

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9 OF 1993.

Nasik Municipal Corporation & Anr. .. Petitioners
Vs.
Smt.Malik Sultan Sadruddin Huda .. Respondent

with

WRIT PETITION NO. 12 OF 1993.

Nasik Municipal Corporation & Anr. .. Petitioners
Vs.
Smt.Nurbanu Peerbhai Lakhani & Anr. .. Respondents

with

WRIT PETITION NO. 2891 OF 1992.

Nasik Municipal Corporation & Anr. .. Petitioners
Vs.
Madhukanta Nandlal Vyas & Ors. .. Respondents

with

WRIT PETITIONS NO. 2901 of 1992 and 2903 OF 1992.

Nasik Municipal Corporation & Anr. .. Petitioners
Vs.
Smt.Jayshree Dineshchandra Joshi .. Respondent

Mr. V.A.Gangal, Senior Advocate a/w Mr. Anup N. Deshmukh for
Petitioners.

Mr. P. N. Joshi, Senior Advocate for Respondents no. 1 to 3 in WP
Nos.2891/1992, 2901/1992 and 2903 of 1992.

CORAM : R.G.KETKAR,J.

DATE : 24/08/2015

PC:

1. Heard Mr. V.A. Gangal, learned senior counsel for the
petitioners and Mr. P.N.Joshi, learned senior counsel for

respondents no. 1 to 3 in Writ Petitions No.2891 of 1992, 2901 of 1992 and 2903 of 1992, at length.

2. By order dated 13.1.1993, these petitions were admitted by issuing Rule and interim order in terms of prayer clause (c) was granted. The petitions were listed for final hearing before this Court on 3.7.2014. It was informed to the Court that Mr. R. V. Vartak, Advocate appearing for the respondent in Writ Petitions No. 9 of 1993 to 13 of 1993, has expired. During the pendency of these petitions, Mr. Joshi appearing for respondents 1 to 3 in Writ Petitions No. 2891 of 1992, 2901 of 1992 and 2903 of 1992 sought time to inform junior of Mr. Vartak in Nashik about pendency of the Petitions. Petitions were accordingly adjourned to 17.7.2015.

3. On 17.7.2015, this Court directed office to issue notice to the respondents in these petitions. As far as Writ Petition No.9 of 1993 is concerned, office remark shows that respondent is served through her son. As far as Writ Petition No.12 of 1993 is concerned, notice issued to respondent no.1 returned unserved with bailiff's remark 'expired'. Notice of respondent no.2 is served through her brother-in-law. Mr. Gangal seeks leave to delete respondent no.1 from this petition. Leave granted. Amendment shall be carried out forthwith. Despite service, nobody appears on behalf of the respondents in Writ Petition No.9 of 1993 and 12 of 1993. Mr. Gangal states that the

petitioners have served the respondents privately and to that effect he will file affidavit of service enclosing therewith acknowledgments. He states that the respondents are also duly served by private notice.

4. The Petitions were called out on 20.8.2015 and 21.8.2015. None appeared for the parties. In view thereof, the Petitions were ordered to be listed today, i.e. 24.8.2015 at 3 pm under the caption 'for dismissal'. Mr. Gangal and Mr Joshi have advanced arguments. None appears for the respondent in Writ Petitions No.9 and 12 of 1993.

5. In support of these Petitions, Mr. Gangal submitted that the respondent is owner of Plot No. 219 (part) of TPS-I, being part of Survey no.536/426/34. It is not necessary to refer to other developments for deciding the controversy raised in these Petitions. Suffice it to say that on 7.12.1987 Notification was issued by Dy. Municipal Commissioner and Competent Authority under section 4 (1) of the Maharashtra Slum Areas, (Improvement, Clearance and Re-Development) Act, 1971 (for short, 'Act') which was published in Maharashtra Gazette on 17.12.1987. The Notification was also published on 10.12.1987 in Daily Newspaper "Deshdoot". Mr.Gangal submitted that Writ Petition No.3121 of 1982 was instituted in this Court by the owners of final Plot no.219 (Pt) for direction to petitioner no.1-Corporation to deliver vacant possession of the plot which was

part of Final Plot no.219 as per the proposals made in the Town Planning Scheme. The petition was admitted only as regards removal of huts, sheds and structures standing on final plot no.219. On behalf of the petitioners therein, statement was made to the effect that on 7.12.1987 declaration was made under section 4 of the Act declaring Final Plot no.219 as a slum area and petitioners have preferred appeal against the said declaration and appeal is pending before the appellate authority. After considering the statement, the Division Bench of this Court (Coram: M.L.Pendse and E.D.D.S.Da Silva, JJ.) disposed of the petition on 1.10.1990 by observing that in view of the declaration, it is not possible to direct the Corporation to remove the structures standing on the final plot. The Court also noted the decision of the Apex Court in the case of Municipal Corporation of Gr. Bombay Vs. The Advance Builders (India) Ltd, AIR 1971 SC 793 which lays down that it is the bounden duty of the Planning Authority to put the petitioner in possession of the plot declared under the final Town Planning scheme. The Court accordingly granted relief in terms of prayer clause (bb) on condition that the Corporation would carry out the writ only in case it is held that the area in dispute in the petition is not a slum area. The Court directed the Corporation to carry out the writ only in case the declaration made under section 4 of the Act is set aside.

