

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6784 OF 2015**

Sambha Shankar Zol & Ors.

..Petitioners

Vs.

Shri Rajendra Ramkrishna Vidur (suryapujari) & ors. ..Respondents

Mr. S. G. Kudle for the Petitioners

Mr. Surel Shah for the Respondent Nos.1 to 4

Ms M. S. Bane, “ B” Panel Counsel for the Respondent No.5

CORAM : R. M. SAVANT, J.

DATE : 23rd July, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 12-6-2015, passed by the Learned Member (Judicial) Maharashtra Revenue Tribunal, (MRT for short) by which order the Revision Application filed by the Respondent Nos. 1 to 4 herein came to be allowed, resultantly the order dated 10-12-2010 passed by the Tahsildar and ALT Karmala in case TNC/KUI/69/2010, as also the order dated 8-8-2013 passed by the Sub Divisional Officer, Mhada Division, Kurduwadi, in Tenancy Appeal No.2 of 2011, came to be set aside.

2 It is not necessary to burden this order with unnecessary details. Suffice it to state that the proceedings have arisen as a consequence of an order passed under Section 32G and a certificate issued under Section 32M in favour of the Petitioners. In so far as the order under Section 32G is concerned, the same has been passed as long back as on 30-6-1975 and in so far as

certificate under Section 32M is concerned, the same has been issued on 10-12-2010. The Revision Application filed by the Respondents herein has been allowed principally on the ground that the notice of purchase issued by the Petitioners to the landlord is not within the time frame as stipulated in Section 32F(1A) of the Bombay Tenancy and Agricultural Lands Act. The said provision postulates that when the landlord is under a disability of the nature mentioned in the said provision, the tenant/purchaser has to issue a notice within one year of the landlords disability going. In the impugned order, the Tribunal has recorded a finding of facts that the said purchase notice was issued by the Petitioners herein not within the time prescribed in Section 32F(1A) but beyond it and therefore relying upon the judgments which have been referred to in the impugned order, has set aside the order dated on 10-12-2012 and order the dated 8-8-2013, thereby virtually calling in question the order passed under Section 32G of the said Act in favour of the Petitioners.

3 In so far as the Appeal filed by the Respondent Nos.1 to 4 herein before the SDO is concerned, the relief sought therein was the setting aside of the order dated 30-6-1975 passed under Section 32G as also the certificate dated 10-12-2010 issued under Section 32M of the said Act. The Respondent Nos.1 to 4 had also sought condonation of delay in filing the said Appeal for which they had filed a separate application along with the Appeal and the grounds on which the condonation of delay was sought, was set out in the

application. However a reading of the order passed by the SDO dated 8-8-2013 discloses that the application for condonation of delay has not been considered by the Appellate Authority i.e. SDO and the SDO has proceeded to consider the matter on merits and has dismissed the Appeal by upholding the order passed by the Tahsildar dated 30-6-1975.

4 In the above Petition whilst assailing the order passed by the MRT, a contention is sought to be raised on behalf of the Petitioners that an order passed as long back as on 30-6-1975 is set aside by the MRT at this length of time. Whereas it is contended on behalf of the Respondent Nos.1 to 4 that the Appeal filed by them was against both the orders i.e. order passed under Section 32G as well as the purchase certificate issued under Section 32M and that an application for condonation was filed in the Appeal and therefore the MRT was within its rights to set aside the order passed on 30-6-1975. As indicated above Appeal was filed challenging the order dated 30-6-1975 passed under Section 32G, it was incumbent on the part of the Appellate Authority to consider the said application for condonation of delay rather than proceeding to consider the matter on merits itself.

5 The impugned order passed by the MRT arises out of the order passed by the SDO in Appeal which Appeal as indicated above has been considered without considering the application for condonation of delay, in my

view, it would be just and proper to set aside the impugned order passed by the MRT as also the order passed by the SDO and remand the matter back to the SDO for a denovo consideration of the Appeal. The impugned order dated 12-6-2015 passed by the MRT as also the order dated 8-8-2013 passed by the SDO are accordingly quashed and set aside and the matter is relegated back to the SDO for a denovo consideration of the Appeal. On the remand the SDO at the outset to consider the application for condonation of delay filed by the Respondent Nos.1 to 4 herein and only after a decision is rendered on the said aspect, that the SDO would proceed to consider the matter on merits, if necessary. The Petitioners would be at liberty to file a reply to the said application for condonation of delay within the time that would be stipulated by the SDO. The SDO on remand to decide the application for condonation of delay within the time stipulated by this Court. The SDO on remand to decide the application for condonation of delay and thereafter the Appeal itself, if necessary within a period of 3 months of the appearance of the parties. The parties to appear before the SDO on 10-8-2015. The time stipulated by the instant order would start to run from then.

6 With the aforesaid directions the Writ Petition is disposed of. Needless to state that the application for condonation of delay as well as the Appeal would be decided on its own merits and in accordance with law.

[R.M.SAVANT, J]