



2024:DHC:7331



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 20th September, 2024

+ W.P.(C) 1794/2014

T C VERMA & ANR.

.....Petitioners

Through: Mr. Yashraj Singh Deora, Senior Advocate with Mr. Priyesh Mohan Srivastava and Ms. Sonal K. Chopra, Advocates.

versus

GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Mehak Nakra, Additional Standing Counsel (Civil), GNCTD with Ms. Gunjan Suyal and Ms. Anjali Pandey, Advocates along with Mr. Puneet Tiwari, Range Officer, South Forest Division and Ms. Jasmine, Project Associate.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India, laying a challenge to an order dated 04.02.2014 passed by the Appellate Authority with a further direction to the Respondent to provide land to the Petitioners equivalent to value of their land or to provide a clear approach/passage to their own land comprised in Khasra No.112/19-23 situated in the Revenue Estate of Village Dera Mandi, Najafgarh, New Delhi.



2. Factual matrix that emerges from the narrative in the writ petition is that Petitioners are recorded *bhumidars* of agricultural land comprised in Khasra no. 112/19 measuring 4 Bigha 16 Biswa and in Khasra no. 112/23 measuring 4 Bigha 16 Biswa purchased vide two separate Sale Deeds both dated 14.07.1995 (hereinafter referred to 'subject land'). Prior thereto, a Notification was issued on 24.05.1994 by Government of NCT of Delhi (GNCTD) under Section 4 of the Indian Forest Act, 1927 (hereinafter referred to as the '1927 Act') declaring its intention to constitute specified land as reserved forest and reserving specified area in Delhi as notified reserved forests.

3. By Notification No.F-1(29)/PA/DC/95 dated 02.04.1996 issued under Section 154 of Delhi Land Reforms Act, 1954, ('1954 Act'), the Lieutenant Governor of Delhi placed the land belonging to Gaon Sabha and surrounding the subject land at the disposal of Department of Forest, GNCTD, for development of ridge/forest thereon and possession of the land was also handed over to the Respondent. It is averred in the writ petition that sometime in June, 2000, Respondent started fencing the land placed at the disposal of the Respondent thereby closing the passage/path to the Petitioners' land, which was being used for egress and ingress.

4. On account of obstruction and hindrance caused to the access of the Petitioners to the subject land, they preferred a representation dated 08.06.2000 to the Respondent requesting that either the Forest Department be directed to leave a passage for the Petitioners to access their land or in the alternative to exchange the land of the Petitioners with the Gaon Sabha land comprised in Khasra No.104/18/2, 19/2, 24/2, 107/8/2 and 9/1, which was



lying vacant and was not placed at the disposal of the Forest Department. After the representation was made, Forest Department fenced the land but did not close the passage of the Petitioners entirely and they were able to approach the subject land.

5. It is averred that somewhere in November, 2005, officials of the Respondent again attempted to block the ingress and egress of the Petitioners to the subject land which led to filing of a writ petition in this Court being W.P.(C) 23021-23/2005 wherein Petitioners sought a restraint order against the Respondent from closing the path, which was the only access to Petitioners' property and/or in the alternative a direction to provide an alternative pathway and/or exchange the property. Notice was issued to the Respondent on 05.12.2005. On 03.08.2006, the Court disposed of the writ petition directing the Petitioners to approach the Forest Settlement Officer ('FSO') so nominated, in light of the statement of the Respondent that the claim of the Petitioners could be considered under Sections 15 and 25 of 1927 Act by the designated FSO. By an interim order, the Court protected the easement rights of the Petitioners by permitting them passage over Respondent's land to access the subject land.

6. In terms of the directions passed by this Court, Petitioners filed an application under Section 15 read with Section 25 of the 1927 Act before the FSO. By an order dated 29.05.2007 in Case No.04/FS/06, the FSO, after considering the fact that Petitioners' land was agricultural land and fit for cultivation as opposed to the land which was being sought as an alternative land by the Petitioners as well as keeping in view the circumstances of the case, directed that the land of the Petitioners bearing Khasra No.112/19 (4-



16), 23(4-16), total ad-measuring 9 Bighas 12 Biswas be exchanged with the land belonging of the Forest Department, which had the same value and was situated at public way/passage in the same revenue estate. The reasoning of the FSO was that if the Petitioners were given passage to approach their land over the forest land, it would lead to wastage of the land belonging to the Forest Department as the passage would pass over about 3 acres of the said land.

