

PETITIONER:
MALOJIRAO NARASINGHRAO SHITOLE

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH

DATE OF JUDGMENT:
07/03/1969

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
HIDAYATULLAH, M. (CJ)
RAMASWAMI, V.

CITATION:
1969 AIR 953 1969 SCR (3) 901
1969 SCC (2) 723

ACT:
Madhya Bharat Abolition of Jagirs Act 28 of 1951, s. 29-
Appeal to Board of Revenue-No provision in Act for exclusion
of time for obtaining copies or to condone delay S. 30 of
Act making Ryotwari Land Revenue and Tenancy Act Samwat
2007 applicable to proceedings under Act-Effect of ss. 34
and s. 149(2) of Ryotwari Act--Construction of s. 149(2)-
Applicability of s. 12 of Indian Limitation Act 1908.

HEADNOTE:
Section 29 of the Madhya Bharat Abolition of Jagirs Act 28
of 1951 provided for appeals against orders of the Jagir
Commissioner to the Board of Revenue. The appeal was to be
filed within 90 days of the communication of the decision to
the party concerned. The Act did not in terms contain any
provision for exclusion of time taken in obtaining copies or
for condonation of delay in filing the appeal. However
under s. 30 of the Act the procedure under the Ryotwari Land
Revenue and Tenancy Act, Samwat 2007 was made applicable to
the proceedings. Section 34 of the said Ryotwari Act
provided for extension and computation of the period of
limitation and s. 149(2) thereof was in the following terms
: "Excp't where it is otherwise provided" in the general
principles of law of Limitation for the time being in force
in the United State regarding extension of the principles of
limitation shall apply to claims made under this Act before
a Revenue officer".

The appellant was a Sardar and Jagirdar in the erstwhile
Gwalior State. His Jagir was resumed by the State on
December 4, 1952 under the Madhya Bharat Abolition of Jagirs
Act 1951. He received a memorandum from the Jagir
Commissioner on February 23, 1958 regarding the compensation
payable to him under s. 13 of the Act. On February 24, 1958
he applied to the Jagir Commissioner for a copy of the
judgment as the memorandum supplied to him did not show how
the compensation had been determined. The application was
returned to the appellant on March 11, 1958 with an
endorsement that the copy could be had on payment of fees.
The very next day the appellant complied with the demand and
a copy of a judgment was given to him on March 18, 1958.

The appellant preferred his appeal to the Board of Revenue on June 2, 1958 but the Board dismissed it as time barred under s.29 of the Act. The High Court upheld the order of the Board. In appeal to this Court,

HELD: The High Court was not right in upholding the order of the Board of Revenue which ignored the provisions of ss. 34 and 149(2) of the Ryotwari Act and the relevant provisions of the Limitation Act. [907 B-C]

(i) Under s. 34 of the Ryotwari Act the Board must guide itself by the provisions of the Limitation Act in force for extension, and computation of the period of limitation. It would appear that s. 149(2) was aimed at giving a similar guide line to the Revenue Officer. To give the said interpretation to s. 149(2) it is necessary to read "extension of the principles of limitation" occurring therein as "extension of the period of limitation" for otherwise the section would be devoid of any meaning.

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The word 'principles' therein was inserted due to inept or careless drafting and what was meant was 'period' and not 'principles'. However, even if the statute is read as it stands the principle of the Limitation Act is not only to dismiss a suit, appeal or application if filed beyond time but also to extend the time for filing an appeal if the delay is explained. That principle was clearly capable of extension in the present case. [905 D; 906 E]

(ii) The general principles of limitation are those contained in the Limitation Act of 1908 which was in force at the date when the present appeal was filed before the Board of Revenue. Sections 3, 4, 5 and 29(2) of the Limitation Act 1908 show that unless excluded by the Jagirs Act or Ryotwari Act, s. 12 of the Limitation Act would be applicable to appeals filed before the Board of Revenue under any of those Acts. [905 E; 906 C]

(iii) In view of the applicability of ss. 34 and 149(2) of the Ryotwari Act to the case, the time spent in obtaining a copy of the judgment forming the basis or giving the reasons of the decision should have been excluded in computing the period of 90 days under s. 29 of the Jagirs Act. The appellant was not guilty of any laches. If there was any delay in filing the appeal the Board of Revenue 'should have considered whether in the circumstances of the case the same should have been condoned. The Board did not act judicially in throwing out the appeal. [906 F-907 B]

Brijrajsingh v. The Board of Revenue and Another, Misc. Civil Case No. 22 of 1962 of the Madhya Pradesh High Court decided on 18-3-63, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 302 of 1966. referred to.

Appeal by special leave from the judgment and order dated November 13, 1962 of the Madhya Pradesh High Court, Gwalior Bench in Misc. Civil Petition 64 of 1961.-

B.Sen, P. W. Sahasrabudhe, A. G. Ratnaparkhi and S. V. Tambwekar, for the appellant.

