

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

WRIT PETITION NO.3707 OF 2014

Yadunath Sahadur Prajapati : Petitioner.
Versus
Dy. Collector and Competent
Authority (Enc/Rem) and ors. : Respondents.

Mr. J G Damani for the Petitioner.
Mrs. Vaishali S Nimbalkar, AGP, for the Respondent Nos.1 to 3.
Mr.S G Surana i/by M S Surana for the Respondent No.4.

CORAM : R. M. SAVANT, J.
DATE : 29th June 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 11/2/2014 passed by the learned President of the Slum Tribunal by which order the Application filed by the Petitioner being Misc. Application No.48 of 2013 seeking condonation of delay of 2039 days in filing the Appeal against the notification of declaration of slum dated 17.8.1978 and the corrigendum issued thereto dated 23.4.2009 came to be rejected.

2 As mentioned herein above the said Misc. Application No.48 of 2013 was filed seeking condonation of delay which has occurred in filing the Appeal. The Appeal was filed against the corrigendum dated 23/4/2009 issued to the notification dated 17/8/1978 declaring the area covered by the notification as slum area. By the corrigendum which has been issued what has

been done is that in respect of Survey No.67, on which the structures bearing CTS No.67/1 to 67/24 are situated, the area was reduced by about 5 sq.meters from the area originally notified by the notification dated 17/8/1978. It is pursuant to the said notification dated 17/8/1978 that steps were taken to implement the slum rehabilitation scheme on the land in question. In so far as the said slum scheme is concerned, Annexure II which is the list of eligible slum dwellers entitled to the allotment of the permanent alternate accommodation was issued on 28/08/2007. The Petitioner's name did not appear in the said list. The letter of intent came to be issued to the Society of the slum dwellers and the Respondent No.4 on 10/8/2010. The intimation of disapproval came to be issued on 1/4/2011 and the commencement certificate came to be issued on 30/1/2012, and presently, the slum rehabilitation scheme is in the process of being implemented by the Respondent No.4.

3 In view of the fact that the Petitioner was declared as an ineligible occupant for allotment of permanent alternate accommodation, that notice for eviction issued to the Petitioner and other similarly situated occupants came to be under Section 33 of the Slum Act on 17/1/2013. The said notice was confirmed by the Competent Authority against which the Petitioner filed an Appeal under Section 38 of the said Act which Appeal came to be dismissed, against which the Petitioner had filed a Writ Petition in this Court being No.4937 of 2013 which came to be disposed of on 12/6/2013 by granting 3

weeks time to the Petitioner for obtaining requisite orders by approaching the appropriate forum. The Petitioner thereafter approached the high power committee by filing an application No.231 of 2013 questioning the slum scheme and also filed written arguments therein on 23.5.2013. The matter it seems is pending before the high power committee. It is after making the aforesaid application and adopting the remedies as mentioned herein above that the Petitioner has chosen to challenge the corrigendum dated 23/4/2009 issued to the notification dated 17/8/1978 in respect of the declaration of the slum area. It is required to be noted that the Petitioner's structure in which he was running a flour mill has been demolished some time in November 2013 to facilitate the implementation of the slum scheme, the said demolition was carried out pursuant to the orders passed under Section 33 and 38 of the Slum Act.

4 In so far as the present application for condonation of delay is concerned, the Petitioner has founded the same on the rights which he has allegedly purchased from one Smt. Sharifabi Mohammed Khan. It seems that the said Smt. Sharifabi Khan has been recorded as the owner of unauthorized structures to the extent of 190 sq.mtrs in the said plot of land. The Petitioner claims that his uncle one Shri Sukru Shivnath Prajapati was assigned the rights of the business of the flour mill by the tenants of the said Smt. Sharifabi Khan i.e. one Shri Ram Lakhan Sharma and Smt. Shakuntaladevi Tripathi. The uncle

of the Petitioner by his power of attorney dated 22/4/1980 appointed the father of the Petitioner as his power of attorney holder to conduct the business of the flour mill in the said property. Before the Slum Tribunal the Petitioner filed a copy of the self declaration dated 17/10/1995 made by the said Smt. Sharifabi Khan who claimed to be in adverse possession of the property bearing CTS No.67 admeasuring 223 sq.mtrs together with structures standing thereon. The Petitioner also relied upon the agreement dated 7/7/2004 between him and the heirs of the said Smt. Sharifabi Khan who agreed to sell the property of the flour mill to the Petitioner for consideration.