6. Mr. Gangal submitted that in fact the said statement was

factually incorrect as on the date when the petition was disposed of on 1.10.1990, no appeal was preferred challenging the declaration dated 7.12.1987. The appeal was preferred some time in October 1991 and since there was delay in filing the appeal, Misc. Applications were filed for condoning the delay on or about 21.1.1992. The Corporation filed reply in or about July, 1992 opposing application for condonation of delay. In paragraph 2 of the reply, it was asserted that the appeal filed by the respondent herein is hopelessly barred by law of limitation. In paragraph 4, reference was made to filing of writ petition no.3121 of 1982 and the order dated 1.10.1990 passed by this Court in that petition. In particular it was stated that solemn statement was made by the petitioners therein (applicants before the Tribunal), that the petitioners have filed appeal against the declaration before the Tribunal and the said appeal is pending. The Corporation also craved leave to refer to and rely upon the true copy of judgment and order dated 1.10.1990 passed by this Court in writ petition no. 3121 of 1982.

7. By the impugned order, the learned President allowed the applications for condonation of delay and the delay is condoned.

8. Mr. Gangal submitted that the Tribunal did not refer to reply filed by the Corporation and in particular paragraphs 2 and 4 thereof. The Tribunal failed to appreciate that the respondent herein cannot claim to be unaware of the declaration published in

the official gazette. In fact, on the basis of the statement made on behalf of the respondent who was petitioner in Writ petition No.3121 of 1982, this Court disposed of the petition on 1.10.1990. It is, therefore, not open to the respondent to claim that she was not aware of the declaration dated 7.12.1987. To say the least, he submitted that the respondent made a false statement for explaining the delay. He submitted that the respondent did not approach the Tribunal with clean hands. In support of his submission, he relied upon the decision of the Apex Court in the case of Oriental Aroma Chemical Industries Ltd Vs. Gujarat Industrial Development Corp., (2010) 5 SCC 459 and in particular paragraphs 14,16 and 19.

9. On the other hand, Mr. Joshi supported the impugned order. He reiterated the submissions that were advanced before the Tribunal.

10. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned order passed by the Tribunal shows that the Tribunal observed that section 45 (1A) lays down that Sections 4,5,12 and 14 of Limitation Act, 1963 apply to filing of every appeal or application made to the Tribunal under the Act. The Tribunal thereafter considered various decisions of this Court as also Apex Court. In paragraph 8, the Tribunal observed that the question is whether the competent

authority has informed the respondent herein that the declaration is published in the Gazette of the particular date. There is nothing on record to show that the competent authority has informed the respondent about publication in the Gazette. It is not expected from a lady living in Nasik to go to the Government Printing Press and read whether her property has been declared as slum area.

11. Perusal of the impugned order does not indicate that the Tribunal has considered the reply filed by the Corporation and in particular papers and proceedings of Writ Petition No.3121 of 1982 and order dated 1.10.1990 passed in that petition. The Tribunal was expected to deal with the contentions raised in the reply filed by the Corporation. Perusal of the impugned order shows that the Tribunal has failed to advert to the aspects raised in paragraphs 2 and 4 of the reply. On this ground alone, the impugned order is liable to be set aside and the application for condonation of delay deserves to be restored to the file of the Tribunal. Hence, petitions are disposed of as under.

(i) Impugned order dated 17.11.1992 is quashed and set aside and Misc. Applications are restored to the file of the Tribunal. The Tribunal will issue notice to the respondents herein/appellant/s and proceed to decide the applications for condonation of delay. The Tribunal will consider the reply filed by the Corporation and deal with all the contentions recorded herein and any other

contention that may be raised before the Tribunal.

(ii) Parties assure that they will appear before the Tribunal along with authenticated copy of this order on 29.9.2015 and for that purpose fresh notice need not be issued to the parties. The Tribunal shall, thereafter, issue notice to the respondents in Writ Petitions no. 9 of 1993 and 12 of 1993 and proceed with the hearing of applications for condonation of delay as expeditiously as possible and in any case shall dispose of the applications within two months from the date of appearance of the parties.

(iii) Rule is partly made absolute in the above terms with no order as to costs.

(R.G.KETKAR, J.)