

IN THE HIGH COURT OF MADHYA PRADESH**AT INDORE****BEFORE****HON'BLE SHRI JUSTICE SUBODH ABHYANKAR****ON THE 22nd OF MARCH, 2024****WRIT PETITION No. 22005 of 2022****BETWEEN:-**

1. **AYODAYA BAI D/O JALAM, AGED ABOUT 65 YEARS, OCCUPATION: HOUSEWIFE GRAM KALIPITH PS KALIPITH TEHSIL AND DISTRICT RAJGARH (MADHYA PRADESH)**
2. **GOPI BAI D/O JALAM, AGED ABOUT 63 YEARS, OCCUPATION: HOUSEWIFE GRAM KALIPITH TEH. AND DISTT. RAJGARH (MADHYA PRADESH)**
3. **JAINARAYAN S/O DEVRAM, AGED ABOUT 55 YEARS, OCCUPATION: HOUSEWIFE GRAM KALIPITH TEH. AND DISTT. RAJGARH (MADHYA PRADESH)**
4. **SARDAR BAI W/O DEVRAM, AGED ABOUT 55 YEARS, OCCUPATION: HOUSEWIFE GRAM KALIPITH TEH. AND DISTT. RAJGARH (MADHYA PRADESH)**
5. **BHANGU BAI D/O DEVRAM, AGED ABOUT 55 YEARS, OCCUPATION: HOUSEWIFE GRAM KALIPITH TEH. AND DISTT. RAJGARH (MADHYA PRADESH)**
6. **KAMLA BAI D/O KANHIYALAL, AGED ABOUT 50 YEARS, OCCUPATION: HOUSEWIFE GRAM KALIPITH TEH. AND DISTT. RAJGARH (MADHYA PRADESH)**
7. **MUKESH S/O KANHIYALAL, AGED ABOUT 32 YEARS, OCCUPATION: AGRICULTURE GRAM KALIPITH TEH. AND DISTT. RAJGARH (MADHYA PRADESH)**
8. **VISHNU S/O KANHIYALAL, AGED ABOUT 27 YEARS, OCCUPATION: AGRICULTURE GRAM KALIPITH TEH. AND DISTT. RAJGARH**

- (MADHYA PRADESH)
 KISHANLAL S/O BHAGIRATH, AGED ABOUT 55
 YEARS, OCCUPATION: HOUSEWIFE GRAM
 9. KALIPITH TEH. AND DISTT. RAJGARH
 (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ROHIT SHARMA, ADVOCATE)

AND

- LAXMI NARAYAN S/O BHAGIRATH DANGI
 1. GRAM KALIPEETH TEHSIL AND DISTRICT
 RAJGARH (MADHYA PRADESH)
 DEV @ DEVRAJ S/O LAXMINARAYAN DANGI
 2. KALIPEETH TEH. AND DISTT. RAJGARH
 (MADHYA PRADESH)
 THE STATE OF MP THROUGH COLLECTOR
 3. RAJGARH COLLECTOR OFFICE DISTT.
 RAJGARH (MADHYA PRADESH)
 4. THE ADD. COLLECTOR COLELCTOR OFFICE
 RAJGARH (MADHYA PRADESH)
 5. THE SDM RAJGARH SDM OFFICE RAJGARH
 (MADHYA PRADESH)
 6. THE TEHSILDAR TEHSIL OFFICE RAJGARH
 (MADHYA PRADESH)

.....RESPONDENTS

*SHRI AJAY BAGADIA SENIOR ADVOCATE ALONG WITH MS. PRANJALI
 YAJURVEDI, ADVOCATE FOR RESPONDENT NO.2
 BY SHRI TARUN KUSHWAHA, GOVT. ADVOCATE RESPONDENT NO.3 TO 6
 SHRI PADMNABH SAXENA, ADVOCATE FOR INTERVENER*

*This petition coming on for order this day, the court passed
 the following:*

ORDER

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 6.9.2022 passed by the Additional Collector, (Biora) District Rajgarh in a Revision No.61/Nigrani/22-23, arising out of order dated 16/8/2022, passed by the Sub Divisional Officer in case no.56/Appeal/21-20.

2. In brief facts of the case are that the petitioners claim themselves to be the owners of the land situated at survey No.956/1/1 and 957/1/1. The dispute arose between the parties in respect of the same land, the respondents no.1 and 2 got their names mutated in the revenue record vide dated 30.3.2019 passed by the Tahsildar.

3. According to the petitioners, they were not aware of such mutation, and subsequently, when they came to know about the same, an appeal was preferred by them before the SDO along with an application for stay as well as for condonation of delay under Section 5 of the Limitation Act, 1963(hereinafter to be referred to as "Act of 1963").The SDO has allowed the application filed under section 5, and has condoned the delay of around three years vide order dated 16.8.2022, which was challenged by the respondents before the Additional Collector, Rajgarh, who, vide its order dated 6.9.2022, while holding that the order allowing the application for condonation of delay was erroneous and has rejected the same by setting aside the order, as a consequence, has also dismissed the appeal preferred by the petitioners before the SDO.

4. Shri Rohit Sharma, learned counsel for the petitioners has submitted that the impugned order is liable to be set aside on the ground that the Additional Collector has acted in excess of its jurisdiction by entertaining the revision against an interlocutory order passed in an appeal despite the fact that the scope of revision

is limited as provided under Section 50 of the M.P Land Revenue Code, 1959.

