

Shaleen Kabra, IAS, Financial Commissioner (Revenue) / Commissioner Agrarian Reforms, J&K, Jammu

File No.
504/FC/ARC/AP

Date of Institution
06.04.2015

Date of Decision
21.04.2022

In the case of:

1. Girdhari lal
2. Jai Kumar both sons of Late Padman residents of at present Rajpura Shakti Nagar, Jammu

.....Appellants

Versus

1. Madan Lal
2. Subhash Chander Both sons of Paras Ram
3. Vijay Laxmi W/o Late Thoru Ram
4. Rajesh Kumar S/o Late Thoru Ram
5. Nisha Devi D/o Late Thoru Ram
6. Deepak son of late Baisakhi Ram
7. Kanta Devi W/o late Baisakhi Ram all residents of Village Alora Tehsil Jammu

.....Respondents

In the matter of:- An appeal against the mutation No. 177 dated attested under section 4 of the Agrarian Reforms Act by the settlement Tehsildar Jammu pertaining to the land comprising Khasra No. 695 (One Kanal), 368 (13 marlas), 673 (2 kanal 12 Marlas), 697 (1 kanal-1 marla), 767 (2 kanal), 117(4 kanal 18 marlas), 457 (2 kanal), 488 (2 kanal- 9marlas), 229(4 kanal - 4 marlas), 380 (2 kanal- 12 marlas), 512 Min (9 marlas), 551 Min (one kanal) situated at village Alora Tehsil Jammu and for setting aside the same.

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.....Appellants

Versus

1. Rajesh Kumar S/o Thoru Ram
2. Nisha Devi D/o Thoru Ram
3. Vijay Laxmi W/o Late Thoru Ram residents of Village Alora Tehsil Jammu

.....Respondents

the matter of:- An appeal against the mutation No. 229 dated 25-05-1994 attested under section 8 of the Agrarian Reforms Act by the settlement Tehsildar Jammu pertaining to the land comprising Khasra No. 229(4K-4M), 380(2 Kanal 12 marlas), 512 min (9 marlas), 551 min (1 kanal) situated at village Alora Tehsil Jammu and for setting aside the same.

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1. Madan Lal
2. Subhash Chander both sons of Paras Ram
3. Vijay Laxmi W/o Late Thoru Ram
4. Rajesh Kumar S/o Late Thoru Ram
5. Nisha Devi D/o Late Thoru Ram
6. Deepak son of Late Baisakhi Ram
7. Kanta Devi W/o Late Baisakhi Ram all residents of village Alora Tehsil Jammu

.....Respondents

In the matter of:- An appeal against the mutation No. 227 dated 25-05-1994 attested under section 8 of the Agrarian Reforms Act by the settlement Tehsildar Jammu pertaining to the land comprising Khasra No. 695(1 kanal), 368(13 marlas), 673 (2 kanal and 12 marlas), 697 (1 Kanal and 1 marla), 767(2 kanal) situated at village Alora Tehsil Jammu and for setting aside the same.

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500/FC/ARC/AP

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06.04.2015


Date of Decision
21.04.2022

In the case of:

1. Girdhari lal
2. Jai Kumar both sons of Late Padman residents of at present Rajpura Shakti Nagar, Jammu

.....Appellants

Versus



In the matter of:- **An appeal against the mutation No. 228 dated 25-05-1994 attested under section 8 of the Agrarian Reforms Act by the settlement Tehsildar Jammu pertaining to the land comprising Khasra No. 117(4k-18m), 457 (2 kanal) 488 (2 kanal 9 marlas) situated at village Alora Tehsil Jammu and for setting aside the same.**

Present:

- 1. Advocate K. R. Sharma for Appellants.**
- 2. Advocate Rahul Sharma for Respondents**

