

**Jai Pal and Others Vs. Randhir Singh and Others**

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**Court :** Delhi

**Decided On :** Feb-22-2012

**Judge :** Sunil Gaur

**Appeal No. :** W.P.(C) No. 2047 of 2011 & CM No.4371 of 2011

**Appellant :** Jai Pal and Others

**Respondent :** Randhir Singh and Others

**Judgement :**

## **ORDER**

1. The impugned order of 23rd February, 2011 of Financial Commissioner, Delhi refusing to condone extra-ordinary delay of fifty one years in filing of an appeal under Section 64 of the Delhi Land Revenue Act, 1954 against mutation order of 23rd February, 1958 passed by the concerned Tehsildar, is assailed in this petition.

2. The challenge to the aforesaid impugned order by learned counsel for the petitioner on the ground that the void orders can be challenged anytime therefore the bar of limitation cannot be raised against the petitioners. According to the petitioners' counsel, the concerned Collector vide order of 15th July, 2009 (Annexure P-9) had rightly cancelled the aforesaid mutation order of 22nd February, 1958, as the Respondents herein were not the legal heirs of Late Shri

Ramji Lal in terms of Section 50 of the Delhi Land Reforms Act, 1954. Reliance was placed by learned counsel for the petitioner upon decision of the coordinate Bench of this Court in **Shakuntala Devi vs. FCI and Ors.**, 161(2009)DLT 300, to contend that for correcting the Annual Register, provisions of the Limitation Act are not attracted. It was pointed out by petitioner's counsel that Section 68 of the Delhi Land Revenue Act, 1954 has no application as the appeal of the Respondents against the collector's order (Annexure P-1) was not maintainable.

3. It was contended by learned counsel for the petitioners that provisions of Hindu Succession Act were not applicable and Delhi Land Reforms Act, 1954 governs the succession in respect of agricultural lands. Thus, according to learned counsel for the petitioner, collector's order (Annexure P-1) had rightly set aside the mutation in question which was against the law and the impugned order upsetting the order of the collector (Annexure P-1) is bad in law and deserves to be quashed. In support of the aforesaid stand taken by petitioners' counsel, reliance is placed upon decisions in **Chhoti Devi vs. The Financial Commissioner and Ors.**, 104(2003)DLT 635; **Shakuntala Devi vs. FCI and Ors.**, 161(2009) DLT 300.

4. Reliance placed by petitioners' counsel upon decision in **Shakuntala Devi** (Supra), is of no avail, as limitation for filing the appeal was not an issue therein. In **Chhoti Devi** (Supra), it was found that the discretion exercised to condone the delay was not arbitrary or without cogent reasons whereas in the instant case, there is no satisfactory explanation for the manifestly inordinate delay of about fifty one years in filing the appeal against mutation order of 23rd February, 1958.

5. A Division Bench of this Court in **Babu Ram and Ors vs. Union of India and Ors.**, 125(2005)DLT 259 (DB) has succinctly reiterated the distinction between void and voidable orders in these words:-

“20. A careful reading of the above would show that what distinguishes an order that is void from another that is voidable essentially lies in whether the order in question is outside the jurisdiction of the authority making the same. On the other hand, if it is an order that is within the jurisdiction of the authority making

the same but the order suffers from an error or irregularity that falls within the jurisdictional sphere of the authority making the order, it is voidable.

xxx xxx xxx

24. It is, therefore, evident that expressions "void" and "voidable" have more than one facet. Transactions and decrees which are wholly without jurisdiction are void ab initio and no declaration may be necessary for avoiding the same. Law does not take any notice of such acts, transactions or decrees which can be disregarded in collateral proceedings or otherwise. There are, however, transactions, which will remain good unless declared to be otherwise. For instance, transactions against a minor without being represented by a next friend may be voidable at the instance of the minor in appropriate proceedings in which case it becomes void from the beginning. The third category may be the cases where an act or transaction is good unless declared to be void. Such a transaction is voidable because the apparent state of affairs is the real state of affairs and a party who alleges otherwise, shall have to prove it. For instance, if the document is forged and fabricated, a declaration to that effect is necessary for otherwise the document is legally effective."

6. In the instant case, even if it is taken that the mutation order of 23rd February, 1958 was contrary to the provisions of Delhi Land Reforms Act, 1954, still, it was a voidable order and not a void order and so, appeal had to be filed within the period of limitation of thirty days, as mandated by Section 67 of Delhi Land Revenue Act, 1954. Even if it is taken that respondents' appeal against collector's order (Annexure P-1) was not maintainable, still it can be treated as a revision and thus this so-called technicality cannot be a ground to upset the impugned order.

7. Sweeping observations of the Appellate Authority i.e. the concerned Collector in order (Annexure P-1) of there being no requirement of the petitioners filing an application for condonation for delay, while treating the impugned mutation order of 23rd February, 1958 being null and void, in spite of petitioners' filing an application under Section 5 of the Limitation Act for condoning the delay of fifty one years, is clearly unsustainable, as it runs in the face of Rule 142 of The

Delhi Land Revenue Rules, 1962, which deals with mutation and it reads as under:-

**“142. Report not to be deemed invalid**-No report shall be deemed to be invalid merely by reason of some of the particulars required to be specified by Rule 139(1) having been omitted or by reason of any of such particulars having been incorrectly stated.?”