5 In so far as the said claim of the Petitioner as having acquired the right, title and interest in the said property is concerned, the Tribunal deemed it appropriate to conduct a limited inquiry into the said aspect before venturing to consider the case of the Petitioner as regards condonation of delay. The Tribunal whilst considering the said aspect observed that the said Smt. Sharifabi Khan being a person who was the owner of the unauthorized construction can be said to be a “slumlord” within the meaning of the provisions of the said Act. The Tribunal further observed that no document was produced by the Petitioner to show that the said Smt.Sharifabi Khan had perfected her title by adverse possession by virtue of any order passed by any Court. The Tribunal further observed that since the Petitioner had claimed to acquire certain rights, title or interest in the said property through the heirs of

said Smt. Sharifabi Khan and since the said Smt. Sharifabi Khan herself had no title to the land in question, the Petitioner was therefore at best an occupant and had no right, title and interest in the land in question. The Tribunal has observed that the Petitioner has not produced any document to show that he has any title to the property in question and therefore came to a conclusion that the Petitioner was not an “aggrieved person” within the meaning of the said Act.

6 The Tribunal thereafter considered the case of the Petitioner seeking condonation of delay. The Petitioner has sought condonation of delay on three grounds viz. that on account of wrong advice, he approached the wrong forum; that he had been to his native place from 28/6/2013 to 7/7/2013, and lastly in the interest of justice delay be condoned.

7 The Tribunal tested each of the aforesaid three grounds urged on behalf of the Petitioner. The Tribunal held that the Petitioner has not mentioned as to on whose wrong advice he had approached the wrong forum. The Tribunal nevertheless in so far as the said ground is concerned, observed that the Petitioner was probably referring to the proceedings filed before the high power committee. The Tribunal however, recorded a finding that the said proceedings were already filed and were already pending and therefore it was not open for the Petitioner to contend that on a wrong advice, he had

approached the wrong forum. In so far as 2nd ground is concerned, the Tribunal observed that there was no explanation for the period between the Petitioner's arrival in Mumbai and till filing of the application for condonation of delay. The Tribunal also questioned the grounds put forth by the Petitioner in view of the fact that the competent authority had passed the order under Sections 33 and 38 of the Slum Act on 20/3/2013 and at least on the said day the Petitioner was aware of the corrigendum issued to the notification. The Tribunal was therefore of the view that there was no plausible explanation for the period from 20/3/2013 till 16/11/2013. The Tribunal lastly observed that the Petitioner has been filing applications after applications and filing various proceedings, and has also been represented by advocate, it therefore could not be said that he was doing so on his own accord and also was not able to understand the legal terms and consequences of the same. The Tribunal also rejected the case of the Petitioner that in the interest of justice delay be condoned. The three reasons put forth by the Petitioner therefore did not commend acceptance to the Tribunal. The Tribunal accordingly by the impugned order dated 11/2/2014 has rejected the said application for condonation of delay filed by the Petitioner.

8 The learned counsel appearing for the Petitioner would contend that the said corrigendum though published in the gazette was not published in the local news paper and therefore there was an infirmity in the

proceedings. The learned counsel for the Petitioner would contend that in the absence of the notice to the Petitioner, the proceedings relating to the notification issued to the corrigendum are vitiated. The learned counsel for the Petitioner sought to place reliance on the judgment of a learned Single Judge of this Court in the matter of *Shri Imam Mirasaheb Nadaf v/s. State of Maharashtra and ors.*¹ The learned counsel for the Petitioner also sought to place reliance on the judgment of the Apex Court in the matter of *N. Balakrishnan v/s. M Krishnamurthy*² involving the aspect of exercise of discretion under Section 5 of the Limitation Act. The learned counsel for the Petitioner lastly sought to place reliance on the judgment of the Apex Court in the matter of *The Govt. of Mysore and others v/s. J V Bhat*³ in support of his contention that since the corrigendum was issued in breach of the principles of natural justice, the same is required to be quashed.

9 Per contra, the learned counsel Shri S G Surana appearing on behalf of the Respondent No.4 would support the impugned order. The learned counsel for the Respondent No.4 would draw this Court's attention to the findings recorded by the Tribunal as regards locus standi of the Petitioner to question the corrigendum. The learned counsel would also draw this Court's attention to the facts which dis-entitle the Petitioner to challenge the corrigendum dated 24/04/2009. The learned counsel would contend that the

1 *2005(1) All MR 82*

2 *AIR 1998 SC 3222*

3 *AIR 1975 SC 596*

Petitioner has admittedly entered into a transaction with the heirs of the said Smt. Sharifabi Khan in the year 2004, that is long after the notification of the declaration of slum was issued in the year 1978 and by the corrigendum what has been done is only a reduction of the area by 5 sq.meters. The learned counsel for the Respondent No.4 lastly contended that in the matter of condonation of delay it is not only the case of the applicant that is to be considered but also the prejudice that is likely to be caused to the other side.

