

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

CRP(CRP Art. 227) No. 24 of 2022

Shri Khumanthem Bijen Singh, aged about 60 years, S/o (L)
Khumanthem Amu Singh of Changangai, P.S. Lamphel.
P.S....Imphal West District, Manipur

..... Petitioner/s

- Versus -

1. Khumanthem Millan Singh, aged about 25 years, S/o (L)
Khumanthem Shanta Singh of Changangai Mayai Leikai, P.O.
Tuliha & P.S. Lamphel, Imphal West District, Manipur.
2. Khumanthem Sundari Devi aged about 21 years, D/o (L)
Khumanthem Shanta Singh of Changangai Mayai Leikai, P.O.
Tuliha & P.S. Lamphel, Imphal West District, Manipur.
3. Khumanthem Jenita Devi aged about 18 years, D/o (L) Khumanthem
Shanta Singh of Changangai Mayai Leikai, P.O. Tuliha & P.S.
Lamphel, Imphal West District, Manipur.

.....Respondent/s

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner	::	Mr. Dayali Elangabam, Advocate
For the respondents	::	Mr. T. Sadananda, Advocate and Mr. T. Momo Singh, Advocate
Date of hearing	::	13.03.2023
Date of Judgment and Order	::	31.05.2023

JUDGMENT AND ORDER (CAV)

[1] By way of the present petition under Article 227, the petitioner herein has challenged the impugned order dated 20.04.2022 passed in Revenue Misc. Case No. 66 of 2021 by the learned Presiding Officer,

Revenue Tribunal, Manipur whereby application under Section 5 of the Limitation Act, 1963 filed by the respondents herein for condoning the delay of 321 days in filing the accompanying Revision case was allowed. In the revision petition, the respondents have challenged the legality, propriety and correctness of the mutation order dated 16.05.2001 in Mutation Case No. 169/SDC(P) 2001 of the Sub-Deputy Collector, Patsoi, Imphal West. By the impugned order, the learned Tribunal allowed the application under Section 5 of the Limitation Act, 1963 by condoning delay of 321 days in filing the Revision Case under Section 95 of the Manipur Land Revenue & Land Reforms Act, 1960 against the order dated 16.05.2001 in Mutation Case No. 169/SDC/(P)IW 2001 of the Sub-Deputy Collector, Patsoi Imphal West.

[2] The brief facts of the case are given below:

- (i) The present petitioner have 7 (seven) brothers including late Kh. Shanta Singh (father of the respondents), the youngest among the siblings.
- (ii) A plot of agricultural land under Pata No. 88/1026 (New), 108/246 covered by C.S. Dag No. 467 measuring an area of 0.82 acre situated at Revenue village No. 78 Changangei was recorded in the name of late Kh. Amu Singh (father of the petitioner and grandfather of the respondents).

- (iii) It is alleged that late Kh. Shanta Singh (father of the respondents) surreptitiously on the instigation of the respondents' mother (Smt. Mandakini Devi) recorded in the land record his name alone without the knowledge and consent of his father Kh. Amu Singh with malafide intention to sell to others. It is stated that Kh. Amu Singh died on 18.11.2001.
- (iv) The petitioner paid a sum of Rs. 90,000/- to the respondents' father Kh. Shanta Singh to meet his requirement and in order to avoid dispute between the siblings, the land was recorded in the name of the petitioner on 16.05.2001 vide Mutation Case No. 169/SDC/(P)IW/2001 before the Sub-Deputy Collector, Patsoi, Imphal West in presence of witnesses and late Kh. Shanta Singh as per family arrangement. Further, late Kh. Shanta Singh sold his share portion of homestead land to another brother Dilip Singh leaving no place to stay. The petitioner and his other brothers had purchased a land measuring 0.03 acres from Yumnam family of the locality and the respondents are residing in the said land.
- (v) It is also stated that during the lifetime of late Kh. Shanta Singh (father of the respondents), he had no

objection on recording the name of the petitioner in the said agricultural land and since then, the petitioner has been possessing with the said agricultural land as absolute owner till date.

