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**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE  
HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV**

**ON THE 14<sup>th</sup> OF MARCH, 2024**

**MISC. PETITION No. 3271 of 2020**

**BETWEEN:-**

**MUSAV SINGH S/O SHRI BHAGWAN SINGH YADAV,  
AGED 66 YEARS, R/O VILLAGE SINDHARAI, TEHSIL  
BADARWAS, DISTRICT SHIVPURI (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI GAURAV MISHRA - ADVOCATE)**

**AND**

**DAUJA S/O BUDDHA JATAV, AGED 59 YEARS, R/O  
VILLAGE SINDHARAI, TEHSIL BADARWAS, DISTRICT  
SHIVPURI (MADHYA PRADESH)**

**.....RESPONDENT**

**(BY SHRI AJAY SINGH RATHORE - ADVOCATE)**

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

**ORDER**

Challenge is made to order dated 7.8.2020 passed by Additional Collector, District Shivpuri in Case No.14/Nigrani/2019-20, order dated 13.6.2019 passed by SDO (Revenue), Kolaras, District Shivpuri in Case No.11/Appeal/2014-15 and order dated 30.7.2014 passed by Tehsildar, Kolaras, District Shivpuri in Case No.13-14/B-121.

2. Heard learned counsel for the parties and perused the record.

3. Main submission of learned counsel for the petitioner is that admittedly, property was granted on lease to the respondent by the State. In the year 2011, petitioner purchased the land in dispute by way of registered sale

deed from the respondent and on the basis of alleged sale deed, name of the petitioner was recorded in the revenue record. Later on, in the year 2014, respondent moved an application before Tehsildar to the effect that previous sanction of Collector concerned has not been obtained before execution of sale deed and on the basis of said objection, Teshildar vide order dated 30.7.2014 deleted the name of the petitioner and recorded the property back in the name of respondent. Being aggrieved against the order of Tehsildar, petitioner filed a time barred appeal along with an application under Section 5 of Limitation Act before the SDO Kolaras, District Shivpuri. Appeal was time barred by about 55 days. SDO rejected the application under Section 5 of Limitation Act. Consequently, appeal was also dismissed. There against, revisionist/petitioner filed Case No.14/Nigrani/2019-20 before the Collector which came to be heard and decided by Additional Collector, Shivpuri vide order dated 7.8.2020, dismissing the revision and confirming the order of SDO. Thus orders of Tehsildar, SDO and Additional Collector are impugned in the present petition.

4. Learned counsel for the petitioner further submits that orders passed by Tehsildar, SDO and Additional Collector are against the law and fact and appeal has not been heard and decided on merit. It was decided on technical ground. It is settled legal position that matter should be decided on merit after providing sufficient opportunity of hearing if the delay is not willful. Learned counsel prays that petition be allowed and all the impugned orders be set aside, remanding the case to the SDO to provide sufficient opportunity of hearing to the parties and pass a fresh order on merit.

5. *Per contra*, learned counsel for the respondent opposed the submission made by learned counsel for the petitioner and submits that

impugned orders have rightly been passed by the authorities concerned. There is no need to quash them. SDO and Additional Collector have rightly rejected the application of the petitioner under Section 5 of Limitation Act and appeal respectively.

6. Evidently appeal before SDO has been filed time barred by 55 days and application under Section 5 of Limitation Act has also been filed to condone the delay and to hear the appeal on merit.

7. Property was granted on lease to the respondent by the State and petitioner purchased the land in dispute by way of registered sale deed. His name was mutated in the revenue record by the order of Tehsildar. His name has been deleted from the land on the ground that it was not purchased with the previous sanction of the Collector. If the transfer has been made in contravention of Section 165 of MPLRC, land should have been vested in favour of the State but Tehsildar did not do so. Against the order of Tehsildar, time barred appeal was filed by the petitioner before SDO which has been dismissed only on the ground of 55 days' delay. It is settled in law that appeal should have been heard on merit and the application under Section 5 of Limitation Act should have been allowed unless otherwise. Rejection of delay condonation application by the SDO is not fair. Moreso, Additional Collector did not consider this point and dismissed the appeal summarily. Orders of SDO and Additional Collector deserve to be set aside.

8. In **Amalendu Kumar Bera and others vs. State of W.B., 2013 (3) MPLJ 1** the Supreme Court has held as under:

9..... There is no dispute that the expression 'sufficient cause' should be considered with pragmatism in justice oriented approach rather than the technical detection of 'sufficient cause' for explaining every day' delay. However, it is equally well

settled that the Courts albeit liberally considered the prayer for condonation of delay but in some cases the Court may refuse to condone the delay inasmuch as the Government is not accepted to keep watch whether the contesting respondent further put the matter in motion....

**9. In State of Nagaland vs. Lipok AO and others, 2005 (3) SCC 752**

the Supreme Court has observed that - Court must also take a just oriented approach while considering an application for condoning the delay.... Court in view of larger public interest should take lenient view in such situation, condone the delay, however, huge may be the delay, and have the case decided on merits. The Court should decide the matters on merits unless the case is hopelessly without merit.

10. Considering the entire facts and circumstances of the case, rival submissions made by learned counsel for the parties and legal proposition discussed above, petition is **allowed**. Impugned orders of SDO, Kolaras, District Shivpuri and Additional Collector, District Shivpuri are quashed and set aside. Delay condonation application filed by the petitioner along with appeal before the SDO, Kolaras, District Shivpuri is allowed. SDO, Kolaras, District Shivpuri is directed to decide the appeal on merit, within a period of six months from the date of production of certified copy of this order before it, after providing sufficient opportunity of hearing to both the parties.

**(RAJENDRA KUMAR-IV)  
JUDGE**

(alok)