

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 632 of 2015****Order Reserved on 6.9.2021****Order Delivered on 08.10.2021**

M/s Krishna Builders And Developers Through Its Partner Shri Pawan Agrawal, Son Of Shri Sedhram Agrawal Aged About 47 Years Resident Of Vidyanagar, P.S. Tarbahar District And Tehsil Bilaspur Chhattisgarh.

---- Petitioner**Versus**

Shiv Narayan Jaisawal (Died) Through Legal Heirs As Per The Hon'ble Court Order Dated 11-08-2021.

1. State Of Chhattisgarh Through The Collector Raigarh, Chhattisgarh.
2. Shri Manoranjan Jaisawal S/o Late Shiv Narayan Jaisawal Aged About 68 Years Resident Of 1, H.B. Road Distillery Compound Ranchi, Police Station Lalpur Ranchi, District Ranchi Jharkhand.

---- Respondents

For the Petitioner	:	Shri Ankit Singhal, Advocate.
For Respondent No.1	:	Shri Vineet Kumar Pandey, Advocate.
For Respondent No.2/ State	:	Shri Shakti Singh Thakur, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

Heard.

1. This petition has been brought being aggrieved by the order dated 3.7.2015, passed in Revenue Revision Case No. RN/R/13/B-121/454/2012 by the Chhattisgarh Board of Revenue allowing the application of respondent No.2 by condoning the delay in filing the revision petition and dismissing the order of the Collector, Raigarh dated 2.7.2012.

2. It is submitted by learned counsel for the petitioner that the agreement to sale was executed between late Shiv Narayan Jaisawal and others with

Gagan Rathi and Others for the sale of property belonging to Shiv Narayan Jaisawal and others on consideration. There was a clause in the agreement that the purchaser may at their own cost get measured the property, demarcate and also divide the property in suitable plots and thereafter, develop the land accordingly. On the basis of this sale agreement dated 23.7.2003, the petitioner obtained the clearance from Town and Country Planning Department, Raigarh on 16.4.2004. On the basis of that agreement for sale, the sale deed was executed on 21.4.2004 in favour of Gagan Rathi and Others. The petitioner was one of the purchaser party. On the basis of this sale deed, the revenue records were duly mutated. The property purchased was diverted by the order dated 7.6.2004 passed by the Sub-Divisional Officer, Raigarh. Subsequent to this diversion, Shivnarayan Jaisawal respondent No.1 and Others, joint holders of the property executed sale deeds in favour of the purchaser for which the sale consideration was received. The name of the purchasers have also been mutated. Deceased – Shiv Narayan Jaisawal had also participated in these transactions and he was well aware of the Court proceedings regarding which, he gave a consent letter (Annexure-P/7) dated 30.11.2004.

3. It is submitted that deceased respondent No.1, Shiv Narayan Jaisawal filed a review application after passing of about 6 years before the Sub-Divisional Officer, which was rejected by the order dated 24.11.2011 (Annexure-P/8) on the ground that review application is barred by limitation. Respondent No.1 then preferred a revision before the Collector, Raigarh which was also dismissed by the order dated 2.7.2012 (Annexure-P/9). It is submitted that the impugned order of Board of Revenue by which the delay

in filing the revision was condoned and the revision was allowed by dismissing the order of the Collector which is totally erroneous and illegal.

Reliance has been placed on the judgment of Supreme Court in the case of **Jumni and Ors. vs. State of Haryana** reported in **(2014) 11 SCC 355**, in which it was held that the Courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of *bona fides* of an inaction or negligence that would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Reliance has also been placed on the judgments of Supreme Court in the cases of **Basawaraj and Another vs. Special Land Acquisition Officer**, reported in **(2013) 14 SCC 81**, **Joint Collector Ranga Reddy District and Another vs. D. Narsing Rao and Others**, reported in **(2015) 3 SCC 695** and **Ibrahimpattam Taluk Vyavasaya Coolie Sangham vs. K. Suresh Reddy and Others**, reported in **(2003) 7 SCC 667**, it has been similarly held in these cases that in the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, therefore, the inordinate delay is not condonable.