- (vi) It is stated that Kh. Shanta Singh died in the year 2010. On 25.02.2019, the respondents had filed a Revenue Appeal No. 2/SDO/(PSI) of 2019 before SDO, Patsoi with an application being Revenue Misc. Case No. 3 of 2019 for condonation of 6128 days, alleging that they came to know about the mutation order dated 16.05.2001 only on 04.02.2019. The Ld. SDO disposed of the appeal on 21.08.2019 directing the parties to approach the appropriate forum for title/ownership of the land. The respondents filed Original Suit No. 91 of 2019 before the Ld. Civil Judge (Sr. Div.), Imphal West on 23.10.2019, inter-alia, praying for declaration of title & entry of their names in the land record; for declaring the mutation order dated 16.05.2001 as void; and for cancellation of name of the petitioner herein from the land record. The suit is still pending.
- (vii) On 06.12.2021, an application under Section 5 of the Limitation Act, 1963 was filed before the learned Revenue Tribunal, Manipur for condoning delay of 321

days in filing the accompanying revision petition under Section 95 of the Manipur Land Revenue and Land Reforms Act (MLR & LR Act), 1960 challenging the mutation order dated 16.05.2001 passed by the SDC, Patsoi, Imphal West in Mutation Case No. 169/SDC/(P)IW/2001. It is stated that the application for condonation of delay [Annexure- A/7] was filed soon after receipt of certified copies of mutation order of SDC and order in appeal passed by SDO and hence there is no delay from the date of knowledge of mutation order dated 16.05.2001. It is prayed to condone 321 days.

[3] The petitioner herein filed written objection before the learned Tribunal to the application for condonation of delay stating that the respondents had no locus standi in filing the revision case stating that their father and/or other brothers of the petitioner never challenged the mutation order and the mutation was done with the consent of the father of the respondents. The petitioner becomes the absolute owner and possessor of the land on the basis of family arrangement. The father of the respondents never challenged the mutation order during his lifetime. It is also stated that the respondents did not challenge the order dated 21.08.2019 passed by the Ld. SDO, Patsoi, Imphal West in Revision Appeal Case No. 2/SDO(PSI of 2019. Thereafter, the respondents have filed a suit being Original Suit No. 91 of 2019 before the Court of Ld. Civil Judge (Sr.Div.), Imphal West. It

is submitted that the same mutation order cannot be challenged twice before two different fora. It is stated that the application is hopeless bar by limitation.

[4] By the impugned order dated 20.04.2022 in Revenue Misc. Case No. 66 of 2021, the Ld. Tribunal allowed the application for condonation of delay and condoned the delay of 321 days in filing the accompanying revision petition against the mutation order dated 16.05.2001. Being aggrieved by the same, the petitioner challenges the impugned order amongst on the following grounds:

- (i) The respondents have no right to challenge the order dated 16.05.2001 which was passed on the basis of the family arrangement. There is no gift deed in favour of late Kh. Shanta Singh (father of the respondents) who died in the year 2010.
- (ii) The application is hopelessly barred by law of limitation and there is no sufficient cause to condone the delay as well as they suppressed the fact that they had already filed O.S. No. 91 of 2019 and after a gap of about 2 years they again filed the application for reviewing the order dated 16.05.2001 before the Revenue Tribunal.
- (iii) The order dated 20.04.2022 of the Revenue Tribunal is illegal and there is no specific reason of condoning the delay and under what basis the delay was calculated is

not known. The Revenue Tribunal failed to apply its judicial mind and without considering the facts, abruptly allowed the application for condonation of delay.

- (iv) Serious miscarriage of justice causes and the order causes inconvenience and hardship to the petitioner; and
- (v) Any other ground may arise be allowed to be urged at the time of hearing.

It is prayed that the impugned order 20.04.2022 be set aside.

