

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 985 OF 2015

Jayeshkumar Kantilal Jain,
Age: 31 years, Occ: Business,
R/o. Tilak Road, Nandurbar,
Tal. & Dist. Nandurbar.

...Petitioner

versus

Nandurbar Municipal Council,
Nandurbar, through its
Chief Officer.

...Respondent

.....
Mr. A.N. Sabnis, Advocate a/w Mr. R.R. Sancheti, Advocate for
petitioner
Mr. D.S. Bagul, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 26th APRIL, 2016

ORAL ORDER :

The petitioner herein since was served with demand notice for tax to be paid to the Municipal Council, which he found to be excessive, filed Regular Civil Suit No. 31 of 2002 on 04/04/2002 challenging the demand. Learned Civil Judge, Junior Division, Nandurbar, pursuant to the objection of the defendant Municipal Council, on 23/08/2005 held that the suit was not tenable.

2. Thereafter, it is claimed that the petitioner filed appeal under Section 169 of the Maharashtra Municipal Councils, Nagar

Panchayats and Industrial Townships Act, 1955 (for short, 'said Act'), on 29/09/2005. Pursuant to the Section 170 of the said Act, the appeal has to be filed within 30 days with which an application was accompanied seeking condonation of delay.

3. On 06/01/2012 learned Judicial Magistrate, First Class, Nandurbar was pleased to reject the application on the ground that since the appeal was under special statute, there is no provision to accept the appeal beyond period prescribed under the special statute and as such, rejected the said appeal. Criminal Revision Application No. 37 of 2012 also came to be rejected. As such, present criminal writ petition.

4. Heard Mr. Sabnis, learned Counsel for the petitioner. According to him, provision of Limitation Act cannot be excluded in absence of specific bar to that effect. He would then submit that doctrine of 'implied exclusion' qua provision of Limitation Act has to be considered. He would then submit that the provisions of Section 29(2) of the Limitation Act was misread by the Court below. According to him, delay caused needs to be condoned. He would rely upon the judgment of this Court of Panaji Bench in the matter of ***Rhea Distilleries vs. Commissioner of Excise & another*** reported in ***2014(4) Bom.C.R. 358***, so as to substantiate his contention that

provisions of the Limitation Act cannot be excluded and delay needs to be condoned. In addition, he would rely upon the judgment of this Court in the matter of ***Atharoddin s/o Mujroddin Kazi vs. Rajendra s/o Ramchandra Indrale and others*** reported in ***2008(6) Mh.L.J. 322*** and sought to be differentiate the said judgment from the earlier judgment in the matter of ***Rhea Distilleries*** (supra). Learned Counsel would invite attention of this Court to the judgment of this Court in the matter of ***Thane Municipal Council, Thane vs. Thane Co-operative Housing Society Ltd., Thane*** reported in ***1977 Mh.L.J.9***, so as to submit that the provisions of Limitation Act are applicable and tried to rely upon the observations made by the Court in paragraphs-6,7 and 8 of the said judgment. In addition, he would rely upon the judgment of Gauhati High Court in the matter of ***Hrishiraj Sharma and another vs. State of Tripura and others*** reported in ***AIR 2010 Gauhati 31***.

5. From the submissions made, it is required to find out whether the provisions of Limitation Act are applicable to the case in hand. It is required to be noted that sub section (2) of Section 29 of the Limitation Act provides that provisions of Section 4 to 24 of the Limitation Act will be applicable to local law provided the applicability of the same by express provision to the local law is barred.

6. In the above wake of submissions of Mr. Sabnis, learned

Counsel for the petitioner, this Court has proceeded to evaluate the claim of the petitioner. Section 169 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 reads thus :

“169. Appeals to Magistrates or Committee

(1) Appeals against any claim for taxes except taxes on buildings and lands or both or other dues included in a bill presented to any person under under section 150 or any other provisions of this Act may be made to any Judicial Magistrate or Bench of such Magistrate by whom under the direction of the Sessions Judge such class of cases is to be tried.

(2) Appeal against any claim for taxes on buildings and lands or both including other dues in relation thereto, if any, included in the bill presented to any person under section 150 may be made, at the discretion of the assessee,

(a) first to the Property Tax Appeal Committee for each Municipal Council consisting of the following members namely:

<i>(I)</i>	<i>Collector of the District or his nominee, not below the rank of Deputy Collector</i>	<i>Ex-officio Chairman;</i>
<i>(ii)</i>	<i>President of the Council</i>	<i>Ex-officio member;</i>
<i>(iii)</i>	<i>Chairperson of the Women and Child Welfare Committee and where there is no such Committee constituted then Chairperson of any other Subjects Committee as the Council may determine, till the</i>	<i>Ex-officio member;</i>

