

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

WRIT PETITION NO. 11172 OF 2014

Ashitosh Shripadrao Mahavarkar and Others ..PETITIONERS

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mr. G.N. Chincholkar, Advocate for petitioners.

Mr. R.B. Bagul, A.G.P. for Respondent Nos. 1 and 2.

Mr. A.G. Dalal, Advocate for Respondent No.3.

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CORAM : T.V. NALAWADE, J.

DATED : 01st DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made by Maharashtra Revenue Tribunal in Revision No. 24/B/07/H. Both sides are heard.

2. The revision filed by present respondent against order made by the Deputy Collector, Hingoli by which the Collector refused to condone the delay of 25 years, 07 months and 23 days caused in filing appeal against the cancellation of the entry made in favour of the present respondent which was to the effect that respondent was protected tenant of the disputed land. The Member of the Tribunal has held that there was

no notice of the proceeding if any by which the deletion of the name of the respondent was made by the authority and that is sufficient cause in respect of delay caused in filing the appeal.

3. Learned Counsel for present petitioner submitted that the Counsel of the present petitioner was not present when the matter was decided and so the order needs to be set aside and opportunity needs to be given to the petitioner to have decision of revision on merits.

4. It is not disputed that the name of respondent was there in other rights column as protected tenant but it came to be deleted in the year 1981. Admittedly the respondent, the then protected tenant is not in possession at present. If the respondent was there as protected tenant then he has right of hearing if his name as protected tenant is deleted from the record. It is his case that no notice was issued before deleting his name and on that ground he has filed the appeal to challenge the deletion of his name. The Member of the Tribunal has only set aside the order due to which the delay was not condoned. In that, delay is condoned and the Deputy Collector will be required to hear the appeal on merits. In tenancy matters, this point needs to be dealt with carefully and the orders cannot be made behind the back of the tenant.

5. In view of these circumstances, it can be said that the tenant is entitled to get the decision of appeal on merits. Condonation of delay is discretionary matter and in view of aforesaid circumstances, this Court holds that it is not possible to interfere in the order made by Maharashtra Revenue Tribunal. In the result, petition stands dismissed. Record and proceedings is to be immediately sent back to the Collector.

(T.V. NALAWADE, J.)

SSD