10 Having heard the learned counsel for the parties, in my view, there is no merit in the above Petition. It is after adopting remedies against the notice of eviction that was issued as also the remedy of challenging the slum scheme being implemented before the high power committee, that the Petitioner has chosen to challenge the corrigendum dated 23/4/2009 issued to the original notification dated 17/8/1978. A reading of the corrigendum dated 23/4/2009 discloses that the authority has observed that the notice etc is not required to be issued in view of the fact that there is virtually no change in the notification except a small area which has been deleted. It is in the said context that the aforesaid aspect would have to be considered. As indicated above, the order of eviction came to be passed against the Petitioner under Section 33 of the said Act which was confirmed in the Appeal under Section 38 of the said Act and the Petitioner's structure came to be demolished in November 2013. The Petitioner was therefore very well aware of the

implementation of the slum scheme on the plot of land in question. The Petitioner claims to have acquired some rights in the property in the year 2004 from the heirs of one Smt. Sharifabi Khan who has been termed by the Tribunal as a “slumlord”. This is long after the notification was issued in the year 1978. Even going by the Petitioner's case, the Petitioner's predecessors were on site and therefore knowledge of the said notification has to be attributed to them, however, no challenge was raised to the notification. It is also required to be noted that the Tribunal has observed that the Petitioner has not produced any document of title except the registered agreement with the heirs of the said Smt. Sharifabi Khan in respect of the flour mill. The Tribunal in the said circumstance was right in coming to a conclusion that the Petitioner was not an “aggrieved party”. In so far as the challenged to the said notification is concerned, as indicated above the Tribunal has observed in its order that a limited inquiry was required to be conducted in view of the fact that the Petitioner was seeking condonation of delay in challenging the notification declaring the area as slum. In so far as the grounds seeking condonation of delay are concerned, the findings recorded by the Tribunal in its order in respect of the three grounds of the Petitioner which have been adverted to in the earlier part of the instant order cannot be found fault with. It is well settled that whilst considering an application for condonation of delay a judicious approach has to be adopted. The prejudice that would be caused to the other side is also one of the relevant considerations. In my view the order

of the Tribunal refusing to condone the delay in the facts and circumstances of the case does not merit any interference of this Court in its writ jurisdiction.

11 In the instant case as indicated above the slum scheme is under implementation since the year 2012. The Petitioner was initially declared as ineligible but on the Appeal filed by the Petitioner, the Petitioner has now been declared as eligible for allotment of premises for non-residential user. The Respondent No.4 would obviously have to rehabilitate the Petitioner in terms of the order passed by the Appellate Authority. A statement was accordingly made on behalf of the Respondent No.4 that the Petitioner would be allotted permanent alternate accommodation in terms of the order passed in Appeal.

12 Now coming to the judgment cited on behalf of the Petitioner. In so far as the judgment in *Imam Mirasaheb Nadaf's* case (supra) is concerned, the facts in the said case and the facts in the instant case are clearly distinguishable. In the instant case, on a consideration of the Petitioner's case of claiming right, title and interest in the property in question, the Tribunal has come to a conclusion that the Petitioner does not have locus standi as he is not an "aggrieved person" so as to be entitled to file Appeal. The Tribunal has thereafter also considered the grounds on which the Petitioner has sought condonation of delay and has recorded the reasons as to why the said grounds did not commend acceptance to it. In so far as two judgments of the Apex

Court in *N Balkrishnan's* case and *The Govt. of Mysore's* case (supra) are concerned, the Apex Court in the said judgments has held that in matters of condonation of delay the Court must be pragmatic and not pedantic. In so far as the last judgment of the Apex court is concerned, in the said case, the Apex Court has found that principles of natural justice were not complied with as the affected parties were not given opportunity to make a representation against the notification. The judgments (supra) would also not further the case of the Petitioner in the instant case, as in the instant case by the original notification dated 17/8/1978 the land encompassed therein has been notified as slum, to the said notification the corrigendum dated 23/4/2009 has been annexed and by the corrigendum what has been done is only the reduction in the area by 5 sq.meters from the area originally declared as a slum. In my view, therefore, no case for exercise of the writ jurisdiction of this Court under Article 227 of the Constitution of India is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]