

**W.R.**  
**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**REVISION/LR/2560/2003/ALWAR.**

Rampat s/o Budhram, Caste Gurjar, r/o Village Sanchod, Tehsil Mundawar, Distt. Alwar.

**...Revisionist.**

*Versus*

1. Kaptan Singh s/o Madaram, Caste Jat, r/o Village Jhabua, Tehsil Bavar, Distt. Rewari (Haryana)
2. State of Rajasthan through Tehsildar Mundawar, Distt. Alwar.

**.....Respondents.**

**REVISION/LR/2561/2003/ALWAR.**

Rampat s/o Budhram, Caste Gurjar, r/o Village Sanchod, Tehsil Mundawar, Distt. Alwar.

**...Revisionist.**

*Versus*

1. Nathuram s/o Kedarnath, Caste Mahajan, r/o Beejwar Chouhan, Tehsil Mundawar, Distt. Alwar.
2. State of Rajasthan through Tehsildar Mundawar, Distt. Alwar.

**.....Respondents.**

**S.B.**

**Shri Rajinder Kumar, Member**

**Argued by:-**

Shri Thaneshwar Sharma, counsel for the Revisionist.

Shri Jagdish Prasad Mathur, counsel for the Respondent.

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**J U D G M E N T**

**Date: 13-02-2019**

1. Shorn of unnecessary details, facts leading to the filing of the present revision petitions are that vide order dated 27.01.1997, the Tehsildar cum Managing Officer, Mundawar (Distt. Alwar) issued a patta of the disputed land measuring 4 bigha 3 biswa comprised in khasra no. 236/2012 of Village Seelgaon in favor of the revisionist Rampat. Assailing the said order, two separate

appeals no. 43/01 and 66/01 were filed by the respondents Nathuram and Kaptan Singh in the court of the learned A.D.M Ist Alwar. To get the delay condoned in filing the said appeals, both the appellants filed applications under Section 5 of the Indian Limitation Act, 1963 and in support thereof, they filed their affidavits as well. The learned first appellate court dismissed the appeal filed by the respondent Kaptan Singh by observing that he had no possession over the disputed land and thus, no locus standi to challenge the patta. The appeal of the respondent Nathuram was accepted and after cancelling the patta, the matter was remitted to the Tehsildar cum Managing Officer Mudawar with a direction to pass the order afresh after giving opportunity of leading evidence and hearing to the parties. Feeling aggrieved against the judgment dated 12.04.2001 of the A.D.M Ist Alwar, two separate appeals came to be filed at the instance of Kaptan Singh and Rampat and vide common judgment dated 28.02.2003, the learned Revenue Appellate Authority dismissed the second appeal filed by the present appellant Rampat and accepted the appeal of the respondent Kaptan. Hence these revision petitions.

2. I have heard the learned counsels.
3. On behalf of the revisionist, it was argued that the learned first appellate court committed illegality in accepting the applications filed by the contesting respondents, namely, Kaptan Singh and Nathuram under Section 5 of the Indian Limitation Act, 1963. No 'cause', what to talk of 'sufficient cause', was shown by them for filing the appeals with inordinate delay. On 28.11.1996, an affidavit was filed by the respondent Nathuram before the Tehsildar cum Managing Officer, Mundawar admitting therein the possession of the revisionist over the suit land. As a matter of fact, the contesting respondents had knowledge of the passing of

the order by the Tehsildar from the very beginning. Therefore, the delay in filing the appeals was not required to be condoned. The learned second appellate court also committed material illegality in not appreciating the said factual aspect while passing the impugned judgment. Learned counsel also canvassed that the disputed land is the custodian land and the same was allotted to the revisionist after seeking report of the Patwari and making proper enquiry as per rules. The objections were also invited and the revisionist was found in possession of the disputed land. The court below also failed to appreciate the fact that Kaptan Singh is the resident of District Rewari (Haryana) and he had no locus standi to challenge the allotment order and patta of the revisionist. He was not in the possession of the disputed land. The respondent Nathuram had already relinquished his interest over the disputed land in favor of the revisionist and therefore, he had no right to enter into agreement qua the disputed land in favor of Kaptan Singh. The court below also ignored this fact that the respondent Nathuram is also not the resident of this Village and he resides in Ajmer. He too was not in possession of the disputed lands. Therefore, the appeals filed at the instance of the contesting respondents were incompetent. At the most, the 'gair khatedars' of this land, namely, Budha and Shambu might have been aggrieved against the order of allotment of land to the revisionist. Both of them did not prefer any appeal. Therefore, the judgment passed by the appellate court in favor of the respondents are perverse, illegal and legally infirm. A prayer was made to accept the revision petition, set aside the impugned judgments of the courts below and maintain the allotment order passed in favor of the revisionist.

4. Learned counsel for the respondents vehemently opposed the aforesaid submissions. According to him, the judgment passed by

the learned Appellate Authority is based on a correct appreciation of the factual and legal aspects of the case involved herein. The scope of revisional jurisdiction is very limited. The findings of the court below are neither perverse nor illegal. Hence a prayer was made to dismiss the revision petitions.