7. Pursuant to the said order, Respondent closed the passage which was being used by the Petitioners for ingress and egress to the subject land and thereby took over Petitioners' land in part compliance of the order of the FSO. However, Respondent failed to implement the other part of the order, i.e., to provide alternative land to the Petitioners, which led to the Petitioners filing representations dated 20.03.2008, 14.07.2008 and 04.09.2008. When there was no response, Petitioners filed another writ petition being W.P(C) No.9046/2008 seeking appropriate writ and direction to the Respondent to allow the Petitioners to access their land or in the alternative to comply with the order dated 29.05.2007 and grant an alternative land.

8. On 18.12.2009, i.e., more than 2½ years from the date of the order dated 29.05.2007, Respondent preferred an appeal under Section 17 of the 1927 Act against the order of the FSO on the ground that the direction to exchange the land was illegal and could not have been passed by the FSO. On 22.07.2011, the Court passed an order directing the Appellate Authority to dispose of the appeal and the matter was adjourned to 17.10.2011. On the adjourned date, Respondent's counsel informed the Court that the appeal was disposed of setting aside the order of the FSO and copy had been served



on the Petitioners. Counsel for the Petitioners sought time to confirm this position and the writ petition was adjourned to 07.12.2011, on which date, Petitioners withdrew the writ petition with liberty to assail the appellate order. Petitioners filed their reply to the appeal on 16.08.2011 and on 07.09.2011 Respondent filed the rejoinder. By order dated 14.10.2011, the Secretary, Revenue allowed the appeal and set aside the order dated 29.05.2007, without providing any pathway to the Petitioners to access the subject land.

9. Aggrieved by this order, Petitioners again approached this Court and filed W.P.(C) 8939/2011 challenging the aforesaid order *inter alia* on the ground that the Appellate Authority had failed to consider that possession of Petitioners' land had been taken over by the Forest Department and plantations were being undertaken on the said land and in this view it was not open to the Appellate Authority to decide the appeal in favour of the Respondent without providing any relief to the Petitioners. The other ground raised by the Petitioners was that a preliminary objection was raised before the Appellate Authority that the appeal was barred by time inasmuch as the limitation for preferring an appeal was 3 months from the date of the order of the FSO, i.e. 29.05.2007 whereas the appeal was preferred on 18.12.2009, but the Appellate Authority did not even decide the issue of limitation.

10. The writ petition was disposed of on 01.02.2012 noting that the appeal had been disposed of without deciding the issue of limitation raised by the Petitioners. Court set aside the order dated 14.10.2011 and remanded the matter back for re-consideration by the Appellate Authority on merits as well as on the aspect of limitation. Respondent was permitted to file an



application within 4 weeks to seek condonation of delay, if any, in preferring the appeal. Court further directed that after deciding the issue of limitation, if the Appellate Authority came to the conclusion that the appeal was not time barred, it shall hear the case on merits. In that event, liberty was granted to the Petitioners to assail the order in fresh proceedings. A period of 4 months was granted to the Appellate Authority to decide the appeal.

11. Pursuant to the aforesaid order dated 01.02.2012, the Appellate Authority decided the appeal bearing No.PS/CCRA (Appeal)/2013/14/37 on 04.02.2014 and allowed the same. It was held that the limitation period prescribed under Section 17 was not mandatory but directory and that the FSO being a Civil Court, Section 5 of the Limitation Act, 1963 ('1963 Act') would be applicable and hence delay could be condoned and accordingly, condoned the delay. It is this order which is impugned in the present writ petition.

12. Learned Senior Counsel appearing on behalf of the Petitioners submits that Appellate Authority has gravely erred in condoning the delay of over 2½ years in filing the appeal. Section 17 of the 1927 Act provides a period of 3 months, within which any person who has made a claim under the said Act or any Forest Officer or other person generally or specially empowered by the State Government in this behalf, may present an appeal but there is no provision for condonation of delay in filing the appeal. Appellate Authority has wrongly invoked and applied Section 5 of the 1963 Act to condone the delay overlooking that the Divisional Commissioner/ Appellate Authority had no jurisdiction to do so as it is not a Court.



