

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 27th OF OCTOBER, 2023
WRIT PETITION No. 14386 of 2023**

BETWEEN:-

**DEEPAK KARLEKAR S/O LATE SHRI SHANKAR
RAO KARLEKAR, AGED ABOUT 59 YEARS,
OCCUPATION: SERVICE R/O 408 MISHRILAL
NAGAR DEWAS (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI V. K. JAIN – SENIOR ADVOCATE WITH SHRI KESHAV
KHANDELWAL – ADVOCATE)***

AND

- 1. THE STATE OF MADHYA PRADESH
COMMISSIONER (REVENUE) UJJAIN
DIVISION, UJJAIN (MADHYA PRADESH)**
- 2. STATE OF M.P. THROUGH SUB DIVISIONAL
OFFICER SHUJALPUR (MADHYA PRADESH)**
- 3. SARPANCH GRAM PANCHAYAT SUNDESI,
DISTRICT SHAJAPUR (MADHYA PRADESH)**
- 4. CHANDRA SHEKHAR S/O LATE SHRI
SHANKAR RAO KARLEKAR, AGED ABOUT
45 YEARS, TEHSIL POLYKALAN, DISTRICT
SHAJAPUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MANISH KUMAR SANKHALA – ADVOCATE FOR

RESPONDENT NO.4 AND SHRI A. S. PARIHAR – G.A./P.L. FOR STATE)

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

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-
 - “(i) Quashed order dated 19.11.2019 & 27.11.2019 passed by the Respondent No. 02 and also quashed order dated 22.09.2022 passed by the Respondent No.01 and issue appropriate writ, order of direction to the Respondent No.02 to hear and decide the appeal on merits.
 - (ii) Pass any other and further orders and or directions as deemed fit by this Hon'ble Court in the facts and circumstances of the case;
 - (iii) Allow this petition with costs.”
- 3] The grievance of the petitioner is that he is having a dispute with his brother respondent No.4 Chandra Shekhar in respect of the property situated at Village Sundersi, Tehsil Polaykalan, District Shajapur and his brother without informing him has got the land mutated in his name in the year 2011, and after coming to know about such mutation in the year 2018 only, the petitioner filed an appeal before SDO under Section 44 of M.P. Land Revenue Code, 1959 (in short ‘the Code of 1959’) read with Section 91 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (in short ‘the Adhiniyam of 1993’) along with an application for condonation of delay of 7 years. The aforesaid appeal was dismissed by the SDO on the ground of limitation without issuing notice to the

respondents and the second appeal preferred before the Commissioner under Section 44 of the Code of 1959 read with Section 91 of the Adhiniyam of 1993 has also been dismissed holding that as per the amended Land Revenue Code, the order rejecting the application for condonation of delay is not an appealable order.

4] Senior counsel for the petitioner has submitted that the petitioner's application for condonation of delay ought not to have been dismissed by the SDO in the first motion itself without even issuing notice to the respondent No.4 and it was not open for the SDO to decide the application on his own holding that the application is barred by limitation. Senior counsel has submitted that the petitioner had also made an objection on 21.04.2008, requesting the Gram Panchayat that the respondents be directed to maintain *status quo*, which document has been relied upon by the SDO to hold that the petitioner was already having the knowledge of the mutation. Senior counsel has submitted that when the objection itself was filed in the year 2008 and the mutation has taken place in the year 2011, it cannot be said that the petitioner had knowledge that when the objection was filed in the year 2008 by the petitioner, he already had the knowledge that the mutation would take place in the year 2011. Thus, it is submitted that the impugned order is liable to be quashed.

5] Counsel for the respondent No.4 has opposed the prayer and it is submitted that the petition itself is misconceived as against the order passed by the Commissioner, an appeal would be

maintainable under Section 91 of the Adhiniyam of 1993, which is maintainable before the Competent Authority as provided under Rule 3 of the M.P. Panchayats (Appeal and Revision) Rules, 1995 (in short 'the Rules of 1995') in which in Clause (c) it is clearly provided that in the case of an order passed by the Commissioner or Director of Panchayats, the appeal would lie to the State Government.

6] Counsel for the State has also opposed the prayer and it is submitted that as the alternative efficacious remedy is also available to the petitioner, no case for interference is made out.

7] In rebuttal, senior counsel for the petitioner has submitted that the Commissioner has rightly passed the order on the basis of the amended Land Revenue Code, in which it is provided that an appeal would not lie against an order either allowing or rejecting the application for condonation of delay and in such circumstances, the petitioner has no other efficacious remedy to ventilate his grievance regarding the impugned order.