5. The submissions made at the Bar have been duly considered. I have perused the records minutely.
6. Three matters are required to be dealt with in deciding these revision petitions. The first matter deals with the scope of revisional jurisdiction, the second matter deals with the legality of the order accepting the applications for delay condonation of the respondents by the first appellate court and the third matter deals with the legality of the order passed by the courts below on the merits of the appeals preferred before them.
7. In Hindustan Petroleum Corporation Ltd. Vs Dilbahar Singh (2014) 9 SCC 78, it was held by the Hon'ble Supreme Court that:-

*“The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a re-hearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an 'appeal' and so also of a 'revision'. If that were so, the revisional power would become co-extensive with that of the trial Court or the subordinate Tribunal which is never the case.....Revisional power is not reconsideration of all questions of fact as a court of first appeal...”*

In view of the above legal proposition, while deciding these matters, it will be kept in mind that the scope of “revision” is much narrower than the scope of “appeal”.

8. Now coming to the concurrent findings of the courts below that the respondents have shown that there was 'sufficient cause' for non filing of the first appeals within the stipulated period. The respondents in their first appeals and the delay condonation applications had averred that the order of land allotment in favor of the revisionist was passed behind their back and as soon as they came to know of the same, they had filed the said appeals. The first appellate court on consideration of the material on record and the fact that the revisionist did not submit reply or counter-affidavit came to the conclusion that the delay in filing the appeals has been satisfactorily explained. The learned first appellate court has passed a well considered order in this regard. It is well settled law that length of delay is not material, acceptability of the explanation is the only criterion. A delay of the shortest duration, namely, one day may be uncondonable due to lack of acceptable explanation whereas in other case delay of very long duration, namely, many years may be condoned as the explanation thereof would be satisfactory.
9. In 1998 DNJ (SC) 365 'N. Balakrishnan Vs M. Krishnamurthy, it was held thus:-

*"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 reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut 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."*

In the instant case, the findings of the first appellate court condoning the delay have been endorsed by the second appellate court also. The concurrent findings of the courts below are based on correct appreciation of the material placed on record. The said findings do not appear to be perverse or arbitrary or based on wholly untenable grounds. There is no reason to interfere in the discretion positively exercised by the courts below in condoning the said delay.

10. Now coming to the merits of the controversy, it is revealed that the judgment passed by the ADM Alwar on the appeal of the respondent Nathu Ram was endorsed by the second appellate court also. The courts below gave concurrent findings of facts that the so-called affidavit of the respondent Nathuram was a forged document and a criminal case in this regard was also registered against the revisionist. The courts below also concurrent on facts that the due formalities were not undertaken before allotting land to the revisionist and local inspection of the land in dispute was also not properly done. To test the concurrent findings of the courts below on touchstone of "whether the same are according to law," I have re-appreciated the material on record for a limited purpose and come to independent finding that the same are neither perverse nor illegal. Therefore, no interference is required on the judgment of the courts below remanding the matter to the original court for *denovo* enquiry as per law.

11. In the second appeal filed by the respondent Kaptan Singh, the decision of the first appellate court was reversed. In fact, the learned first appellate court had dismissed the appeal of the respondent Kaptan Singh on the ground that he had no right over the disputed land. The said court did not, while returning such

finding, took into consideration the local inspection report wherein it has been stated that Kaptan Singh was cultivating the said land. The learned second appellate court on the basis of this report and the other documentary evidence came to the conclusion that the respondent Kaptan Singh too had locus standi to challenge the allotment order in question. However, the said court erred in accepting the second appeal filed at the instance of the respondent Kaptan Singh in its entirety. The effect of the said judgment would be that no further enquiry could be made in the matter of allotment of land to the revisionist whereas on the appeal of the respondent Nathuram, an order for *denovo* enquiry has been passed. In other words, if the judgment passed by the second appellate court in accepting the appeal of the respondent Kaptan Singh is allowed to maintain, there would be in existence two self contradictory judgments, namely, the one where the allotment order and patta have been set aside and the other where *denovo* enquiry would be required to be done. This would obviously create legal complications. Therefore, the judgment of the second appellate court accepting the appeal of the respondent Kaptan Singh in its entirety requires modification.

12. Resultantly, the revision filed by the revisionist against the respondent Nathuram is dismissed. However, the revision filed against the respondent Kaptan Singh is partly accepted and the impugned judgment of the second appellate court is modified to the extent that the original court of the Tehsildar cum Managing Officer Mandawar shall conduct *denovo* enquiry as per the directions given by the first appellate court and in that enquiry the respondent Kaptan Singh shall also be heard and given opportunity of hearing. The trial court is directed to conclude the enquiry and pass the order afresh expeditiously and not later than a period of six months from today. It is made clear that

nothing stated hereinabove shall be deemed to be an expression on the merits of the controversy. The Tehsildar cum Managing Officer Mandawar shall decide the matter without being influenced by any of the said observations.

Pronounced.

**(Rajinder Kumar)**  
Member