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by Mitter, J. This is an appeal by special leave from an order of the Madhya Pradesh High Court under Art. 227 of the Constitution refusing to quash an order made by the Board of Revenue of the State throwing out the appeal of the appellant on the ground that it was barred by time.

The facts are as follows. The appellant was a Sardar and a Jagirdar in the former Gwalior State. His Jagir known as Pohari Jagir was resumed by the State on December 4, 1952 under the Madhya Bharat Abolition of Jagirs Act, 28 of 1951. He received a memorandum from the Jagir Commissioner on February 23, 1958 regarding the compensation payable to him under s. 13 of the Act in respect of the resumption of his jagir. On February 24, 1958 he applied to the Jagir Commissioner, for a copy of the

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judgment. The memorandum received by him gave the total amount of compensation determined and the deductions to be made therefrom. It did not contain the data forming the basis of the calculations nor did it show how the authority disposed of the appellant's claim to compensation and made its own computation. At the hearing, a copy of the judgment of the Jagir Commissioner running into twenty three pages was handed up to us giving full details of the claim and showing how the same were dealt with for fixing the amount payable to the appellant.

It appears that the application of the appellant for a copy of the judgment was returned to him on March 11, 1958 with an endorsement that the same could be had on payment of fees. On the very next day the appellant applied for a copy of the judgment after paying the fees mentioned and a copy of the judgment was given to him on March 18, 1958. The appellant preferred his appeal to the Board of Revenue on June 2, 1958. As already stated, the Board did not go into the merits of the case holding the appeal to be barred by time under the provisions of s. 29 of the Act.

It is necessary to note a few of the provisions of the Madhya Bharat Abolition of Jagirs Act, 1951 (hereinafter referred to as the 'Act') to find out whether the appeal to the Board of Revenue was out of time. Under s. 3 of the Act the Government had to appoint a date for the resumption of all jagir lands in the State, as soon as may be, after the commencement of the Act. The consequences of the resumption of the jagir land are given in s. 4. By the operation of that section the right, title and interest of every jagirdar and of every other person claiming through him in his jagir lands including forests, trees etc. whether being worked or not, were to stand resumed to the State free of all encumbrances and certain other consequences were to follow. Section 5 of the Act however enabled the Jagirdar to continue to remain in possession of lands personally cultivated by him and of certain other items of property mentioned in cl. (b) of the said section. Under s. 8 the Government was to be liable to pay to every jagirdar whose jagir land was resumed under s. 3 such compensation as would be determined in accordance with the principles laid down in Schedule 1. Under s. 12 every Jagirdar whose jagir land had been resumed under s. 3 was to file in the prescribed form within two months from the date of resumption, a statement of claim for compensation before the Jagir Commissioner. Sub-s. (2) of the section prescribed the particulars which such statement of claim had to furnish. On receipt of a statement of claim under s. 12 or if no statement was received by him within the period fixed, it was the duty of the Jagir Commissioner to determine (a) the amount of compensation payable to the Jagirdar

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under s. 8, (b) the amount recoverable from him under cl. (e) of sub-S. (1) of s. 4, (c) the amounts of the annual maintenance allowances payable to maintenance holders, if any, under s. 9; (d) the amounts payable annually to the

Zamindars of the Jagirdar, if any under s. 10 and (e) the amount payable to the cosharers of a Jagirdar, if any, under s. 11. The section casts a duty on the Jagir Commissioner to communicate his decision to the Government, the Jagirdar, the maintenance holders, the co-sharers and the Zamindars, if any, as soon as may be practicable. Under s. 29 the Government or any person aggrieved by the decision of the Jagir Commissioner under ss. 4, 10, 11, 13 or 14 had the right to appeal to the Board of Revenue within 90 days from the date of the communication of such decision to it or him and the decision of the Board of Revenue was to be final.

From the above provisions of the Act, it is amply clear that neither the Government nor the Jagirdar nor any person aggrieved by the decision of the Jagir Commissioner under s. 13 can file an appeal to the Board of Revenue to any purpose without a copy of the judgment showing how the decision under s. 13 was arrived at. In this case, the memorandum of compensation merely showed that a sum exceeding Rs. 17 lakhs had been determined as the amount payable to the appellant. The memorandum did not show how the same was computed or how the clam for compensation preferred by the petitioner under various heads was dealt with. In order that an appeal may be effective the appellant must be able to formulate his grounds for challenging the judgment which has gone against him.