[5] The respondents entered into appearance and filed counter affidavit where it is stated that by the impugned order dated 20.04.2022, the Ld. Tribunal has rightly allowed the application for condonation of delay of 321 days, as the respondents established sufficient cause for condonation of delay in filing the accompanying revision petition against the mutation order dated 16.05.2001 passed in Mutation Case No. 169/SDC/(P)IW/2001 passed by the Ld. SDC, Patsoi, Imphal West and the accompanying Revision Petition deserves to be heard on its merit. It is further stated that the respondents are son and daughters of the petitioner's younger brother, i.e. their nephew and nieces of the petitioner. It is also stated that under the family arrangement, the father of the respondents did not take his share from the homestead land under patta No. 88(Old) corresponding to new patta No. 90 under C.S. Dag No. 1355, measuring an area of 0.14542 at village No. 78 Changangei IWT left by

their grandfather as land was too small to distribute among the 7 brothers. The brothers of the petitioner are now residing in the said homestead land. During the lifetime of the respondents' deceased father, he purchased one homestead land from one person namely Yumnam Kesho Singh and they are residing with their grandmother on the said homestead land under patta No. 788/1187 measuring an area of 0.0300 acres. The father of the respondents did not take his share from the homestead land left by their grandfather. The father of the respondents was the absolute owner and recorded pattadar of the piece of the agricultural land under New patta No. 88/1026, corresponding to old patta No. 108, 246, covered by C.S. Dag No. 467 measuring an area of 0.82 acres situated at revenue village No. 78 Changangei. The father of the respondents sold out some portion of aforesaid agricultural land to the petitioner measuring an area of 0.31000 acres out of the total area of 0.82 acres under New Patta No. 88/1026 corresponding to old patta No. 108,246 covered by C.S. Dag No. 467 situated at revenue village No. 78 Changangei. Thereafter, the name of the petitioner was recorded in the relevant record of rights and partition was done thereby recording the name of the petitioner in the said agricultural land under a separate patta (jamabandi) being New patta No. 1072, covered by C.S. Dag No. 467/546, measuring an area of 0.31000 acres situated at revenue village No. 78 Changangei. The father of the respondents was the absolute owner and recorded pattadar of the agricultural land under New patta No. 88/1026, corresponding to old patta No. 108, 246 covered by C.S. Dag No. 467 measuring an area of 0.51

acres situated at revenue village No. 78 Changangei (hereinafter called "Suit Land") was recorded in the name of the deceased father of the respondents.

[5.1] The father of the respondents met with a serious road accident in the year 2002 and lost his consciousness due to serious injury on the head, when the respondents were minor. The mother of the respondents left the matrimonial home after the said accident and they were living together under the care and guidance of their grandmother namely Khumanthem (O) Apabi Devi at the house of the deceased father. On 06.12.2010, the father of the respondents died and the suit land was let out to the petitioner and in return the respondents and their grandmother enjoyed the 'lousal' (5 paddy bags in a year as rent). During the lifetime of the father of the respondents, he never sold, gifted, exchanged or mortgaged the said suit land to anybody and as such, there was no registered deed in connection with the suit land. The father of the respondents sold only a portion of agricultural land measuring an area of 0.31 acres out of 0.82 acres to the petitioner and remaining portion measuring an area of 0.51 acres (suit land) were never sold, gifted, exchange or mortgaged to the petitioner. In the first week of January, 2019, the respondents made a demand to the petitioner to give the right of cultivation as they were grown-up and attained majority but the petitioner, who was cultivating the land after the said accident of their father, refused to give the right of cultivation of the said agricultural land to them. On

04.02.2019, the respondents went to the concerned sub-Deputy Collector Office to enquiry about the record of the said suit land and they came to know that the name of their deceased father, late Khumanthem Shanta Singh, was not recorded in the record of rights (Jamabandi) and the name of the petitioner was recorded vide order dated 16.05.2001 of mutation Case No. 169/SDC/(P)IW/2001 passed by the Sub-Deputy Collector, Patsoi, Imphal West.

