

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9660 OF 2014

MAHADEV DASU RATHOD AND OTHERS
VERSUS
THE SUB-DIVISIONAL OFFICER, OSMANABAD AND ANOTHER

...
Advocate for Petitioners : Shri Chandaliya K.M.
AGP for Respondents 1 & 2 : Shri Shelke V.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 10, 2015

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PER COURT :-

1. While issuing notice to the respondents, I had passed the following order on 23.12.2014 :-

"1 The petitioner is aggrieved by the impugned order dated 19.9.2014, by which delay of 277 days, caused in preferring the appeal, has not been condoned and as such, the appeal has not been registered.

2 The petitioner submits that, under a mistaken belief, the petitioner had approached the Office of the Collector, for challenging the order passed by the Sub Divisional Officer. Time was consumed in the said proceedings and it was then noticed that, the Collector did not have the jurisdiction to entertain such proceedings. Therefore the said delay.

3 Issue notice before admission to the respondents r/o on 16.1.2015. Learned AGP waives service on behalf of both the respondents."

2. I have heard the learned Advocate for the petitioners and the learned AGP for the respondents, who seriously opposes the petition. Contention of the respondent is that the delay in preferring the appeal under Section 33 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, is delayed by 277 days. Explanation put forth is not satisfactory. Delay cannot be condoned on sympathetic grounds and therefore, the petition be dismissed.

3. It is not in dispute that the petitioners had mistakenly approached the District Collector for assailing the order of the Sub- Divisional Officer, dated 8.7.2013. The Additional Collector, Osmanabad in Appeal No. 2013/RTS/53/149, passed an order on 17.2.2014, concluding that the Additional Collector does not have the jurisdiction to decide the appeal and the same should be preferred before the learned Maharashtra Revenue Tribunal, Aurangabad. It is in this backdrop that the delay was caused.

4. The Honourable Supreme Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has, while dealing with the application for condonation of delay, observed as under :-

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that

can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

5. I do not find that the petitioners have drawn any advantage by delaying their appeal. I also do not find that laches are attributable to the conduct of the petitioners.

6. In the light of the above, the impugned order dated 19.9.2014, passed by the Maharashtra Revenue Tribunal in proceeding No.27/A/2014/Osmanabad is quashed and set aside. The delay caused in preferring the appeal is condoned. The Maharashtra Revenue Tribunal shall

accordingly register the appeal preferred by the petitioners and issue notices to the litigating sides for commencing the hearing on the appeal.

7. Writ Petition is, therefore, partly allowed.

8. Needless to state, the application for stay preferred by the petitioners be decided as expeditiously as possible. Any alteration in the revenue record / mutation entry shall be subject to the result of the appeal.

(RAVINDRA V. GHUGE, J.)

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