.P. Ceiling of Agriculture Holdings Act, 1960 (hereinafter referred to as the "Act, 1960"). The petitioners filed their objections in that proceeding but the same was dismissed and order dated 18.03.1991 (Annexure P-5) was passed by the Sub-Divisional Officer (Revenue) vesting the disputed land with the State Government. Subsequent to that the petitioners and the various villagers made representation before the Sub-Divisional Officer, Sakti, for allotment of land from the government. The applications of some of the villagers were entertained and lease was granted in favour of some of the villagers vide order dated 22.05.1993 (Annexure P-6), but the case of the petitioners were not considered. The petitioners then preferred an appeal before the Board of Revenue (Annexure P-7). Additional Tahsildar,

Malkharauda had submitted report dated 07.11.1992 (Annexure P-10), in which, the recommendations were made in favour of the petitioners for grant of government land on lease. The learned Board of Revenue has dismissed the appeal of the petitioners by order dated 29.10.1997 (Annexure P-13) only on the ground of limitation.

3. It is submitted by the learned counsel appearing on behalf of the petitioners, that the order passed by the Board of Revenue is cryptic order, by taking technical approach, without considering that the petitioners have been prosecuted their claim since very beginning by raising their objections. Hence, the order passed is erroneous without any justification. The appeal was required to be decided on merits for the reason that in the report of Additional Tahsildar, Malkharauda (Annexure P-10), their had been recommendation in favour of the petitioners, whereas on similar grounds, the other villagers of the vicinity were granted lease of the government land. Hence, the petitioners have been discriminated, which is violation of their constitutional rights under Article 14 of the Constitution of India. It is prayed that the impugned order be quashed and the case be remanded back to the Board of Revenue with a direction to decide the appeal on merits.

4. Learned State Counsel appearing on behalf of the respondents No.1, 2 and 3 opposes the petition and the submissions made in this respect. It is submitted that no error has been committed by

the Board of Revenue in passing the impugned orders. The appeal was clearly delayed by two years, before it was filed in the Board of Revenue, regarding which, day to day explanation was required and there had been no such explanation given by the petitioners' side. Hence, the impugned order has been correctly passed, which needs no interference.

5. I have heard the learned counsel for the parties and perused the documents placed on record.

6. On perusal of the impugned order dated 29.10.1997, it is clear that the appeal has not been decided on merits. Only consideration that has been given by the learned Board of Revenue was on the application for condonation of delay in filing the appeal.

7. Section 44 of the Act, 1960 provides for limitation of 60 days from the order against which appeal or revision is to be preferred. It is further provided that the provisions of Section 4, 5, 12 and 14 of the Indian Limitation Act shall also apply to the filing of such appeal or application for revision.

8. Section 35 of the Act, 1960, provides for allotment of surplus land. The land which is declared surplus and vested with the State, has to be allotted under this provision to the persons entitled. The persons, who shall be entitled are detailed in Sub-section (1) of Section 35 of the Act, 1960. On such application it shall be subject to enquiry whether such person is entitled or not. The grievance of the petitioners is this that after vesting of the land with the State, the villagers of the vicinity and the petitioners all made prayers for

such allotments but the petitioners were left out, while other persons were allotted surplus land.

9. There is recommendation made by the Additional Tahsildar, Malkharauda vide (Annexure P-10), which had been considered in the order of making allotment dated 22.05.1993 (Annexure P-6), wherein the petitioners were left out. It is the claim of the petitioners that their names finds mention in the recommendation made by the Additional Tahsildar, Malkharauda, which was not given consideration by the Sub-Divisional Officer while passing the order dated 22.05.1993. Hence, they have a case to prosecute in appeal.

10. Although Section 44 of the Act, 1960 provides for a limitation of 60 days to file appeal, but at the same time, the applicability of the provisions of Indian Limitations Act, 1963 has also been provided. Section 5 of the Indian Limitation Act provides for extension of prescribed period, in certain cases, where in, the applicant satisfies the Court that he had sufficient cause for not preferring the appeal within the prescribed period. It was mentioned in the memo of appeal and the application for condonation of delay, that the petitioners/ were never informed about the order of Sub-Divisional Officer dated 22.05.1993 and neither they had notice of the same and that was the ground of delay in filing the appeal before the Board of Revenue. On perusal of the impugned order it is seen that this averment of the petitioners/applicants was not at all given consideration.

11. In the case of **Oriental Aroma Chemical Industries Limited Vs. Gujrat Industrial Development Corporation & Anr,** reported in **(2010) 5 SCC 459**, it was held, that law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties, but to ensure that they do not resort to dilatory tactics and seek remedy without delay, therefore, the expression sufficient cause must receive a liberal construction so as to advance substantial justice. It was also held by the Supreme Court in case of **State of Karnataka Vs. Y. Moideen Kunhi (dead) by LRS. & Ors. Koonhi**, reported in **(2009) 13 SCC 192,** that the Court must not be pedantic in deciding delay condonation petition, which should not be dismissed on mere ground of longer delay, if the, explanation offered is bonafide.

12. In view of the principle laid down by the Apex Court and the facts present in this case, that the petitioners have a claim for allotment of surplus land vested with the State in ceiling proceeding, in their favour on the basis of their entitlement and that despite there being recommendation in their favour, the same was not considered by the Sub-Divisional Officer and also the reasons for delay mentioned in their memo of appeal and application for condonation of delay, which appears to be bonafide, hence, I am of this view that the learned Board of Revenue has failed to exercise the jurisdiction and dismissed the application for condonation of delay of the petitioners in mechanical and arbitrary manner. Hence, it is a fit case in which the supervisory jurisdiction

of this Court can be exercised.

13. On the basis of the discussions made here-in-above and the conclusions drawn, this petition is allowed. The impugned order dated 29.10.1997, passed by the Revenue Board/respondent No.2 in Revision No. RN/3-1/CG/576/97 is hereby set-aside. The application for condonation of delay in filing the appeal by the petitioners is hereby allowed. The appeal of the petitioners before the Revenue Board is restored. The Revenue Board (respondent No.2 is hereby directed to consider on the appeal filed by the petitioners on merits after giving appropriate opportunity of hearing to the parties and pass appropriate orders in accordance with law. The Revenue Board is further directed to dispose of the case within a period of three months.

14. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram