

S. No.

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 05.03.2025
Pronounced on: 10.03.2025**

Case:- WP(C) No. 551/2025
CM No. 1269/2025

Mohd Bashir, aged 65 years S/o Khizra R/o Village Fazlabad,
Tehsil Surankot, District Poonch

.....Petitioner(s)

Through: Mr. R P Sharma, Advocate

Vs

1. Union Territory of J&K through Commissioner/Secretary
Department of Revenue, Civil Secretariat, Jammu.
2. Mohd Rafiq S/o Samda R/o Village Fazlabad,
Tehsil Surankot, District Poonch.
3. Additional Deputy Commissioner, Poonch (Commissioner
Agrarian Reforms) Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

01. Petitioner through the medium of the instant petition which has been preferred under Article 226 of the Constitution of India, has sought a writ of Certiorari to quash and set aside order dated 29.10.2024 passed by the learned Additional Deputy Commissioner, Poonch exercising powers of Commissioner under Agrarian Reforms Act, 1976, as appellate authority, in File No. ARA/1373/2023 titled "*Mohd Bashir vs Mohd Rafiq*" by way of an application for condonation of delay under Section 5 of the Limitation Act, in filing an appeal against Mutation No. 644 dated 25.04.1984 under Section 8 of the Agrarian Reforms Act along with appeal, has been rejected.

02. Before proceeding further in the matter and to clinch the controversy in

question, it is apposite to give brief resume of the facts, which, in nutshell, are summarized as under:-

FACTUAL MATRIX OF THE CASE:

- 03.** The case, as projected by the petitioner in the instant petition is that Mutation No. 644 dated 25.04.1984 under Section 8 of the J&K Agrarian Reforms Act, 1976 was attested by Tehsildar Surankote, whereby for land comprising Survey No. 1842 measuring 04 kanals situated in Village Fazlabad, the respondent Mohd Rafiq was recorded as owner. It was against the entry of Girdawari of Kharief 1971 wherein the column of cultivation the names of Habiba, Qadara, Subhana, Dulla were recorded.
- 04.** It is pleaded that after the demise of the petitioner's father, his mother got remarried to Qadara and being step son of Qadara, the petitioner is entitled to the estate of said Qadara. Since there was no male issue of Qadara other than the petitioner, as his daughters had already married, there exists no lawful justification for the attestation of the mutation under Section 8 of the Agrarian Reforms Act in favor of the respondent to the exclusion of the petitioner, it was illegal *per se*. An appeal against the mutation was filed before the Additional Deputy Commissioner, Poonch, who in exercise of its appellate jurisdiction under the Agrarian Reforms Act, 1976, dismissed the appeal on the ground that the appellant failed to present 'sufficient reasons' to justify the delay in filing the appeal.
- 05.** It is further pleaded that the impugned order is liable to be quashed because the Mutation No. 644 with regard to the land in question was attested at the back of the petitioner, which was in his cultivating possession since the life

time of Qadara, who had also made a 'Will' in favour of the petitioner and the said land continues to be in cultivating possession of the petitioner till date.

- 06.** It is a specific case of the petitioner that because of sufficient opportunity of being heard, in support of the application for condonation of delay, was not afforded to the petitioner before passing the impugned order, as such, the petitioner is entitled to the relief, as prayed for, as the discretion exercised by the authority below in rejecting the application for condonation of delay is neither fair nor proper.
- 07.** Learned counsel for the petitioner has vehemently argued that the petitioner having continuously cultivating possession of the land bearing Khasra No. 1842 measuring 04 Kanals situated at Village Fazlabad since the life time of the step father of the petitioner, namely, Qadara, who had also made a 'Will' in respect of the aforesaid land in his favour, but the respondent, who is a influential person, by his conspiracy got the mutation attested in his favour with respect to the aforesaid land under Section 8. It has been further argued that the mutation of the land in question was attested at the back of the petitioner, who after passage of many years, came to know that the respondent contemplated to take forcible possession of the land from the petitioner on the basis of the mutation which has been attested under Section 8 of the Agrarian Reforms Act by Tehsildar Surankote.
- 08.** It is further argued that the procedure prescribed under Agrarian Reforms Rules particularly Rule 14 laying down that the attesting officer will follow Standing Order No. 23-A was not adopted. It reads as under:-

14. Procedure and competence for attesting mutations:

(1) mutations under this Chapter shall, subject to the provisions herein contained, be attested, in accordance with the procedure provided by Standing Order No.23-A, by a Revenue Officer, in or near the village to which these pertain.

3[Provided that no Naib-Tehsildar shall attest any disputed mutation or any other such mutation where change or correction of any entry of Khasra Girdawari is involved unless he is empowered for the said purpose by the Commissioner appointed under Section 18 of the Act.

(2) Ex-parte proceedings on mutations, even if permitted shall be avoided, as far as possible, and where such proceedings are taken in accordance with law, the mutation order and the record accompanying such mutation, shall show that sufficient steps were taken to give notice to the person against whom such proceedings have been taken.

09. Learned counsel for the petitioner, in support of his arguments, has placed reliance on the judgment of Hon'ble Apex Court in case titled '**Ram Nath Sao alias Ram Nath Sahu & Ors vs Gobardhan Sao & Ors**', reported in **2002 Legal Eagle (SC) 239**. It shall be quite apposite to reproduce paragraphs 9,10,11,12 and 13 as under:

*"9. It is axiomatic that condonation of delay is a matter of discretion of the court. **Section 5** of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the 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. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.*

10.....