The question therefore arises as to whether the time taken in obtaining a copy of the judgment which forms the basis of the decision in determining the compensation can be excluded from the period of 90 days mentioned in s. 29 of the Jagirs Abolition Act. There is no provision in the Act which expressly empowers the Board of Revenue to entertain an appeal filed beyond the period of 90 days from the date of the communication of the decision under s. 13. Under s. 30 of the Act

"The Jagir Commissioner, or any other officer conducting an enquiry under this Act, and the Board of Revenue and the Collector hearing appeals from the orders of the Jagir Commissioner or the Tahsildar, as the case may be, shall follow the procedure applicable to proceedings under the Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007, so far as may be and shall have the same powers, in relation to proceedings before them as a revenue officer has in relation to original or appellate proceedings, as the case may be, under the Act." (hereinafter referred to as the Ryotwari Act). Section 34 of the Ryotwari Act provides

"Subject to the provisions of the Limitation Act in force for the time being regarding the extension and computation of the period of limitation :-

(1) no appeal to the Board shall be brought after the expiry of ninety days from the date of the decision or the order complained of;

(2).....

Section 149(2) of the Ryotwari Act provides that

"Except where it is otherwise specially provided the general principles of law of Limitation for the time being in force in the United State regarding extension of the principles of limitation shall apply to claims

made under this Act before a Revenue Officer." It is clear from the language of s.34 that in hearing an appeal under the Ryotwari Act the Board must guide itself by the provisions of the Limitation Act in force for extension and computation of the period of limitation. It would appear that s. 149(2) was aimed at giving a similar guide line to the Revenue Officer. To give the said interpretation to s. 149(2) it is necessary to read "extension of the principles of limitation" occurring therein as "extension of the period of limitation" for otherwise the section would be devoid of any meaning. The general principles of limitation are those contained in the Limitation Act of 1908 which were in force at the date when the appeal was filed before the Board of Revenue. Section 3 of the Limitation Act, 1908 laid down that subject to the provisions contained in ss. 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the First Schedule was to be dismissed although limitation had not been set up as a defence. Under s. 5 of the Limitation Act of 1908 an appeal could be admitted after the period of limitation prescribed therefor when the appellant satisfied the court that he had sufficient cause for not preferring or making the application within such period. Under s. 29(2) of the Limitation Act

"Where any special or local law prescribes for any suit appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule and for the purpose of determining any period of limitation

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(a) the provisions contained in section 4, sections 9 to 18 and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

These sections go to show that unless excluded by the Jagirs Act or Ryotwari Act section 12 of the Limitation Act would be applicable to appeals filed before the Board of Revenue under any of those Acts.

It has been held by a Division Bench of the Madhya Pradesh High Court in Brijrajsingh v. The Board of Revenue and another(1) that the expression "principles of limitation" in s. 149(2) mentioned above should be construed as extension of the period of limitation. For the reasons given above, we are in agreement with the said conclusion of the Madhya Pradesh High Court. In our view, the word 'principle' therein was inserted due to inept or careless drafting and what was meant was "period" and not principles'.

Even if we were to read the Statute as it is, the principle of the Limitation Act is to dismiss a suit appeal or application if filed beyond time but also to extend the time for filing an appeal if the delay is explained. That principle is clearly capable of extension in the present case.

If sections 34 and 149(2) were applicable to the facts of the case before the Board of Revenue and we hold to that effect, the time spent in obtaining a copy of the judgment formi

ng the basis or giving the reasons of the decision should have been excluded in computing the period of 90 days under s. 29 of the Jagirs Act. The appellant was not guilty of any laches in his appeal to the Board of Revenue. He applied for a copy of the judgment of the Jagir Commissioner on the day next after communication to him of the order of the Jagir Commissioner. Even if the application was unaccompanied by any fees prescribed for the purpose, the Board of Revenue should have taken this fact into consideration before holding the appellant's appeal to be out of time. If the application for the copy of the judgment made on the 24th February was in order, the appeal was in time. Even if the time taken in obtaining the copy of the judgment be reckoned from the 12th March to 18th March, 1958, the appellant was out by two days only in filing the appeal to the Board of Revenue. If the 1st of June 1958 which

(1) Misc. Civil Case No. 22/1962 decided on 18-3-63.

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happened to be a Sunday be left out of consideration, the appellant was out by one day only.

As appears from the order dated September 28, 1961 the Board of Revenue refused to entertain the appeal on the ground of limitation without considering the question as to whether the appellant had made out a case for condonation of delay, if any. In our view, the Board of Revenue had not acted judicially in throwing out the appeal. The High Court was therefore not right in upholding the order of the Board of Revenue which ignored the provisions of ss. 34 and 149 (2) of the Ryotwari Act and the relevant provisions of the Limitation Act. A sounder view of the law was taken by another Division Bench of the same High Court in Brijrajsingh's case(1) noted above.

For the reasons given the appeal is allowed, the order of the Board of Revenue is quashed and the matter sent back to the Board for disposal of the appeal according to law and in the light of the observations made by us. The appellant will have the costs of this appeal.

G.C.

Appeal allowed.

(1) Misc. Civil case No. 22/1962 decided on 18-3-63.

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