

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 9th September, 2021

+ CM(M) 582/2021

GOAN SABHA IBRAHIPMPUR & ANR. Petitioners
Through: Mr. Anupam Srivastava, ASC.

versus

SH. KULDEEP SINGH & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]

AMIT BANSAL, J. (Oral)

CM Nos.29190/2021 & 29191/2021(both for exemption)

1. Allowed, subject to all just exceptions.
2. The applications are disposed of.

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3. The present petition under Article 227 of the Constitution of India impugns the judgment dated 21st December, 2018 passed by the Financial Commissioner, Delhi in Case No.133/2014 and Case No.134/2014 both titled as *Gaon Sabha Ibrahimpur & Anr. Vs. Kuldeep Singh & Ors.*

4. The two petitions under Section 85 of the Delhi Land Reforms Act, 1954 in respect of Khasra Nos. 25(6-1) and 400 (4-16) situated in Village Ibrahimpur, Delhi were filed on behalf of the respondents, claiming that

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they were in physical cultivatory possession over the land for last more than three years and therefore they have acquired *bhumidari* rights. During the pendency of the proceedings, one of the original petitioners, Balbir Singh expired and his legal heirs, Kamal Singh, Bijender Singh and Mahesh Chand were brought on record. Subsequently, Kamal Singh one of the legal heirs of Balbir Singh expired and his legal heirs were also brought on record. Subsequently, the remaining two legal heirs Bijender Singh and Mahesh Chand also expired during the pendency of the petition and applications under Order XXII Rule 3 of the Civil Procedure Code (CPC) for taking on record their legal heirs were filed and the said applications were allowed by the order dated 28th May, 2013 passed by the Revenue Assistant (RA). It was noted in the said order that the counsel appearing on behalf of Gaon Sabha has no objection to the said applications for impleadment of legal heirs and the application under Section 5 of the Limitation Act being allowed.

5. An appeal was filed against the said order before the District Magistrate and Collector, who vide order dated 17th January, 2014 dismissed the said appeal filed by the Gaon Sabha holding that the RA had allowed the impleadment of legal heirs not just on the basis of no-objection given by the counsel appearing on behalf of Gaon Sabha, but also upon applying his mind to the averments made in the application. The relevant extracts from the said order are given below:-

“As regards, the plea of the Gaon Sabha that some of the petitioner before the Revenue Assistant had expired and application for substitution was filed lately and that ‘no objection’ was incorrectly recorded from the side of Gaon Sabha by the Revenue Assistant. On this issue, counsel for the

respondent has submitted that as per order 22 Rule 9 C.P.C. and Section 5 of Limitation Act, the Trial Court had power to condone the delay in moving the application and to set-aside the abetment, if any. The impugned order shows that the application U/o 22 Rules 3 & 9 C.P.C. coupled with an application U/s 5 of Limitation Act was filed with supporting affidavit. While allowing the application, the Revenue Assistant has not only recorded the 'no objection' given by the counsel for Gaon Sabha to the allowing of the application, rather has also considered the averments made in the application and reasons for condonation of delay in filing the application. Revenue Assistant has further recorded that ends of justice will meet, if LRs are taken on record and delay in filing the respective application is condoned. So it is not the case that the Revenue Assistant has allowed the application only on the basis of alleged 'no objection', rather the Revenue Assistant has applied its mind and has exercised his discretionary powers and allowed the application for substitution of LRs of deceased petitioner before the Revenue Assistant. So I do not find any substance in the said submissions also."

6. Against the aforesaid order passed by the District Magistrate and Collector, appeal was preferred by the Gaon Sabha before the Financial Commissioner, Delhi, which was dismissed by the impugned order dated 21st December, 2018. The relevant extracts from the aforesaid impugned order with regard to impleadment of legal heirs are set out below:-

"4. I have heard the arguments of parties and have perused the material on record. It is recorded in the order of the revenue assistant that both the counsels submitted their lead evidences and the same has not been disputed before the Deputy Commissioner. As regards, substitution of LRs. Deputy Commissioner has already held that applications for substitution were not decided merely on the basis of no objection submitted by counsel for Gaon Sabha but merits of the applications were also considered. The Revenue Assistant has not allowed the application only on the basis of alleged "No objection", rather the Revenue Assistant has exercised his discretionary power and

allowed the application for substitution of LR's of deceased petitioner. Hence, I find no infirmity in the said order."

7. The aforesaid order has been impugned in the present petition. It is noted that the impugned order was passed on 21st December, 2018 but the present petition has only been filed on 9th April, 2021 after a delay of almost two and a half years.

8. Mr. Anupam Srivastava, learned Additional Standing Counsel appearing on behalf of the petitioners states that there is no limitation prescribed for petitions under Article 227 of the Constitution of India and therefore the present petition may be considered on merits. It is correct that there is no period of limitation provided for filing petitions under Article 227 of the Constitution of India, however the general principles applicable for entertaining writ petitions under Article 226 are equally applicable to petitions filed under Article 227. The said petitions cannot be filed at any point of time and if the said petitions are filed after an inordinate delay, the same are liable to be dismissed on the ground of delay and laches. In this regard reference may be made to the observations made by the Supreme Court in ***Bithika Mazumdar and another Vs. Sagar Pal and others*** (2017) 2 SCC 748, which are set out below:

4. It is an admitted position in law that no limitation is prescribed for filing application under Article 227 of the Constitution. Of course, the petitioner who files such a petition is supposed to file the same without unreasonable delay and if there is a delay that should be duly and satisfactorily explained. In the facts of the present case, we find that the High Court has dismissed the said petition by observing that though there is no statutory period of limitation prescribed, such a petition should be filed within a period of limitation as prescribed for

applications under Section 115 of the Code of Civil Procedure. This approach of the High Court cannot be countenanced. As mentioned above, in the absence of any limitation period, if the petition is filed with some delay but at the same time, the petitioner gives satisfactory explanation thereof, the petition should be entertained on merits.

9. In the present case, no justification or explanation has been given as to why the aforesaid petition has been filed after such an inordinate delay and therefore, the present petition is liable to be dismissed on the ground of delay and laches alone.

10. Even on merits, no case is made out for interference with the impugned order. There are three concurrent findings given by the authorities below allowing the applications for impleadment of legal heirs of the original petitioners. No merit is found in the submissions of the counsel for the petitioners that the said applications were wrongly allowed as no such applications under Order XXII Rule 3 for bringing on record their legal heirs, were filed. Once a clear finding of fact is given by all the three authorities below that the said applications were duly filed along with an application under Section 5 of the condonation of delay, the counsel cannot be heard to argue that the said applications were not on record. I have perused all the orders passed by the authorities below and I see no ground for interference with the same in exercise of powers under Article 227 of the Constitution of India.

Dismissed.

AMIT BANSAL, J

SEPTEMBER 9, 2021

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