8] Heard counsel for the parties and perused the record.

9] From the record, it is found that the respondent No.4 got his name mutated in the Gram Panchayat's record in the year 2011 by Gram Panchayat Sundersi vide its resolution no.189. The aforesaid resolution was challenged by the petitioner by filing an appeal before the SDO under Section 44 of the Code of 1959 read with Section 91 of the Adhiniyam of 1993, along with an application for condonation of delay of around 7 years. The application for condonation of delay has been rejected by the SDO on his own

without even issuing notice to the other party vide its order dated 19.11.2019, against which a second appeal was also preferred by the petitioner before the Commissioner under Section 44 of the Code of 1959 read with Section 91 of the Adhiniyam of 1993 but the same has also been dismissed vide order dated 22.09.2022 holding that as per the amended Land Revenue Code, the order rejecting the application for condonation of delay is not an appealable order.

10] So far as Rule 3 of the Rules of 1995 is concerned, the same reads as under:-

“3. Appeal and appellate authorities. - Save where it has been otherwise provided in the Act or rules or bye-laws made thereunder, an appeal shall lie,-

- (a) in the case of an order passed by the Sub-Divisional Officer under any provision of the Act or rules or bye laws made thereunder to the Collector;
- (b) in the case of an order passed by the Collector under any provision of the Act or rules or bye laws made thereunder to the Commissioner;
- (c) in the case of an order passed by the Commissioner or Director of Panchayats to the State Government;
- (d) in the case of an order passed by the Panchayat specified in Column (1) of the Table below to the authority specified in the corresponding entry in Column (2) thereto.

Table

	(1)	(2)
(a)	Gram Panchayat	Sub-Divisional Officer.
(b)	Janpad Panchayat	Collector.
(c)	Zila Panchayat	Commissioner.

”

11] In the considered opinion of this court, the aforesaid order dated 22.09.2022 has been passed by the Commissioner as he has

considered the appeal u/s.46 of the Code, and has not even referred to his powers under Clause (b) of R.3 of the Rules of 1995 which are distinct from the powers vested in him under the Code of 1959. Under the Rules of 1993, he has the jurisdiction to entertain an appeal arising out of an order passed by the Collector, whereas, under Clause (a), the order passed by the SDO is appealable before the Collector.

12] This court finds that as the original resolution no.189 was passed by the Gram Panchayat, hence the petitioner was not required to refer to the provisions of appeal as provided under the Code of 1959 in his appeal, which was to be exclusively preferred under the provisions of the Adhiniyam of 1993 r/w. Rules of 1995, and thus, the reference of the provision of Appeal under the Code of 1959 in the memo of appeal has only led to the confusion in the minds of the Commissioner. In the considered opinion of this court even as per Rule 3 of the Rules of 1959, since the Commissioner can hear appeals arising out of the orders passed by the Collector only, he should have returned the appeal arising out of the order of SDO to the petitioner, to be submitted before the Collector, but instead, the Commissioner has held that no appeal lies under the Code of 1959 against an order rejecting an application u/s.5 of the Limitation Act. Thus, in the considered opinion of this court, the Commissioner has passed the impugned order which is bad in law by exercising his jurisdiction under the Code of 1959.

13] In such circumstances, instead of directing the petitioner to prefer an appeal against the impugned order of the Commissioner

under Rule 3(c) of the Rules of 1995, which would only result in further waste of time for no useful purpose, in the fitness of the things, it would be appropriate to set aside the order dated 22.09.2022 passed by the Commissioner and direct the petitioner to prefer an appeal under Rule 3(a) of the Rules of 1995 before the Collector against the order passed by the SDO on 19.11.2019 and 27.11.2019.

14] If the petitioner files an appeal as aforesaid within three weeks' time, it shall be decided on merits without raising any objection as to the limitation because the time spent by the petitioner in prosecuting the appeal before the Commissioner and this petition before this court has to be excluded from the period of limitation in filing the said appeal. Parties are also directed to appear before the Collector, Shajapur on 30th November 2023 who shall decide the appeal in accordance with law.

15] In view of the same, **the order dated 22.09.2022 passed by the Commissioner is hereby set aside.**

16] With the aforesaid, the petition stands **disposed of.**

(Subodh Abhyankar)
Judge

Pankaj