8. It is relevant to note that the impugned mutation order of 23rd February, 1958 was followed by subsequent mutation order of 15th April, 1983 on account of death of Smt. Lado and when Smt. Nihal Kaur had died, mutation order of 25th May, 1999 was passed in favour of her legal heirs. Not only this, again on 21st July, 2003, mutation order was passed in favour of the respondents. All this along, petitioners had remained silent. It is not the case of the petitioners that they were not put to notice when afore-noted subsequent mutation orders were passed. It stands noted in the appellate order (Annexure P-1) that the subject lands stood acquired and compensation in respect thereof was awarded in the year 2008-09 and when respondents had filed their objections to seek their shares on the strength of the mutation of the year 2003 in their favour, then only the petitioners woke up and had belatedly filed an appeal under Section 64 of Delhi Land Reforms Act, 1954 in the year 2009.

9. Instead of explaining inordinate delay of fifty one years in filing the appeal against initial mutation order of 1958, and by maintaining silence in respect of subsequent mutation orders, as noted hereinabove, petitioners have simply averred in the writ petition that in the year 2009 they became aware that the mutation of the subject land is also in favour of the respondents. It is not averred in the writ petition by the petitioners as to how they became aware of it. Pertinently, petitioners are silent about the subsequent mutation orders, noted herein above.

10. Apex Court in **Shri Santoshkumar Shivgonda Patil and Ors. vs. Shri Balasaheb Tukaram Shevale and Ors.**, JT 2009 (13) SC 69, has ruled that where no limitation is provided, the reasonable period to avail of the remedy is of three years. The clinching observations made in Santosh Kumar (Supra),

deserve to be highlighted, which are as under:-

“It seems to be fairly settled that if a statute does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, sue motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein. Ordinarily, the reasonable period within which power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time.?”

11. In the instant matter, period of limitation for filing an appeal, as provided under Section 67 of Delhi Land Revenue Act, 1954 is of thirty days. Therefore, petitioners cannot be heard to say that there is no period of limitation for challenging the void order, as it runs counter to afore-referred Rule 142 of The Delhi Land Revenue Rules, 1962. Thus, the instant case falls in the third category of the categorization in Babu Ram (Supra), i.e. where an act or transaction is good unless declared to be void. To seek such a declaration, petitioners had filed statutory appeal under Section 64 of the Delhi Land Revenue Act, 1954 along with application for condonation of delay, which was not considered by the Appellate Authority but has been rightly dismissed vide impugned order, as delay application does not disclose cogent reasons for the extra-ordinary delay of fifty one years in filing the appeal.

12. After having heard learned counsel for the petitioner and upon perusal of the impugned order and the material on record, I concur with the findings returned in the impugned order, which are as follows:-

“After having considered the argument of both the sides the order passed by the learned first Appellate Court is erroneous and not sustainable in law. The learned first appellate Court before condoning the delay should have considered

the averments made in support of condonation of delay. The explanation and reasons for delay are unexplained and thus the delay ought not to have been condoned. Merely branding the said order as void is not sufficient. Admittedly, the Tehsildar was having the power to pass the said order dated 23.02.1958. Hence, the same cannot be considered as having been passed by an authority not having power to pronounce the same. It is not even the case of the Respondents that the said order dated 23.02.1958 was outcome of some fraud. In my considered view, accepting the contention of the Respondent on their face value, at the best, lead to a conclusion that the order dated 23.02.1958 was bad on merits. But, being bad on merits does not mean that such bad order is void ab-initio and is required to be challenged in accordance with law. The Id. Deputy Commissioner has condoned the delay on the ground that the mutation order dated 23.02.1958 was void ab initio and, as such, was not even required to be challenged. Here the Ld. Deputy Commissioner has completely misdirected himself and has failed to appreciate the difference between bad order on merits and a void order.

In my considered view, there is no satisfactory explanation for delay. The delay has been condoned on a misdirected notion. Hence there was no sufficient and cogent reason for condonation of a huge delay of about 51 years. The application for condonation of delay, therefore, lacks merit. Consequently I do not find myself in agreement with Ld. Deputy Commissioner. Resultantly, the impugned order is found to be unsustainable. Same is hereby set aside. The application for condonation of delay, as moved before the First Appellate Court is hereby rejected. As a result thereof, the appeal filed by the Respondents also stands rejected.”

13. In the light of the afore-noted distinction drawn between ‘Void’ and ‘Voidable’ orders in **Babu Ram** (Supra), I find no palpable error in the impugned order holding that the mutation of the year 1958 was voidable order. When the question of apportionment of compensation in respect of the acquired subject land arose, then only petitioners had sought to belatedly challenge the mutation of the year 1958, without cogently explaining manifestly inordinate delay of fifty one years. The law assists those, who are vigilant and those, who are indolent.

14. Since the impugned order does not bear the brand of invalidity upon its forehead, therefore, finding no substance in this petition, I dismiss it with no orders as to costs. Pending application is disposed of as infructuous.

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