Appellate Authority travelled up the wrong path by first holding that FSO under Section 8 of the 1927 Act is a Civil Court as he adjudicates rights of civil nature in respect of land or rights related to the land comprised within the proposed reserved forest and since an appeal is an extension of the suit and right to file an appeal is conferred under the Revenue Laws, i.e. Delhi Land Reforms Act, 1954, etc. recognized by Section 5 of Civil Procedure Code, 1908, Appellate Authority also exercises power of a Civil Court and thereafter, wrongly concluded that provisions of 1963 Act would apply to the appellate proceedings. The argument is that the Appellate Authority under Section 17 is not a Court and suits, appeals and applications referred to in the 1963 Act are suits, appeals and applications which are to be filed in a Court. Therefore, the appeal ought to have been dismissed on ground of delay as Section 5 of the 1963 Act was inapplicable. Relying on the judgment of the Supreme Court in ***Ganesan represented by its Power Agent G. Rukmani Ganesan v. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and Others, (2019) 7 SCC 108***, it is urged that the case of the Petitioners is squarely covered by the said judgment.

13. It is further argued that Appellate Authority has erroneously interpreted the expression 'may' in Section 17 of 1927 Act to mean that it gives power to the Appellate Authority to condone delay in filing the appeal beyond the period of 3 months stipulated in Section 17. Plain reading of Section 17 of 1927 Act shows that the expression 'may' gives a discretion to the person/Forest Officer etc. to file an appeal and if he chooses to do so, the outer limitation period is 3 months. 'May' cannot be interpreted to mean giving power to the Appellate Authority to condone the delay. It is also



urged that there is no other provision in the 1927 Act which enables the Appellate Authority to condone delay beyond 3 months from the date of order impugned before the Appellate Authority. Having wrongly interpreted the word ‘may’, Appellate Authority illegally condoned an inordinate delay of over 2½ years. It is also strenuously urged that while on one hand Respondent has filed an appeal against the order of the FSO, on the other hand, Respondent has in part compliance of the order taken possession of the land belonging to the Petitioners and planted trees on the same. The result is that Petitioners have been deprived of their own land and not given any land in the alternative and have suffered a double jeopardy.

14. *Per contra*, learned Additional Standing Counsel appearing on behalf of the Respondent contends that the expression ‘may’ has been correctly interpreted by the Appellate Authority and a bare reading of Section 17 shows the intent of the Legislature to make the limitation period of 3 months directory and not mandatory and therefore, an aggrieved person can file an appeal under the said provision even beyond a period of 3 months from the date of the order proposed to be challenged and on sufficient ground being shown for the delay, the same can be condoned. It is further argued that Section 29 of the 1963 Act and Section 17 of the 1927 Act have to be harmoniously construed and the period of limitation must be treated as a flexible one. The 1927 Act is a special law and therefore, by virtue of Section 29(2) of the 1963 Act, provisions contained in Sections 4 to 24 shall apply as they are not expressly excluded by any special or local law.

15. On merits, it is argued that once the land is acquired under the 1927 Act, no new or fresh rights can be given to any party post the Notification



under Section 4 of the said Act and this includes the right to passage, if it does not already exist. It is not open to the Forest Department to give or take away any right in a notified forest land and the appeal has been rightly allowed by the Appellate Authority. It is urged that FSO had no authority to order exchange of notified forest land with any other land. His jurisdiction is confined to determining the existence of a right at the time of issuance of Notification under Section 4 of the 1927 Act and to settle the same as per provisions of the Act. FSO failed to consider that the land included in the Notification dated 02.04.1996 issued under Section 154 of 1954 Act is part of Southern Ridge and cannot be put to any other use including cultivation. Admittedly, Petitioners purchased the subject land in July, 1995 while Village Dera Mandi in which the subject land is situated was notified as reserved forests on 24.05.1994 and Petitioners have also not placed on record any documents to show that they were in continuous possession of the land and/or their *bhumidari* rights.

16. Heard learned Senior Counsel for the Petitioners and learned Additional Standing counsel for the Respondent.

17. A bare reading of the impugned order shows that before proceeding to examine the appeal, the Appellate Authority had framed the following three questions that were arising for consideration:-

“(1) Whether the appeal under section 17 of the Indian Forest Act, 1927 filed by the Department of Forest Delhi against the order of settlement officer granting compensatory land is time barred ?

(2) Whether the appellate authority under section 17 of Act can condone the delay applying section 5 of the Limitation Act?

(3) Whether the order dated 14-10-2011 passed by my predecessor deserves to be reaffirmed?”