Reliance has also been placed on the judgment of Supreme Court in the case of **Bishundeo Narain and Another vs. Seogeni Rai and Jagernath**, reported in **AIR 1951 SC 280**, it is submitted that the delay in the present case was not fit to be condoned, therefore, the impugned order is unsustainable. Hence, the petition be allowed and the relief be granted to

the petitioner.

3. Learned counsel for respondent No.1 opposes the submissions and submits that the present writ petition is not maintainable under Article 227 of the Constitution of India as the order passed has not been passed in exercise of any judicial powers. Relying on the judgment of Supreme Court in the case of **Dr. Ram Sharan Lal Tripathi vs. State of Chhattisgarh**, reported in **2015 SCC Online Chhattisgarh 1521**. It is submitted that according to agreement for sale dated 23.7.2003, total 8.24 acres of land was to be sold as per agreement. The sale deed that was executed on 21.4.2004 was only for the part of the land, therefore, the title had not passed over the remaining lands belonging to respondent No.1. The petitioner by keeping respondent No.1 in dark got the entire lands diverted for its own benefit. The diversion order has been obtained on the basis of this agreement for sale and the application for diversion was submitted by the petitioner with forged signature of respondent No.1, therefore, the diversion order was obtained fraudulently by the petitioner. Respondent No.1 after collecting the information and material preferred an application to Sub-Divisional Officer for review of the diversion order on the ground that the earlier order was obtained fraudulently but the same was dismissed erroneously on the ground of delay only. The revision before the Collector was also dismissed without considering on the merits. The Chhattisgarh Board of Revenue has allowed the application for condonation of delay. The issue based on the fraudulent diversion is still pending which has to be decided by the Collector.

Relying on the judgment of the Supreme Court in the case of **Satluj**

Jal Vidyut Nigam Ltd. vs. Raj Kumar Rajinder Singh, reported in **(2019) 14 SCC 449**, it is submitted that the orders obtained unlawfully by the declarant, would be a nullity in the eyes of law. It is submitted that in the case of **Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others**, reported in **(1987) 2 SCC 107**, it was held that hyper technical view should not be taken in the matter of condoning the delay emphasizing on the submission that the proceeding initiated against the petitioner is based on fraud. It is submitted that in the case of **A.V. Papayya Sastry and Others vs. Govt. of A.P. and Others**, reported in **(2007) 4 SCC 221**, the Hon'ble Supreme Court has held that the judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority has to be treated as non est and nullity in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings, therefore, the delay in this case was fit to be condoned.

Reliance has also been placed in the case of **Madhukar Sadbha Shivarkar (dead) by legal representatives vs. State of Maharashtra and Others**, reported in **(2015) 6 SCC 557**, in which the Supreme Court has reiterated the same view as held in *A.V. Papayya Sastry and Others vs. Govt. Of A.P. and Others* (supra).

4. Learned State counsel/ respondent No.2 has made formal objection.

5. Heard learned counsel for the parties and perused the documents present on record.

6. The objection on maintainability of the petition has to be decided first. The respondent has relied upon the judgment of this Court in the case of *Dr. Ram Sharan Lal Tripathi vs. State of Chhattisgarh* (supra). In the case of *Sunil Tawari vs. Janak Ram Kurre and Anr.* in W.P.(227) No.914 of 2015 and batch of other W.P.(227) cases decided on 16.7.2021 the maintainability of the petition under Article 227 of the Constitution of India against the order passed by Revenue Board has been upheld by clearly distinguishing the view taken by the Co-ordinate Bench in the case of *Dr. Ram Sharan Lal Tripathi vs. State of Chhattisgarh* (supra).