ORDER

1. Appellants have filed four separate appeals against the mutations attested u/s 4 and 8 of Agrarian Reforms Act, 1976 with respect to land situated at village Alora erstwhile Tehsil Jammu now Tehsil Mandal. By virtue of Mutation No. 177 respondents were declared prospective owners while ownership right were conferred u/s 8 of Agrarian Reforms Act vide Mutation No. 227, 228 and 229. Since the impugned mutations attested u/s 8 of Agrarian Reforms Act are based on Common mutation No. 177 attested u/s 4 of Agrarian Reforms Act, as such all the four appeals have been clubbed and heard together.
2. Alongwith the respective appeals, an application for condonation of delay has also been filed by the appellants wherein the appellants alleged that the impugned mutation has been attested at their back. Neither the summons were issued nor there was any information about the attestation of impugned mutation. The applicants, appellants herein came to know about the attestation of the impugned mutations when the respondents refused to partition the land. Counsel for appellants also submitted copies of judgments in support of his argument, relying upon the decision of the Hon'ble Court in case of Esha Bhattacharjee Vs Managing Committee of Raghunathpur Netar Academy and others 2013 (4) CCC 32 (SC) and others wherein the Hon'ble Court held "*there should be a liberal, pragmatic, justice-oriented, non pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*" Also Shahid Hussain and


others Vs Mohd Ramzan and others 2018(1) SLJ (HC) 157 & Ors wherein the Hon'ble Court held that "Condonation of delay is a matter of discretion of the court and the length of delay is no matter, acceptability of the explanation is the only criteria. Sometimes, delay of 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". Based upon the above said judgments passed by the Hon'ble Supreme Court and Hon'ble High Court, Counsel for appellants argued that these appeals should be accepted and delay in filing these appeals be condoned.

3. On the other hand, counsel for respondents filed their objection to the application for condonation of delay where in the respondents have denied the allegations as alleged herein above by the appellants. The respondents stated that the mutations were attested in the village in presence of Chowkidar, Numberdar and residents of the village. The respondents are in cultivating possession of the land in Khariet 1971 and the rights of the appellants stood extinguished by virtue of Section 4 of the Agrarian Reforms Act and after the levy was deposited by the respondents, mutations u/s 8 of the Act were attested on 25.05.1994 in favour of respective respondents and since then the respondents are enjoying the land as owners. Counsel for respondents prayed that as the appeals are time barred as such the appeals may kindly be dismissed on this ground.
4. Heard the arguments put forth by counsel for both the sides on the point of condonation of delay.
5. I have gone through the averments in the application for the condonation of delay. In the application seeking condonation of delay it is stated that the mutation has been attested at the back of appellant. Neither the summons were issued nor there was any information. The appellants were not having the knowledge of attestation of impugned mutation. The counsel for appellants argued that as per Revenue Records both the parties are co-sharers with respect to the subject land and the appellants came to know about the attestation of the impugned mutation only when the respondents refused to partition of the land. However, the appellants have not annexed any proof or record to support their averment regarding the date of knowledge.
6. In case of Basawaraj and others Vs Special Land Acquisition Officer (2013) 14 SCC 81, it has been held that,

“where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No Court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

7. Explanation for the delay is neither sufficient nor satisfactory. It is noted that the mutations under section 8 have been attested in 1994 and there has been no challenge for all these years whatsoever. The mutation under section 4 is even prior to 1994. The bare reading of the mutation attested under section 4 of the Act brings out that it was attested for the entire village with prospective ownership being accorded to a large number of tenants, and in presence of chowkidar, numberdar and all the local villagers present in the camp. Therefore, the allegation of not having any information regarding the attestation of impugned mutations is baseless.
8. In view of the above and for the reasons stated above, the present appeal preferred by appellants is dismissed on the ground of delay.
9. Status quo order issued, if any by this court shall stand vacated. File be consigned to records after due compilation.

**Announced
21.04.2022**


**Shaleen Kabra (IAS)
Financial Commissioner, Revenue
J&K**