18. To answer the aforesaid questions, Appellate Authority examined the provisions of Section 17 of the 1927 Act as well as Section 5 of the 1963 Act. Having noted that admittedly, there was no provision under the 1927 Act empowering the Appellate Authority to extend the period of limitation, the Appellate Authority first held that the expression ‘may’ in Section 17 was merely directory and not mandatory and thereafter held that the Appellate Authority being a Civil Court, provisions of Section 5 of 1963 Act were applicable and proceeded to condone the delay. Relevant paragraphs from the impugned order are as follows:-

“ISSUE NO.(2)

In view of my finding vide issue no.1, this issue does not arise for any further consideration. However for academic purposes, keeping in view the scheme of the Act, I can safely hold that limitation Act is applicable in proceedings under the Indian Forest Act for the reasons stated below :-

- a) *The power of the forest settlement office under section 8 of the Act is purely of a civil court. Sub-clause (b) of section 8 clarifies that the settlement officer shall exercise power of a civil court in the trial of suits.*
- b) *The power conferred upon the forest settlement officer is in the nature of adjudicatory in as much as he has to adjudicate rights of civil nature in respect of the land or rights related to the land comprised within the proposed reserved forest. The settlement officer therefore exercise power purely of a civil court and not that of a tribunal or quasi judicial authority.*
- c) *It is settled law that an appeal is an extension of suit whereby the rival claims are re-agitated and contended. Section 17 deals with right of appeal while section 18 deals with procedure of appeal. The appeal under section 17 therefore is a judicial proceeding.*
- d) *The right to exercise appeal is conferred to the revenue officer under the Indian Forest Act as is conferred under the revenue laws i.e. Delhi Land Reforms Act, Punjab Land Reforms Act etc., which are duly recognized even by section 5 of the Code of Civil Procedure.*
- e) *Since the proceeding both before a settlement officer and the appellate authority are judicial in nature and not quasi judicial or administrative both exercise power of civil court. Hence, the provision of Limitation Act applies to such proceedings.*



Keeping in view the public interest, the delay if any needs to be condoned and as such is condoned applying section 5 of Limitation Act. It is settled law that whenever substantial justice is pitted against technical consideration, substantial justice deserves to be preferred. In the present case this principle apply with more force as the issue pertains to conservation of forest and environment. Limitation is only a prescription of law albeit a procedural aspect. The legislature in their wisdom used the term 'may' under section 17 of the Limitation Act for a right purpose and object sought to be achieved i.e. the larger public interest."

19. Having perused the impugned order and after hearing the arguments canvassed on behalf of the respective parties, I am of the view that there is merit in the contentions raised on behalf of the Petitioners that the impugned order is legally unsustainable. First and foremost, the interpretation given by the Appellate Authority to the expression 'may' in Section 17 of the 1927 Act is wholly erroneous. Plain reading of the provision, which is unambiguous, shows that the expression 'may' is used by the Legislature to give discretion to a person to file an appeal within 3 months, if he intends to challenge an appealable order but cannot be construed to mean and connote that Legislature intended the '3 months limitation period' to be flexible and directory enabling the Appellate Authority to condone the delay beyond 3 months, as erroneously held in the impugned order. Once the provision is mandatory and there is no other provision in the 1927 Act, Appellate Authority had no power to condone the delay beyond 3 months much less a delay of over two and a half years. Section 17 is extracted hereunder for the ease of reference:-

"17. Appeal from order passed under section 11, section 12, section 15 or section 16.—Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from



such order to such officer of the Revenue Department of rank not lower than that of a Collector, as the State Government may, by notification in the Official Gazette, appoint to hear appeals from such orders:

Provided that the State Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the State Government, and when the Forest Court has been so established, all such appeals shall be presented to it.”

20. The next question that arises for consideration is whether the Appellate Authority could have condoned the delay in filing the appeal beyond a period of 3 months invoking Section 5 of the 1963 Act and this in turn gives rise to two further questions which are intrinsically linked i.e. whether Appellate Authority under Section 17 is a Court and whether the provisions of the 1963 Act are applicable. These two questions need not detain this Court as law on this aspect has been crystallized by the Supreme Court in **Ganesan (supra)**.

21. The Supreme Court in **Ganesan (supra)** framed questions which were arising for consideration and as captured in paragraph 8 of the judgment are:

“8. After hearing the learned counsel for both the parties and perusal of the record, following are the questions which arise for consideration in this appeal:

8.1.(1) Whether the Commissioner while hearing the appeal under Section 69 of the 1959 Act, is a court?

8.2.(2) Whether applicability of Section 29(2) of the Limitation Act is with regard to different limitation prescribed for any suit, appeal or application to be filed only in a court or Section 29(2) can be pressed in service with regard to filing of a suit, appeal or application before the statutory authorities and tribunals provided in special or local laws?