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time- limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is

to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide [Shakuntala Devi Jain v. Kuntal Kumari \(1969\) 1 SCR 1006](#) and [State of W.B. v. Administrator, Howrah Municipality \(1972\) 1 SCC 366](#).

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. "
(Emphasis added)

10. Heard learned counsel for the petitioner at length and perused the record.
11. I have gone through the order passed by the appellate authority i.e Additional Deputy Commissioner, Poonch exercising powers of Commissioner under Agrarian Reforms Act in the appeal preferred by the petitioner against the Mutation No. 644 dated 25.04.1984 attested by Tehsildar Surankote situated at village Fazlabad Tehsil Surankote in favour of respondent and also for setting aside the same along with application under Section 5 of the Limitation Act.
12. The record reveals that summon was served to the respondent, who

appeared before the Court of Additional Deputy Commissioner, Poonch on 08.08.2023 and contested the case. As per the record, Mutation No. 644 was attested on 25.04.1984 under Section 8 of the J&K Agrarian Reforms Act and the appeal was filed by the petitioner on 16.06.2023 after a delay of 14294 days i.e **(39 years 01 month and 20 days)** and accordingly, the Additional Deputy Commissioner granted number of opportunities to the petitioner by way of many hearings. The application which has been preferred under Section 5 of the Limitation Act was bereft of any merit as no cogent reason was given to justify such huge delay. The limitation period for filing the appeal under Section 12 of the Land Revenue Act is 60 days. For facility of reference, Section 12 of the Land Revenue Act is reproduced as under:

“12. Limitation for appeals, revisions and reviews:

(1)[Save as otherwise provided in the Act] the period of limitation for an appeal under the last foregoing section shall be as follows:-

- (a) When the appeal lies to the Collector or Assistant Collector of the first class: 60 days***
- (b) When the appeal lies to [xxx] the Financial Commissioner or Divisional Commissioner: 90 days***

Provided that, in the District of Ladakh and Gilgit twice the ordinary period of limitation for appeals under this Section shall be allowed.

(2) Such provisions of the Limitation Act as apply to appeals, applications for revision and review in civil suits shall also apply to appeals, applications for revision and review under this Act.”

- 13.** The only ground which has been canvassed by the appellant/writ petitioner herein that he is an illiterate person having no knowledge that the land of the applicant has been attested and when he got the knowledge, got copy thereof and filed the appeal under rules. The application preferred by the petitioner before the Court of learned

Deputy Commissioner was deficient in the following manner:

- “1. The exact date of knowledge is not specified in the application.*
- 2. The source of knowledge is also not mentioned in the application.*
- 3. There is no request to condone the delay for the period in which the appellant lacked knowledge of the impugned mutation.*
- 4. The application does not include dates indicating when the copy of the mutation was requested and issued to the appellant.”*

- 14.** From bare perusal of the application, which was preferred and has been examined by this Court, the same was found to be deficient with regard to the exact date of knowledge and also the source of the said knowledge. Even application has been drafted in most casual manner in which there was no prayer for condoning the delay for the period in which the petitioner lacks such knowledge of the impugned mutation or for that matter no specific date has been mentioned when the copy of the mutation was applied for and issued to the petitioner.

LEGAL ANALYSIS

- 15.** Rules of limitation are *prima facie* rules of procedure and do not create any rights in favour of any person nor do they define or create cause of action but simply prescribe that the remedy could be exercised only upto a certain period and not beyond it. The Rules of Limitation are not superfluous or vestigial but are to be interpreted in a meaningful manner so as to save the system from anarchy. Law of Limitation fixes a life span for every legal remedy. Time is precious and the wasted time would never resist. So, a life span must be fixed for each remedy. Unending period for launching the remedy may lead to an uncertainty and consequential anarchy. It is enshrined in maxim, *“Interests reipublicae up sit finis litium* (It is for the

general welfare that a period be put to litigant). Every legal remedy must be kept alive for legislatively fixed period of time. Law is also clear each day after limitation time, is required to be explained by cogent means.

16. In **Sheo Raj Singh v. Union of India & Anr**, reported at AIR 2023 SC 5109, the Supreme Court has considered the issue regarding delay and laches. It would be profitable to reproduce Para 29 of the above judgment which reads as under:

"29. *Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.*"

17. Since application was deficient for the reasons mentioned supra and rightly so, the appeal was dismissed by respondent No.3 as the petitioner has failed

to project any compelling reasons to justify such huge delay of more than 39 years, while as the limitation period for filing an application under the Land Revenue Act is 60 days.

CONCLUSION

18. Keeping in view the authoritative enunciation of law as referred to above, I do not find any legal infirmity in the impugned order dated 29.10.2024, therefore, writ petition preferred by the petitioner challenging the aforesaid order being devoid of merit, on account of huge delay of **39 years 01 month and 20 days**, deserves dismissal and the same is, accordingly, **dismissed in *limine***. Resultantly, the order passed by the learned Additional Deputy Commissioner, Poonch is upheld as the appeal preferred by the petitioner was barred by law of limitation.

JAMMU
10.03.2025
Vijay

(WASIM SADIQ NARGAL)
JUDGE

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No