
(1999) 07 PAT CK 0127
In the Patna High Court
Case No : C.W.J.C. No. 3943 of 1999

Peyare Lal Singh	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1999) 2 PLJR 895

Hon'ble Judges : Negendra Rai, J

Bench : Single Bench

Advocate : Mahesh Pd., No. 2, for the Appellant; H.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—Though this application has been listed under the heading for orders but with consent of the parties, this application is being disposed of at this stage itself.

2. The Petitioner has challenged the resolution dated 22.12.98, passed by the Additional Member, Board of Revenue, Respondent No. 2 in Revision Case No. 16 of 1998 by which he has upheld the order of the Collector dated 25.5.98 passed in Ceiling Appeal No. 120 of 1997 rejecting the objection of the Petitioner regarding the admission of the appeal by him by order dated 6.10.98 after condoning the delay. Copy of the resolution of the Board dated 22.12.98, copies of the orders of the Collector dated 25.5.98 and 6.10.98 have been annexed as Annexures-5, 4 and 2 respectively.

3. it appears that the Land Ceiling Case No. 1/90-91 was initiated against Bimla Devi, the daughter of the Petitioner by the D.C.L.R., Bhabhua. She was found to be in possession of 550.60 acres of different class of land and in the draft statement u/s 10(3) of the Act 373.75 acres of land was shown as surplus land.

4. The Petitioner after, having come to know the said proceeding, filed, objection. The other person also filed objection claiming the lands, subject matter of the

ceiling proceeding. The D.C.L.R. by order dated 17.2.97 dropped the proceeding holding that neither the Respondent No. 6 nor the Petitioner who was the objector has surplus land and sent the record to the Collector for approval. A copy of the said order is Annexure-1 to the writ application. It appears that the file remained with the Additional Collector and after his retirement it came to the notice of the other authorities and thereafter steps were taken. An appeal was filed on 6.10.97 and the Collector condoned the delay in filing the appeal and admitted the same. The Petitioner appeared before the appellate court and filed a petition praying therein that the appeal was barred by limitation and the delay has been condoned without hearing the aggrieved person. The Collector came to the conclusion that the delay has been satisfactorily explained by the Appellant State and rejected the objection of the Petitioner by order dated 25.5.98 which was challenged by the Petitioner before the Member, Board of Revenue in the aforesaid revision case and the revision application has been dismissed. Hence the present writ application.

5. Learned Counsel for the Petitioner raised two points. Firstly, he submitted that in absence of any formal application u/s 5 of the Limitation Act for condoning the delay, the order condoning the delay is not maintainable. Secondly, he submitted that the Additional Member, Board of Revenue was not justified in issuing direction, to the appellate authority with regard to the steps to be taken in the appeal.

6. Counsel appearing for the Respondent on the other hand, submitted that there is no requirement in law that separate application under the relevant provision should be filed. Only requirement is that delay in filing the appeal should be satisfactorily explained and in this case in the memorandum of appeal itself the circumstances for not filing the appeal were given and after being satisfied with that the delay was condoned by the Collector. He further submitted that the revisional authority has not issued any direction and on the other hand it has only made certain observation with regard to the options open to the appellate court while deciding the appeal pending before him. Thus, according to him, no specific direction has been issued to the Collector to deal with the matter in a particular manner.

7. Admittedly the appeal against the order dated 19.2.97 was filed beyond the period of limitation. In the memorandum of appeal it was specially stated that the D.C.L.R. sent the record to the Collector which was kept by the Additional Collector till his retirement and when the new incumbent joined, then the steps were taken to file an appeal. The Collector being satisfied about the said facts, condoned the delay and thereafter the Petitioner filed an objection and after hearing he has affirmed the order of condonation.

8. Section 5 of the Limitation Act provides that an appeal/application etc. may be admitted after the prescribed period if the Appellant or the applicant satisfied the Court that he has sufficient cause for not preferring the appeal or making the application within the said period. There is no requirement in law that a separate

petition for condonation of delay is to be filed. Only requirement is that the Appellant has to satisfy that the good and significant grounds exist for condonation of delay. Learned Counsel for the Petitioner relied upon the Division Bench judgment of this Court in the case of Anant Sah and Others Vs. The State of Bihar and Others, in support of his contention. From the perusal of the said judgment it appears that one of the points raised on behalf of the Petitioner in that case was that the appeal filed before the Deputy Director, Consolidation was barred by limitation. The Court noticed that there was no discussion on the point of limitation and accordingly allowed the application on the ground that the appeal before the Deputy Director, Consolidation was filed beyond time. It was also stated that no application was even filed for condoning the delay. This Court after having noticed that there was no discussion with regard to condonation of delay by the appellate court, allowed the writ application on the said ground. In that case the question as to whether formal application for condonation of delay was to be filed or not was not the subject matter of decision. The case is an authority on the point decided by it and any factual statement in a judgment is not a ratio decidendi. Thus in my view that case in no way supports the case of the Petitioner.

9. The question as to whether formal application u/s 5 of the relevant provision is necessary for condonation of delay came up for consideration before the Division Bench of Allahabad High Court in the case of Mostt. Kalsumun Nisha and Anr. v. Noor Mohammad alias Sultan Haidar 1936 All. 686 wherein it was held that the extension of time u/s 5 of the Limitation Act cannot be disallowed on the ground of absence of formal application for extension of time (condonation of delay). The learned Single Judge of this Court relying upon the said judgment in the case of Ram Kali Kuer v. Indradeo Choudhary 1985 Pat 148 : 1985 PLJR 129 held that Section 5 of the Limitation Act does not provide that an application must be filed before the relief u/s 5 of the relevant provision can be granted. The same view has been taken by Orissa High Court in the case of Gadachetti Thakurani and Anr. v. Udi Barik 1981 Ori 126. I am in full agreement with the law laid down in the aforesaid cases. However, I would like to clarify that as the delay is to be condoned only on the proof of sufficient ground, the necessary facts with regard to the same has to be brought on the record of the case. Only on the basis of oral statement the court cannot condone the delay. Ordinarily the application should be filed wherein the sufficient cause for condonation of delay is to be stated but if the same is not filed but the grounds for condoning the delay is stated in the memo of appeal and the Court or authority on being satisfied condones the delay then the order of condonation cannot be nullified on the ground that there was no formal application for condonation under the relevant provision. In my view, the objection raised by the Petitioner is devoid of any substance and the order passed by the Collector condoning the delay which has been upheld by the revisional court cannot be assailed on the aforesaid ground.

10. Coming to the second point, I can only say that the apprehension of the Petitioner is wholly unjustified. No direction was issued by the revisional court.

On the other hand the revisional court was conscious of the fact that the appeal was pending before the Collector and as such it has observed in the order itself that as the appeal is yet to be decided, he will not pass any orders with regard to the various contentious issues raised on behalf of the State. It is for the Collector to first decide the course of action that he will adopt for acquiring the surplus land. He has only mentioned about the various options which are open in the case which the Collector has to consider. The same cannot be treated to be a direction. Accordingly, the second point is also devoid of any substance.

11. In the result, there is no merit in this application and the same is dismissed.