8.3.(3) Whether the Commissioner while hearing the appeal under Section 69 of the 1959 Act is entitled to condone a delay in filing an appeal applying the provisions of Section 5 of the Limitation Act, 1963?

8.4.(4) Whether the statutory scheme of the 1959 Act indicate that Section 5 of the Limitation Act is applicable to proceedings before its authorities?”



22. In the aforesaid case, the appellant before the Supreme Court filed an application under Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 ('1959 Act') claiming his ambalam right. Joint Commissioner of the Endowments Board passed an order holding the appellant entitled to the said right. An appeal was filed against the said order by 3rd Respondent under Section 69 of the 1959 Act along with a condonation of delay application seeking condonation of delay of 266 days before the Commissioner appointed under Section 9 of the said Act. The learned Commissioner condoned the delay and against the said order, writ petition was filed by the appellant before the Madras High Court. Learned Single Judge held that Section 5 of the 1963 Act was fully applicable and condoned the delay on the ground that sufficient cause was made out. Division Bench of the Madras High Court upheld the order and this is how the appeal was filed in the Supreme Court. Examining the provision in question and referring to the earlier judgments of the Supreme Court on the subject, the Supreme Court held that statutory authority like the Commissioner under 1959 Act was not a Court and suits, appeals and applications referred to in the 1963 Act are those which are filed in a Court. It was also held that the Commissioner while hearing an appeal under Section 69 was not entitled to condone the delay in filing the appeal since provisions of Section 5 were not attracted on the strength of Section 29(2) of the 1963 Act. Relevant paragraphs of the judgment are as follows:-

“59. The ratio which can be culled from the abovenoted judgments, especially judgments of three-Judge Benches, as noted above, is as follows:

59.1. The suits, appeals and applications referred to in the Limitation Act, 1963 are suits, appeals and applications which are to be filed in a court.



59.2. The suits, appeals and applications referred to in the Limitation Act are not the suits, appeals and applications which are to be filed before a statutory authority like Commissioner under the 1959 Act.

59.3. Operation of Section 29(2) of the Limitation Act is confined to the suits, appeals and applications referred to in a special or local law to be filed in court and not before statutory authorities like Commissioner under the 1959 Act.

59.4. However, special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of the Limitation Act which can be decided only after looking into the scheme of particular, special or local law.

60. We, thus, answer Questions (2) and (3) in the following manner:

60.1. The applicability of Section 29(2) of the Limitation Act is with regard to different limitations prescribed for any suit, appeal or application when to be filed in a court.

60.2. Section 29(2) cannot be pressed in service with regard to filing of suits, appeals and applications before the statutory authorities and tribunals provided in a special or local law. The Commissioner while hearing of the appeal under Section 69 of the 1959 Act is not entitled to condone the delay in filing appeal, since, provision of Section 5 shall not be attracted by strength of Section 29(2) of the Act.”

23. Applying the aforesaid judgment to the present case, it is clear that the Appellate Authority under Section 17 is not a Court and therefore, provisions of 1963 Act will be inapplicable. The Supreme Court has also repelled the argument that Section 29(2) of 1963 Act can be pressed into service with regard to filing of an appeal before a statutory authority provided in a special law, an argument strenuously made by the Respondent. Therefore, the impugned order wherein the Appellate Authority has invoked Section 5 of the 1963 Act to condone the delay is untenable in law and cannot be sustained.

24. There is yet another aspect of the matter on which the impugned action of the Respondent deserves to be quashed. After the FSO passed the order on 29.05.2007 directing the Respondent to exchange the land of the



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Petitioners with land of the Respondent with the same value falling at public way/passage in the same revenue estate, Respondent conveniently took possession of the subject land of the Petitioners and has planted trees therein but did not fulfill the reciprocal obligation of exchanging the land and allotting an alternative land. It needs no gainsaying that if the Respondent was not inclined to allot an alternative land in compliance of the order of the FSO, it should not have taken away the subject land and/or blocked the ingress and egress of the Petitioners to their own land. In fact, the FSO completely balanced the situation by directing provision of alternate land instead of allowing a pathway over the forest land as that would have led to wastage of about 3 acres of land of the Forest Department. Respondent cannot be permitted to approbate and reprobate.

25. Accordingly, this writ petition is allowed, quashing the impugned order dated 04.02.2014 with a further direction to the Respondent to implement the order of the Forest Settlement Officer within a period of three months from the date of receipt of the order.

JYOTI SINGH, J

SEPTEMBER 20, 2024/mk/shivam