	<i>constitution of such Committee</i>	
(iv)	<i>Leader of the Opposition in Council</i>	<i>Member;</i>
(v)	<i>An officer of the Town Planning and Valuation Department other than the concerned Valuation Officer not below the rank of a Town Planner to be nominated by the Deputy Director of Town Planning of the concerned Division</i>	<i>Member,</i>

Explanation.- For the purposes of sub-clause (iv), Leader of the Opposition in the Council means an elected Councillor who is for the time being, the leader of the political party, Aghadi or Front which is in opposition in the Council, having greatest numerical strength, as informed by the political party. Aghadi or Front, to the Collector, as provided by rule 3 of the Maharashtra Local Authority Members' Disqualification Rules 1987, framed under the Maharashtra Local Authority Members' Disqualification Act, 1986 (Mah. XX of 1987) or

(b) directly to any Judicial Magistrate or Bench of such Magistrates by whom under the direction of the sessions Judge such class of cases is to be tried :

Provided that, an appeal against the decision of the Property Tax Appeal Committee under clause (a) shall lie to the Judicial Magistrate or Bench of such Magistrates referred to in clause (b).

2A. Notwithstanding anything contained in sub-section (2), the Property Tax Appeal Committee may, suo motu review all cases excluding those in which appeals have directly been preferred under clause (b) of sub-section (2), where the rateable values or the capital values, as the case may be of the properties have increased three-

fold or more than the last preceding revision done under section 124:

Provided that, the Regional Director, on a revision application made by a property owner, within fifteen days from the date of the decision of the Property Tax Appeal Committee, may, reconsider the decision of the said Committee and on being satisfied about the merit of the case, issue directions to amend the said decision and the decision so amended, shall be deemed to be the final decisions of the Committee.

(3) The Chairman shall preside over all meetings of the Committee.

(4) The Chairman shall fix the date, time and place of the hearing of each appeal and issue an individual notice of hearing to the Chief Officer and the appellant.

(5) The quorum for every meeting of a Committee shall be three including the Chairman of the Committee:

Provided that, if within half an hour of the time fixed for the meeting of the Committee there is no quorum and if the Chairman alone or Chairman and any one member are present, the Chairman alone, or the Chairman and the other member, as the case may be, shall be deemed to be necessary quorum to constitute the meeting of the Committee. The Chairman shall then proceed further with the hearing and record the decision in the appeal which shall be deemed to be the decision of the Committee.

(6) Save as otherwise provided in sub-section (5), all decisions of the Committee shall be by a majority opinion of the members present

and where the opinion is equally divided, the decision of the Chairman shall be the decision of the Committee.

(7) No act or proceedings of any such Committee shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

(8) A certified copy of the decision of the Committee shall be supplied to the concerned parties, by the Committee."

7. In the above referred background, what is required to be noted is that the Act in clear terms provides for a specific limitation within which the appeal is to be filed and also provides for express remedy in case of cause. It is then required to be noted that as regards whether remedy is provided by special statute and whether statutory provision provides for limitation for exhausting such remedy. If the period of limitation is prescribed in statutory provision, then exhausting remedy in prescribed period is required to be construed strictly. It is then required to be noted that if the statute itself provides for limitation, then provisions of Limitation Act cannot be read in a local Act, particularly as regards Section 29 of the Limitation Act. Though learned Counsel has relied upon the judgment in the matter of **Rhea Distilleries** (supra), however, it is required to be noted that the Court in the said matter was dealing with eventuality under the Goa Excise Duty Act. While doing so, the Court has observed that

since Section 40 of the Goa Excise Duty Act which provided for an appeal does not expressly exclude the applicability of Section 29(2) of the Limitation Act, as such, Section 5 of the Limitation Act along with other provisions of Limitation Act are very much applicable.

8. The law laid down by the Apex Court, in my opinion, particularly in the matter of ***Prakash H. Jain vs. Marie Fernandes***, reported in ***A.I.R.2003 SC 4591*** is required to be taken into account. The Apex Court in the said matter has taken a view that in the absence of statutory provision for condonation of delay in special statute, recourse to inherent power would not be permissible. Only exception to above proposition is, in case of special Act provides for self contained Code, the applicability of General Law Procedure would be impliedly excluded. The relevant observations of the Apex Court are required to be taken note of, which reads thus :