Section 51 of the Chhattisgarh Land Revenue Code, 1959 provides for review of orders and such power is exercised by a Revenue Officer acting as a Court in accordance with the provision under Code of Civil Procedure, 1908, therefore, any order passed in review application under this provision is to be regarded as an order passed by a Court and is subject to supervision under Article 227 of the Constitution of India, therefore, the objection raised by respondent No.1 & 2 is dismissed.

7. Considered on the submissions. Perused the entire documents present in the petition filed by the petitioner as well as by the respondents. On perusal of Annexure-R/1, the order-sheets of diversion proceedings before Sub-Divisional Officer shown on 24.11.2004, the application for diversion was filed by the petitioner. In the order-sheet dated 7.6.2004, there is a mention that diversion is prayed for the land belonging to the petitioner

and also the land belonging to Shiv Narayan Jaisawal (deceased). It is claimed by respondent No.2 that neither he made any such prayer for diversion nor he had given any such authority to the petitioner to make such prayer for diversion. The diversion order dated 7.6.2004 (Annexure-P/5) also mentions the land belonging to the petitioner and the land belonging to late Shiv Narayan Jaisawal and Others separately. However, there is a sale deed produced by the petitioner side in which late Shiv Narayan Jaisawal and Others were vendors. The property was sold to Chandrama Singh, however, the consenting party was the petitioner. The sale deed includes all the property of description which is mentioned in the report of the Revenue Inspector which is the basis of passing the diversion order dated 7.6.2004. There is a statement in the sale deed (Annexure – P/6) that the property under the description of the sale deed has been diverted vide order dated 7.6.2004 in Revenue Case No. 244/A-2/2003-04 (Annexure-P/5). Respondent No.2 is not challenging the sale deed dated 29.11.2004 which is apart from the sale deed in question and was previously executed by the other title holders in favour of the petitioner.

8. Learned Chhattisgarh Board of Revenue in the impugned order has held that technical approach of the parties for condoning the delay should not be taken. It is very clear that the application for review of the order dated 7.6.2004 (Annexure-P/5) has filed after six years. If the statement of respondent No.2 has to be taken as it is that he was not the signatory to the application filed, on which the order dated 7.6.2004 has passed, which was based on the statement in the sale deed dated 7.11.2004 made by late Shiv Narayan Jaisawal making acquiescence of the order passed on 7.6.2004

(Annexure-P/5) for diversion of land gives impression that Shiv Narayan Jaisawal had knowledge about the diversion proceedings. In such circumstance, no objection was raised by him soon after the diversion or soon after the execution of sale deed and it has taken six years to file an application for review only by making an allegation of fraud. The same is not enough until and unless the issue of fraud was substantiated by cogent and reliable evidence. In the case of *Basawaraj and Another vs. Special Land Acquisition Officer* (supra), the Supreme Court has held in paragraph 12, which is as follows:

‘12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “*dura lex sed lex*” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.’

In the case of **Brijesh Kumar and Others vs. State of Haryana and Ors.**, reported in **(2014) 11 SCC 351**, the Supreme Court has held in paragraph 10, which is as follows:

‘10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of

delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of [Section 5](#) of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.'

9. As discussed herein-above, there appears to be material present to show that respondent No.1 was aware of the developments according to which the diversion orders were passed and the sale deed that was executed by him on subsequent date i.e. 7.11.2004. The statement was made by him in the manner of acquiescence to the diversion proceedings. Hence, there is nothing to hold that respondent No.1 was not aware of the proceedings and therefore, he was required to submit explanation sufficiently which he has not submitted, therefore, taking guidance from the view of Supreme Court in **Basawaraj and Another vs. Special Land Acquisition Officer**, (supra) and in **Brijesh Kumar and Others vs. State of Haryana and Ors.**, (supra), I am of this view that the impugned order passed by the Board of Revenue is unsustainable. Hence, the petition is allowed and the impugned order is quashed. As a result of which, the order passed by the Collector dated 2.7.2012 stands restored.

Sd/-

(Rajendra Chandra Singh Samant)
Judge