[5.2] It is stated that the petitioner in collusion with staff of the concerned revenue department mutated the said suit land in his name vide order dated 16.05.2001 of the mutation case No. 169/SDC/(P)IW/2001 without the knowledge and consent of the children of original pattadar. On 25.02.2019, the respondents filed a Revenue Appeal No. 2 of 2019 in the Court of Sub-Divisional Officer, Patsoi and vide order dated 21.08.2019, it was observed that the mutation order dated 16.05.2001 was not executed as per the prescribed procedure and directed the parties to approach an appropriate forum for claiming their title/ownership of the said. Thereafter, the respondents filed Original Suit No. 91 of 2019 before the Ld. Civil Judge (Sr.Div.), Imphal West against the petitioner praying for a decree that the respondents are the absolute owner of the suit land and entry of their names in land record and the mutation order be set aside. The suit is still pending. Being aggrieved by the order dated 16.05.2001 in Mutation Case No. 169/SDC/(P)IW/2001 passed by the SDC, Patsoi, Imphal West, the respondents filed Revenue Misc. Case No. 66 of 2021 which is an

application under Section 5 of the Limitation Act, 1963 for condonation of delay of 321 days in filing the accompanying revision petition before the Ld. Revenue Tribunal, Manipur against the mutation order.

[6] Mr. E. Dayali, learned counsel for the petitioner submits that in the application for condonation for delay filed before the learned Tribunal, the respondents have miserably failed to disclose any valid reason (not to speak of the sufficient cause) for the delay of 321 days in filing the revision petition against the mutation order. It is pointed out that the actual delay is not 321 days as mentioned. The impugned mutation order is dated 16.05.2001 and the application for condonation for delay was filed on 06.12.2021 and as such there is more than 20 years of delay. Even if, the period of delay is calculated from the date of alleged knowledge, ie, 04.02.2019, there is a delay of almost three years. If the delay is calculated from the date of order passed by SDO in appeal, ie, 21.08.2019, there is more than 2 years of delay. He points out that the respondents have failed to specifically mention the exact days of delay. Mr. Dayali further submits that the respondents have not disclosed in the application the factum of filing of a suit being OS No. 91 of 2019 on 23.10.2019 immediately after disposal of the appeal by the SDO on 21.08.2019. It is stated that the respondents could also have filed the present revision in the year 2019 itself and no explanation has been given for not doing the same.

[7] Mr. E. Dayali, learned counsel for the petitioner fairly concedes that liberal approach has to be employed while considering the

application for condonation of delay, if the applicant discloses a sufficient cause for not enabling to approach the court in time. However, if there is no explanation at all, the delay so caused is to be rejected with cost. He draws the attention of this Court to the fact that the respondents filed a suit for declaration immediately after disposal of the appeal by SDO, but waited for more than two years to file the present revision petition and such fact has been concealed in the application. It is also stated that the Learned Tribunal has not given any cogent reason for condoning the delay except for merely observing that sufficient cause has been established. It is prayed that the application for condonation of delay be rejected by setting aside the impugned order.

[8] Mr. T. Sadananda, learned counsel for the respondents submits that liberal interpretation has to be adopted while considering an application for condonation of delay to do complete justice. He relies on the case of **N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123 @ Para 9**, where the Hon'ble Supreme Court held that in considering application for condonation of delay court ought to construe it liberally. It was observed that length of delay is no matter and acceptability of the explanation is the only criterion. It was cautioned that superior courts not to disturb the acceptance of reason for condoning the delay by original court, unless the discretion was wholly tenable or perverse. Para 9 is reproduced below:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the

only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

[9] Mr. T. Sadananda, learned counsel for the respondents also refers to a recent decision of this Court in the case **Mst. Mumtaz v. Md. Manab & Ors reported as 2023 SCC Online Mani 73** where it has been held that Revenue Tribunal has jurisdiction to entertain an application for condonation of delay under the provision of Section 5 of the Limitation Act, 1963 and condoned delay of 151 days in filing the revision petition against the impugned order of mutation passed without issuing notice to the applicant. In that case, this Court excluded the period from the date of order to the date of knowledge and further the time taken in counselling sessions in the Legal Aid Clinic to arrive at a mutual settlement from calculating the period of limitation, treating the same as the ‘sufficient cause’. It has also been held that the decisive factor in condonation of delay is not the length of the delay, but the sufficiency of the satisfactory explanation. He prays that the present petition may be rejected, as learned Tribunal has rightly condoned the delay of 321 days.

