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**(2021) 03 CHH CK 0001**

**Chhattisgarh High Court**

**Case No:** Writ Petition (227) No. 3588 Of 2011

Rajendra Kumar And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

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**Date of Decision:** March 3, 2021

**Acts Referred:**

- Madhya Pradesh Ceiling Of Agriculture Holdings Act, 1960 - Section 35, 35(1), 44
- Limitation Act, 1963 - Section 4, 5, 12, 14
- Constitution Of India, 1950 - Article 14

**Hon'ble Judges:** Rajendra Chandra Singh Samant, J

**Bench:** Single Bench

**Advocate:** Rajeev Shrivastava, Adil Minhaj

**Final Decision:** Disposed Of

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**Judgement**

Rajendra Chandra Singh Samant, J

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 find 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.