

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 727 OF 2000

Nivrutti Dadu Kadam & Ors.	..	Petitioners
VS.		
Smt. Kusum Baban Jagtap	..	Respondent

Mr. P. B. Shah for Petitioners.
Mr. A. S. Khandeparkar with Mr. Rakesh Pathak and Lokesh Zade
i/b. Mr. Mahesh Chandanshiv and Mr. Ramesh Jadhav for
Respondent.

CORAM : M. S. SONAK, J.
DATE: 22 JANUARY 2015

P.C. :-

1] This petition is directed against the judgment and order dated 6 July 1999 made by the Maharashtra Revenue Tribunal, Pune (MRT).

2] By the aforesaid judgment and order dated 6 July 1999 (impugned judgment and order), the MRT set aside orders dated 21 July 1959 made by the Tahsildar and order dated 17 January 1998 made by the Sub Divisional Officer (SDO). The SDO, by order dated 17 January 1998, had remanded the matter to the Tahsildar for fresh adjudication. In pursuance of the remand, the Tahsildar, by judgment and order dated 14 December 1999 has decided that the petitioners are not tenants in respect of the suit property. The petitioners, in order to save the bar of limitation, have preferred an

appeal against the judgment and order dated 14 December 1999 made by the Tahsildar. However, as corollary to the challenge to the impugned judgment and order, the petitioners have questioned the judgment and order dated 14 December 1999 made by the Tahsildar, in the present petition, as well.

3] Mr. Shah, the learned counsel for the petitioners submitted that the Tahsildar had determined the purchase price under Section 32G by order dated 21 July 1959. This order was challenged by the respondent some time in the year 1997 i.e. after delay of almost 36 years before the SDO. There was no explanation or sufficient cause shown for said delay in filing the appeal. The SDO, therefore rightly refused to entertain the appeal. The MRT without addressing itself to the question of delay, but merely on basis of surmises and conjectures, has proceeded to make the impugned judgment and order. Such exercise, is clearly in excess of jurisdiction. Therefore, the impugned judgment and order and the judgment and order dated 14 December 1999 made by the Tahsildar in pursuance thereof, is liable to be set aside.

4] Mr. Khandeparkar, the learned counsel for the respondent made the following submissions:

(A) The petitioners have acquiesced with the impugned judgment

and order which had remanded the matter to the Tahsildar. In pursuance of the remand, the Tahsildar by judgment and order dated 14 December 1999 has decided the issue of tenancy against the petitioners. The petitioners have further preferred an appeal to the SDO on 5 January 2000 as against the same. In such circumstances, the petitioners cannot be permitted to approbate and reprobate. Having chosen the statutory and alternate remedy under the Bombay Tenancy and Agricultural Lands Act, 1948 ("said Act"), the petitioners again, at the same time be permitted to invoke the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India.

(B) The perusal of order made by the SDO on 17 January 1998 indicates that there is no reference to the application for condonation of delay, which was in fact filed by the respondent along with the appeal. The SDO's order dated 17 January 1998, having made without consideration of the respondent's application for condonation of delay, the same itself was illegal and void. If the impugned judgment and order is now interfered with, the same shall result in the revival of the SDO's order dated 17 January 1998, which is itself illegal and void. In such circumstances, the equitable and extra ordinary jurisdiction ought not to be exercised.

5] Having heard the learned counsels for the parties and

perused the record, I am convinced that the impugned judgment and order made by the MRT is required to be interfered with. However, this does not mean the ipso facto revival of SDO's order dated 17 January 1998. Accordingly, it would be appropriate if the impugned judgment and order, as well as the SDO's order dated 17 January 1998 are set aside and the matter is remanded to the SDO for reconsideration. The SDO, in such a situation would be required to first address himself to the application for condonation of delay made by and on behalf of the respondent. If the SDO is satisfied that sufficient cause has been shown for preferring the appeal beyond the prescribed period of limitation, only then would the SDO proceed to entertain and decide the appeal on its own merits and in accordance with law. The reason for adoption of such a course of action, is briefly indicated hereafter.

6] The MRT, in making the impugned judgment and order has not at all adverted to the question of delay in filing the appeal before the SDO. In this case the delay, at least *prima facie*, is of thirty six years. In such circumstances, it was not permissible for the MRT to simply gloss over such an issue and directly deal with the merits or demerits of the case. This is sufficient reason to quash and set aside the impugned judgment and order made by the MRT.

