

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

Case No: OWP no. 593/2005
CMP nos. CMP Nos. 1432/2007, 787/2005
& 1035/2005

Date of decision: 21.10.2008

Vakil Singh
v.
Assistant Commissioner (R) Collector Agrarian Reforms & Ors.

Coram:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Petitioner : M/s. C.M.Gupta & Kovid Khosla,
Advocates.

For Respondents: M/s. A.H.Qazi, AAG, G.S.Thakur
and Suresh Kumar, Advocates.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes |
| ii) | Whether to be reported
in Digest/Journal | : Yes |
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Petitioner has filed this writ petition questioning Director Land Records' order of August 16, 2003 whereby he had set aside mutation nos. 752 and 781 attested under Sections 4 and 8 of the Jammu and Kashmir Agrarian Reforms Act, 1976, pertaining to five kanals of land comprised in Khasra nos. 413/122 of village Parlah Tehsil R.S.Pura and remanded the case to Tehsildar Settlement, R.S.Pura for fresh inquiry, as also against Jammu and Kashmir Special Tribunal Jammu's order of August 29, 2005 rejecting the revision petition he had preferred against the above mentioned order of Director Land Records.

upta, learned counsel for the petitioner raises a short submission to assail the orders impugned in this petition. According to him, the Director Land Records had erred in condoning delay in respondent nos. 6 to 8's filing their appeal against the mutations without there being any justifiable cause therefor and the Tribunal had failed to correct the error which the Learned Director Land Records had committed in condoning the delay.

Per contra, Mr. G.S.Thakur submitted that the mutations impugned in the appeal, snacked, ex-facie of numerous illegalities committed by the Assistant Commissioner in attesting mutations at a place in Village Murallian far away from the village where the land is situated, and that too without the identification of the persons who had been recorded in the revenue records to be in possession of the land. He submits that rather than getting the identification of the persons recorded in occupation of the land much prior to Kharief 1971 till 1990, the Assistant Commissioner had, in violation of Government Order No. Rev(LB)133 of 1989 of 26th May 1989 is stated to have got the petitioner identified from the persons recorded in possession of the land whose identity had not been certified either by the Lumberdar of the village where the land is situated or by any resident thereof. Learned counsel submitted that delay in filing the appeal had been condoned by the Appellate Court for good reasons and in the interest of justice. He submitted that the facts and circumstances of the case may not justify any interference with the discretion exercised by the Appellate and the Revisional revenue agencies in condoning delay in respondents filing the appeal against the mutations.

I have considered the submissions of learned counsel for the parties and gone through the records.

of delay by Appellate and Revisional Forums, is a subject which has been deliberated upon on numerous occasions by Hon'ble Supreme Court of India reiterating that expressions like "sufficient cause" or the like vesting discretion in the Appellate and Revisional Forums to condone delay in filing appeals and revisions is adequately elastic to enable the Forums/Courts to apply the law in a meaningful manner which sub-serves the ends of justice-that being the life-purpose for the existence of the institution of Forums/Courts. The approach to be adopted by such Forums, as suggested by the Supreme Court is to make a justifiably liberal approach in matters instituted in the Forums/Courts. This liberal approach is required to be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides.

Judiciary is not respected on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice which the law and justice expects it to do.

What constitutes sufficient or good cause for exercising discretion cannot be laid-down by hard and fast rules. Discretion conferred on the Appellate and Revisional Forums to condone delay in entertaining appeals and revisions is thus required to be exercised keeping in view the facts and circumstances of each case.

When Appellate or Revisional Forums find the orders impugned in the appeals or revisions to be bad in law and contrary to the norms prescribed for passing

cretion needs to be exercised liberally keeping the facts and circumstances of the case in view in favour of the litigant who suffers because of such illegal and unwarranted orders. Limitation cannot be projected as a shield to seek perpetuation of illegalities apparent on the face of the records.

While dealing with the plea raised by the petitioner's counsel before the revisional forum, the Tribunal had observed as follows:-

“Next question that arises for consideration is whether revision filed raises any question of law or public importance. I find decision of appeal rests on merit after discussing the facts as well as law does not involve any question of law or public importance to entail the survival of the present revision. However, the objection taken to the limitation during the course of argument before the appellate court about appeal filed after a decade is time barred and no sufficient cause has been shown is concerned I may state that sufficient cause in this present case is a question of facts and it is also a fact that none of the mutation has been attested in the village where the land is situated, manner in which the mutation under Sections 4 and 8 have been attested by Assistant Commissioner and Tehsildar concerned without associating respectable persons of the area and Lambardar of the area where the land is situated cannot be overlooked and Learned Director Settlement record after going through the record rightly recorded satisfaction explaining delay in condoning period of limitation from the date of knowledge as stated in the application of condonation of delay accompanied by affidavit not rebutted by the petitioner in writing by way of filing any counter affidavit during the entire proceeding before the appellate court except raising objection to the limitation during arguments. Looking to the facts and circumstances of the case taken note while considering the objection to the condonation allowed raised in the present revision right of the party should be substantially decided and no party should be allowed to suffer merely on some in action and lapse. Reliance is placed on AIR 1987 SC 1453 and AIR 2001 SC 2497. Authority KLJ 1988 page 338 cited by the learned advocate of the respondent is not at all applicable to the facts of the present case and his argument that plea of limitation cannot

in revision is devoid of force as only to challenge the same at the first instance was the appellate forum which was the first court and in such case superior forum is free to consider the cause shown for delay afresh and it is open to such superior forum to come to its own finding even untrammelled by the conclusion of the lower court. As already discussed here in the above the court below has sufficiently recorded the satisfaction for explaining the delay stated in the condonation application in the impugned order.”

Keeping in view the law laid-down by Hon’ble Supreme Court of India as to how discretion may be exercised by the Superior Forums in entertaining delayed appeals and revisions and the facts and circumstances of the case indicating that the mutation attested by Assistant Commissioner was illegal, on the face of it, being an utter violation of the standing orders governing the field and Government Order no. Rev(LB) 133 of 1989 issued on 26.05.1989, the Appellate Forum was absolutely right in accepting respondent nos. 6 to 8’s plea that they had no notice of the attestation of mutations and had approached the Appellate Forum immediately after having come to know about it.

I, therefore, do not find any error of law or jurisdiction in Director Land Records’ condoning delay, setting aside mutations and remanding the case for fresh consideration by Tehsildar Settlement, R.S.Pura.

The Jammu and Kashmir Special Tribunal’s order of August 29, 2005 upholding the Director’s order cannot thus be faulted.

As the rights of the parties regarding attestation or otherwise of mutations are yet to be finalized by the Tehsildar after fresh inquiry as directed by the Appellate Forum, so I do not find the petitioner to have established any case, on the basis whereof, it may be said that the



in this petition had violated any of his fundamental, legal or statutory rights.

Facts and circumstances of the case, when two Forums have supported reconsideration of the question of attestation or otherwise of mutations by the Tehsildar afresh, do not warrant interference in the orders impugned in this petition in exercise of this Court's extraordinary civil writ jurisdiction.

There is thus no merit in this petition, which is, accordingly, dismissed.

(J. P. Singh)
Judge

JAMMU:
21.10.2008.
***Anil Raina, PS**