[10] This Court has considered the rival submissions of the parties, the pleadings and documents on record and the law in this regard.

[11] The settled proposition of law while considering the application for condonation of delay is whether the applicant is able to explain the sufficient cause for the delay so occurred. Liberal construction has to be applied so as to do complete justice to both parties. It is not the length of delay, but the explanation is the sole criterion. It is the mandate of **N. Balakrishnan (supra)** that superior court ought not to disturb the finding of original court, unless the exercise of the discretion is wholly untenable or perverse. The essence of the test is the sufficient explanation for the delay. Hon'ble Supreme Court considered the lapse on the part of the earlier counsel as a sufficient cause for the delay. In the case of **Mst. Mumtaz (supra)**, this Court condoned the delay of 151 days as the impugned order was passed without notice and also treated time taken in counselling as sufficient cause.

[12] In the present case, the application for condonation of delay does not indicate how 321 days have been calculated. The impugned order is dated 16.05.2001 and the revision petition was filed with the application for condonation of delay on 06.12.2021. It is stated that the date of knowledge is on 04.02.2019. After this, the respondents have filed appeal before SDO on 25.02.2019 and the same was disposed on 21.08.2019. Then on 23.10.2019, the respondents filed a suit before the civil court regarding the same suit land for declaration of title and entry of their names

in the land record as directed by the SDO. However, the revision petition was filed only on 06.12.2021 along with an application for condonation of delay. In the application for condonation of delay, the filing of the suit is not disclosed. In para 8 & 11 of the application, it is vaguely mentioned that the revision petition was filed soon after from the date of knowledge. But the admitted date of knowledge (as per the respondents' pleading before SDO, Annexure-A/4 and Para 5(xii) of counter affidavit before this Court) is 04.02.2019 and date of filing is 06.02.2021. This Court is of the view that the same cannot be considered as 'filed soon after the knowledge of the impugned order'. Moreover, the main prayer in civil suit is for declaration of title in favour of the respondents and entry of their names in the revenue record. If the suit is decreed in favour of the respondents herein, it will be as good as allowing the revision petition before the Tribunal. Besides, the learned Tribunal has not given any cogent reason for condoning the delay of 321 days except for merely observing that *"... the petitioners have established sufficient cause for condonation of 312 days for filing their accompanying Revision Petition against the impugned order dated 16.05.2001..."*. It is silent on how cause has been established.

[13] In terms of the discussion in para 12 above, this Court is of the opinion that the respondents have failed to give any explanation for the delay so caused to get benefit of liberal interpretation of 'sufficient cause' as mandated by Section 5 of the Limitation Act. Failure to explain their inability to file the present revision petition while filing a civil suit

immediately after disposal of the appeal by SDO will go against the respondents. It is also settled proposition of law that delay is not to be condoned on mere asking and, that too, without any sufficient explanation. The learned Tribunal also has failed to consider this aspect. Case laws cited by the respondents are not applicable to the facts of the present case. In the cases of **N. Balakrishnan (supra)** and **Mst. Mumtaz (supra)**, the delay was condoned as the applicants satisfactorily explained the delay so caused, whereas the respondents herein miserably failed to do so. Accordingly, it is held that the impugned order dated 20.04.2022 passed by learned Revenue Tribunal, Manipur in Revenue Misc. Case No. 66 of 2021 is perverse for discussing the sufficient cause in detail and the same is set aside. It is further held that the accompanying revision petition under Section 95 of MLR&LR Act is barred by limitation. The present petition is allowed. Parties are to bear their own cost.

[14] In the application for condonation of delay and objection filed before the learned Tribunal as well as in the pleadings before this Court, both the parties have pleaded the facts touching to the merits of the case. It is clarified that this Court considers the facts limited to deciding the question of limitation only and it does not express any opinion on the rival contentions with respect to the merit of the case. Nothing stated herein shall affect the case of the parties in the pending civil suit concerning the same property.

[15] Send a copy of this order to the learned Revenue Tribunal,
Manipur for information.

JUDGE

joshua

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