5. In support of his submission counsel for the petitioners, has relied upon the decision rendered by the coordinate Bench of this Court in **Ramgopal Sharma Vs. Kamla Bai 2016(1) MPLJ 320**.

6. It is also submitted that the SDO has rightly condoned the delay because although the petitioners have mentioned the delay to be of three years, however, in effect the delay was of only 18 days, as no sooner the petitioners came to know about the order dated 30.3.2019, they obtained the certified copy of the same and has challenged the same before the SDO in the appeal, along with an application under Section 5 of the Act of 1963.

7. Shri Sharma has also drawn the attention of this court to the impugned order dated 6.9.2022, as according to the Revisional Court, even assuming that the petitioners got the certified copy of the order on 3.12.2021, in that case also the appeal ought to have been preferred on or before 17.1.2022, whereas it has been preferred on 3.2.2022, and no cogent reasons have been assigned in explaining the delay. Thus, it is submitted that the delay which has been caused is of 18 days only which has been rightly condoned by the SDO, even though it was not properly explained in the application filed under Section 5 of the Act of 1963.

8. Counsel for the petitioners has also submitted that the matter ought to have been allowed to be decided on merits only as the

petitioners substantial right has been prejudiced by the impugned order.

9. In support of his submissions, Shri Sharma has relied upon the decision rendered by the coordinate Bench of this Court in the case of **Smt. Jani bai and another Vs. State of M.P. and others order dated (W.P.No.11774/2022 order dated 17.3.2023)** and the decision rendered by the Gwalior Bench of this court in the case of **Brij Mohan and others Vs. Smt. Kastoori and others (M.P.No.3718/2019 dated 3.2.2020)**.

10. On the other hand, Shri Ajay Bagadia, learned senior counsel appearing for the respondent no.2 has vehemently opposed the prayer, and has submitted that no case for interference is made out. Attention of this Court has also been drawn to the application filed before the SDO under Section 5 of the Act of 1963 for condonation of delay, and it is submitted that the application itself is vague as the petitioners have deliberately not mentioned as to when they had the knowledge of mutation, and when they applied for the certified copy of the same.

11. Shri Bagadiya has also submitted that the petitioners have taken a different stand in their writ petition in respect of the delay which is also apparent from paragraph 5.1 and 5.2 of the petition, wherein two different reasons have been assigned for delay.

12. Learned senior Counsel has also drawn attention of this Court to the order dated 16.8.2022, passed by the SDO which in itself is

cryptic in nature, and nothing has been discussed regarding the petitioners' application for condonation of delay, and none of the arguments advanced by the respondents have also been discussed in the aforesaid order. Thus, it is submitted that the application for condonation of delay has been decided by a cryptic and non-speaking order which has been rightly set aside by the Additional Collector in the impugned order, wherein the Additional Collector has taken note of the entire averments of the petitioners as pleaded before the SDO, and has come to a conclusion that the delay has not been properly explained. It is submitted that once the application of condonation of delay is rejected, the necessary corollary would be to dismiss the appeal itself which has been rightly done by the Additional Collector, and therefore, no interference is called for.

13. Shri Bagadiya, learned senior counsel for the respondent no.2 has also relied upon the decision rendered by the Supreme Court in the case of P.K. Ramachandran Vs. State of Kerala and another reported as (1997) 7 SCC 556.

14. Heard. On due consideration of the rival submissions and on perusal of the record, this court finds that so far as the order dated 16.8.2022 passed by the SDO is concerned whereby delay has been condoned, regarding which elaborate arguments have been made by the parties, the same reads as under:-

"प्रकरण का अवलोकन किया गया। अपीलांत के द्वारा प्रस्तुत आवेदन अनुसार उसे जानकारी के अभाव में विलम्ब

माफ किये जाने हेतु धारा 05 लिमिटेशन एक्ट के तहत निवेदन किया गया।

प्रकरण के अध्ययन व उभयपक्ष के तर्कों का मनन करने के उपरांत विलम्ब की अवधि सद्भाविक होने से माफ किये जाने योग्य है। अतः आवेदन पत्र अंतर्गत धारा 05 लिमिटेशन एक्ट स्वीकार किया जाकर अंतिम तर्क हेतु नियत किया जाता है। "

15. It is apparent from the aforesaid order that it is rather cryptic in nature and does not spell out any reasoning to condone the delay. In such circumstances, the revisional authority, the Additional Collector, ought to have refrained from passing any order on merits of the order which in itself was without any reasoning. This court is of the considered opinion that at times it is not necessary to reflect upon the merits of the matter when it should have been remanded back for fresh consideration. Such practice is also necessary for bringing to the notice of the original authority, the errors committed by it while passing the order so that the same mistake may not be committed next time.

16. As a result, the impugned order dated 6.9.2022 is hereby set aside, as also the order dated 16.8.2022 passed by the SDO, which is a non-speaking order, is hereby set aside and the matter is remanded back to the SDO for its decision afresh on the application filed under Section 5 of the Act of 1963. The petitioner is also granted liberty to file additional application raising the other

grounds in the said application u/s.5 of the Act of 1963, which shall be decided by the SDO in accordance with law, by a reasoned and speaking order.

17. It is made clear that this court has not reflected upon the merits of the case, and none of the observations made by the Additional Collector shall also influence the SDO.

18. A copy of this order be also communicated to the SDO, who has passed the order dated 16.8.2022 if he has already been transferred to elsewhere.

19. Petition stands *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

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