7] However, as pointed out by Mr. Khandeparkar, before the SDO made its order dated 17 January 1998, the SDO overlooked that the respondent herein had, by means of a separate application, applied for condonation of delay. Such application does not appear to have been disposed by the SDO. Proceeding to decide upon the merits of the matter, without disposing of the application for condonation of delay, cannot be regarded as a valid exercise. The jurisdiction of the SDO to go into the merits of the matter depends upon delay being condoned. In fact, Mr. Shah has relied upon the decision of this Court in the case of ***Pandharinath Rambhau Kavitke vs. Shaikh Hamaja Shaikh Husen***¹, which lays down that the appeal court would have no jurisdiction to entertain the appeal in law unless delay is condoned. Such decision would apply to the exercise of jurisdiction by the SDO. Accordingly, it is proper that order dated 17 January 1998 made by the SDO is also set aside. This takes care of the second objection raised by Mr. Khandeparkar.

8] In so far as the first objection raised by Mr. Khandeparkar is concerned, it is true that whenever statutory remedy is available under the statute in question, normally this Court will not exercise its extra ordinary jurisdiction. However, it is well settled that this not a rule which goes to the root of maintainability of the petition, but rather a self imposed restraint. For the cogent reasons, it is always

1 2001 (4) Mah. L. J. 43

permissible for this Court to exercise its extra ordinary jurisdiction. Such cogent reasons, in my judgment, exist in the present case.

9] The challenge in this petition is to the impugned judgment and order made by the MRT on 6 July 1999. This petition was filed on 1 February 2000. In paragraph 10 of the petition, the petitioners have stated that there was a sudden death of a family member in the petitioners' family and yet another family member suffered an accident. Further it has been averred that the Tahsildar in great haste and even without recording any evidence proceeded to pass judgment and order dated 14 December 1999. In order to save the bar of limitation, the petitioners did prefer an appeal on 5 January 2000, however soon thereafter i.e. on 1 February 2000, this petition was lodged. These averments have not been controverted by the respondent by filing any affidavit in reply. Rule was issued in this petition and at the stage of grant of interim relief, status quo was directed. There is no record that any objection having raised by the respondent at the stage when the respondent was heard on the issue of grant of interim relief. This petition was admitted, way back in the year 2000. For all these reasons, it will not be proper non suit the petitioners on the ground of the petitioners having availed any alternate remedy. Besides the alternate remedy availed will not even be efficacious in the facts and circumstances of the present

case, because the Tahsildar would not be in a position to comment upon legality or otherwise of the impugned judgment and order dated 7 July 1999 made by the MRT. Consequent upon setting aside the impugned judgment and order made by the MRT, the judgment and order dated 14 December 1999 made by the Tahsildar, in pursuance of remand order by the impugned judgment and order, shall also have to be set aside.

10] In the result, this petition is disposed of by making the following order :

(A) The impugned judgment and order dated 6 July 1999 made by the MRT is set aside;

(B) The judgment and order dated 14 December 1999 made by the Tahsildar, in pursuance of remand, is hereby set aside;

(C) The petitioners' appeal before the SDO being Tenancy Appeal No. 1 of 2000 against the aforesaid judgment and order dated 14 December 1999, would not survive, and the same is hereby disposed of.

(D) The order dated 17 January 1998 made by the SDO is also set aside.

(E) The matter is remanded before the SDO, who shall first consider respondent's application for condonation of delay. If the delay is condoned, only then the SDO shall proceed to decide the

respondent's appeal against the Tahsildar's order dated 21 July 1959 on its own merits and in accordance with law;

(F) The parties to appear before the SDO, Pune on 5 March 2015 at 11.00 a.m. for the purpose of obtaining a schedule of dates.

(G) The SDO, Pune, to expeditiously decide the matter and in any case dispose of the same on or before 5 March 2016.

(H) The Registry to transmit the record and proceedings to the SDO, Pune, as early as possible and in any case on or before 1 March 2015.

(I) It is made clear that this Court has not made any observations on the merits or demerits of the case, set out by respective parties or on the issue of condonation of delay.

(J) Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(K) All parties to act on an authenticated copy of this order.

(M. S. SONAK, J.)