“10. We have carefully considered the submissions of the learned counsel appearing on either side. Questions of the nature raised before us have to be considered not only on the nature and character of the Authority, whether it is court or not but also on the nature of powers conferred on such Authority or Court, the scheme underlying the provisions of the Act concerned and the nature of powers, the extent thereof or the limitations, if any, contained therein with particular reference to the intention of the legislature as well, found expressed therein. There is no such thing as any inherent power of court to condone delay in filing a

proceedings before Court/Authority concerned, unless the law warrants and permits it, since it has a tendency to alter the rights accrued to one or the other partly under the statute concerned. So far as the Maharashtra Rent Control Act, 1999 is concerned, different provisions seem to have been made constituting different authorities conferred with different nature of powers as well in dealing with claims before such Authorities/Court constituted for the purpose as well as in relation to further avenue of remedies against orders passed by the original Authority. Chapter VIII of the Act is itself with a caption, "Summary disposal of certain applications" and Section 39 reads that the provisions of Chapter VIII or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. Therefore, there is hardly any scope to have recourse to any other provisions in the very Act or any other law, when particularly there is specific and clear provisions or stipulation in chapter VIII itself as to how a particular situation has to be handled and what are the powers of the authorities constituted for the purpose of Chapter VIII of the Act. Section 40 envisages the appointment of competent Authority by the Government for purposes of exercising powers therein. Section 41 has its own definition of landlord for the purposes of the said chapter and Section 42 provides a special procedure for seeking eviction under the said chapter, and Section 43 provides special procedure, as the legislature itself calls it to be, for disposal of applications. Sub-section (2) of Section 43 mandates the issue of summons in the form specified in Schedule III, which form indicates, apart from

informing the person concerned about the filing of an application seeking for his eviction, the need to appear and contest the application for eviction on the ground mentioned therein and that in default whereof the applicant will be entitled, at any time after the expiry of the period stipulated therefore, to obtain an order for his eviction from the said premises and further as to how the said application should be filed as well. Section 44 states that the order of competent Authority is not appealable and only revision could be sought before the Government or the Authority designated for the purpose. Section 49 deems the competent Authority under the chapter to be a public servant within the meaning of Section 21 of the IPC, while all proceedings before such Authority are deemed to be judicial proceedings for the purposes of Section 193 and 228 IPC under Section 50, and Section 51 deems the competent Authority to be civil court for the purposes of Section 345 and 346 of the Code of Criminal Procedure, 1973.”

9. The power to condone the delay by an authority which is not Court is considered by the Apex Court in the matter of **Prakash H. Jain** (supra). The Apex Court in the said judgment has observed that there is no such thing as inherent power of the Court to condone delay in filing proceedings before it, unless law warrants and permits of doing so by the statutory provisions. While considering the scheme of Maharashtra Rent Control Act, the Apex Court observed that the Act provides for various avenues of remedies against the

orders passed by the original authority thereunder and even if the authority constituted under the Act is Court or deemed to be a Court for specific purpose, same cannot be termed as Court for all practical purposes. It is held that for the purpose of making available provision of Limitation Act, 1963 before such authority, there has to be an express power to clothe such authority with any such power under the Limitation Act. In my opinion, paragraph Nos. 12 and 13 of the said judgment are worth referring to, which read thus :

“12. The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the Act except to the extent indicated therein itself and for that matter has been given overriding effect over any other provisions in the very Act or any other law for the time being in force, though for enforcement of other remedies or even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once over again refer to the special procedure provided for in chapter VIII, but unmistakably indicate that the competent authority constituted thereunder is not 'Court' and the mere fact that such authority is deemed to be Court only for limited and specific purposes, cannot make it a Court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to the proceedings before such Competent Authority or clothe such authority with any power to be exercised under the Limitation Act. It is by now well settled by innumerable judgments of various Courts

including this Court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas that the said thing is not in reality and something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more when the deeming clause itself confines as in the present case, the creation of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the Competent Authority can by no means be said to be Court for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963.”

“13. The competent Authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and limitations stipulated by the very provision of law under which the Competent Authority itself has been created. Clause (a) of sub-section (4) of Section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filing, within thirty days of service of summons

on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the Competent Authority to contest the application for eviction as provided therefor. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the appellant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction. It is only when leave has been sought for and obtained in the manner stipulated in the statute that an hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in clause (a) of sub-section (4) of Section 43 of the Act. The order of the learned Single Judge of the High Court under challenge in this appeal is well merited and does not call for any interference in our hands.”

10. In the back ground of the facts of the present case, it is

worth to note here that what is provided before the Magistrate is avenue of remedy of appeal, particularly having regard to the provisions of Section 169 of the Act. In my opinion, the same cannot be termed as Court for all practical purposes, particularly for the purpose of exercising powers under the Limitation Act and as such, the issue as is sought to be raised that the Magistrate should have condone the delay in exercise of powers under the Limitation Act will be of no consequence for the petitioner, as the Magistrate is not clothed with such powers in express terms.

11. It is worth to mention here that the petitioner though has cited catena of judgments so as to draw support that the provisions of Limitation Act are applicable, unless in an express terms, the powers to condone delay are not to be exercised by the authority under Special Statute in the present case, however in view of law laid down by the Apex Court in the matter of **Prakash H. Jain** (supra) as discussed herein above, in my opinion, the judgments as are cited by the petitioner will be of hardly any assistance.

12. As such, in my opinion, there is no substance in the writ petition so as to call for interference in extraordinary jurisdiction. The writ petition, As such, fails and stands dismissed.

[N.W. SAMBRE, J.]