

State of Raj Vs. Bhera and Ors

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Court : Rajasthan Jodhpur

Decided On : Nov-30-2015

Appellant : State of Raj

Respondent : Bhera and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR D.B.Civil Special Appeal (Writs) No.910 /2015 State of Rajasthan V/s Bhera and ors. 30.11.2015 HONBLE THE ACTING CHIEF JUSTICE MR.AJIT SINGH HONBLE MR. JUSTICE ARUN BHANSALI Dr.P.S.Bhati, Additional Advocate General with Mr.Sajjan Singh Rathore for the appellant.

1. This intra-court appeal is directed against the order dated 7.12.2009 passed by the learned Single Judge of this High Court, whereby he has dismissed appellant's S.B.Civil Writ Petition No.8047/2009.

2. By the impugned order, the learned Single Judge has affirmed the findings of the Board of Revenue, Revenue Appellate Authority, Udaipur and Additional District Collector, Udaipur upholding the allotment of 10 bighas of agriculture land in favour of respondents no.1 and 2. The learned Single Judge has taken note of the plea of the Department of Revenue, Government of Rajasthan before the Board of Revenue that the land, which has been allotted in favour of respondents no.1 and 2 does not belong to the Department of Forest. Thus, all the revenue authorities have consistently held that the allotment of land in their favour is legal

and valid.

3. Admittedly, there is enormous and inordinate delay of 2021 days in filing the appeal. We shall, therefore, examine whether there is any sufficient cause for the condonation of such a huge delay.

4. The application for condonation of delay filed by the State Government alongwith the affidavit of the Officer-in-charge of the case Shri Sushil Kumar Saini, Assistant Conservator of Forest, Jhadol District Udaipur reads as under: -

1. That the case was decided on 07.12.2009 by the Hon'ble Court.

2. That the application for obtaining certified copy was moved and the same was received on 15.01.2010.

3. That the copy of the order was forwarded to the officer in charge.

4. That the District Forest Officer vide letter dated 29.01.2010 forwarded the copy of the order alongwith his opinion to CCF, Udaipur. 2 5. That the CCF Udaipur forwarded the same to the PCCF, Jaipur on 29.01.2010.

6. That the matter was placed before the Pre Litigation Committee on 20.04.2010 whereby it was decided that the matter first may be inquired and measurement be taken with the revenue authorities and thereafter the appeal may be filled if the land is forest land.

7. That the PCCF Jaipur communicated the decision of the Pre Litigation Committee to the CCF Udaipur on 11.05.2010.

8. That the SLR of PCCF office made a communication dated 07.07.2014 for submitting the factual position of the case.

9. That the DCF thereafter submitted the factual report to the DLR vide communication dated 27.11.2014.

10. That the SLR again made a communication dated 17.12.2014 to the DCF about the delay in not forwarding the case for filing appeal.

11. That the DCF replied vide communication dated 21.01.2015 and submitted that the delay was not from their office and the same was at the level of department.

12. That the CCF also submitted the communication dated 21.01.2015 that there was no delay from the authority at the level of Udaipur.

13. That on 09.02.2015 the SLR made communication alongwith the copy of the minutes of Pre Litigation Committee and asked the CCF to conduct Joint Survey of the land with the Revenue authorities.

14. That the CCF Udaipur thereafter communicated the letter of SLR vide communication dated 25.02.2015 to the DCF Udaipur.

15. That the DCF made communication to the SDO Jhadol, District Udaipur for Joint Survey.

16. That on 15.04.2015 a joint survey was conducted and it was found that the land in dispute is in the forest land.

17. That the copy of the joint survey report was forwarded to the office of CCF Udaipur vide communication dated 27.04.2015 and the CCF Udaipur forwarded the same on 08.05.2015 to the office of PCCF, Jaipur.

18. That thereafter the matter was examined and decision was taken to file appeal against the order impugned. That the officer incharge was appointed vide order dated 22.05.2015 and ACF, Jhadol, District Udaipur was appointed as Officer Incharge.

19. That the file was then moved for appointment of Additional Advocate General and thereafter the AAG was appointed vide sanction dated 23.07.2015. That the copy of the sanction was forwarded to the DCF by the office of PCCF Jaipur vide communication dated 04.08.2015.

20. That the officer in charge contacted the office of the AAG on 31.08.2015 with all record.

21. That the record was examined by the office of the AAG and instruction was issued for procuring some more records and the position of other litigations.
22. That all the necessary record was made available by the officer incharge and thereafter the appeal was prepared and filed before the Hon'ble Court.
23. That delay in filing the special appeal is bonafide one and has been caused due to processing of matter at different 3 levels and due to the administrative reasons.. 5. The recent decision of the Supreme Court in Office of the Chief Post Master General v. Living Media India Ltd. AIR 2012 SC1056 is directly on the point. In this case there was a delay of 427 days in filing the appeal before the Supreme Court against the judgment of the High Court and the certified copy of the High Court judgment was applied after four months with no explanation why it was not applied for within a reasonable time. The Supreme Court after examining other dates mentioned in the affidavit of the person-in-charge of the case to justify the delay found that there was delay at every stage with no explanation for the cause of delay. The Supreme Court also took serious note of the casual manner in which the Government departments are functioning showing virtually no respect to the law of limitation. And, while dismissing the appeal on the ground of delay, the Supreme Court has made the following observation: The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.. 6. In yet another recent decision, the Supreme Court in Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai AIR

2012 SC1629 has held that in cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

7. In the present case, certified copy of the impugned order was received by the appellant on 15.01.2010 and the decision to file appeal was taken in May, 2015 after more than 5 years and the officer-in-charge was appointed on 22.5.2015. The Additional Advocate General was appointed on 23.7.2015 and he was contacted by the officer in-charge on 31.8.2015 and the appeal was filed on 29.9.2015 with a huge delay of 2021 days. Such has been the casual approach of the appellant in filing appeal. Though, it is stated that delay in filing the appeal is bonafide, the fact remains that from day one, the authorities concerned have not evinced diligence in pursuing the matter for filing the present intra-court appeal by taking appropriate steps. The State has miserably failed to give any acceptable and cogent reason to condone such a huge delay in filing the intra-court appeal required to be filed in the same High Court building and that too when the order under challenge was passed in the presence of Government Advocate.

8. Having regard to the above referred decisions of the Supreme Court in Office of the Chief Post Master General (supra) and Maniben Devraj Shah (supra) and the fact situation of the present case, we find no sufficient cause to condone the delay.

9. In the result, the application for condonation of delay is dismissed. Consequently, the appeal is dismissed on the ground of delay. (ARUN BHANSALI), J.

(AJIT SINGH), Actg.CJ.

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