

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

Civil Revision Application No.248 of 2015

Deelip s/o. Kunjilal Sharma
And Others.

.. Petitioners.

Versus

Nanded Waghala City Municipal
Corporation & Others.

.. Respondents.

Shri. Pratap P. Mandlik, Advocate, for petitioners.

Shri. R.K. Ingole, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 27 JUNE 2016

ORDER:

1) The present proceeding is filed to challenge the order made by District Judge-1 Nanded in R.J.E. No.145/2015. The said proceeding was filed by present respondent No.1 Municipal Corporation for condonation of delay caused in filing first appeal. The application is allowed by the District Court and delay is condoned. Both the sides are heard.

2) Special Civil Suit No.197/2007 was filed by present petitioners against Municipal Corporation Nanded, against the State Government and against one Smt. Vijaya Pande. It is the case of the petitioners that they are the owners of house property bearing Municipal No.3-1-136/1 which is now bearing No.3-6-125. It is bearing CTS No.2458. Its length is 20.73 meters and width is 4.34 meters. It is their case that they are the owners of the property as they purchased the property by registered sale deed in the year 1968.

3) It is the case of the plaintiffs that they had given possession of the suit property to defendant No.3 Smt. Vijaya Pande under lease. It is their case that defendant No.3 prepared false record of agreement of sale and got entered her name in the record of rights. It is their case that in the past they had filed Civil Suit No.798/2006 for relief of declaration against Smt. Vijaya as the property was being acquired for the Municipal Corporation and Smt. Vijaya was trying to get the compensation. It is contended that the suit was then withdrawn and then the Corporation paid the

compensation to Vijaya. In the present suit the petitioners had claimed relief of declaration of their ownership and they had also prayed for giving compensation to them.

4) Written statement was filed by the Corporation and it denied the aforesaid contentions. They contended that the property was acquired and then the compensation was paid to defendant No.3.

5) The suit was decreed in favour of present petitioners by decision dated 16-4-2012. R.J.E. No. 145/2015 was filed for condonation of delay around 3 years 3 months and 24 days. On merits the District Court has allowed the application.

6) Learned counsel for the petitioners submitted that sufficient cause was not shown and the first appellate Court ought not to have condoned the delay.

7) In the application the Corporation had given reasons like there were three proceedings filed in respect of the same property. Even after the decision of the suit

filed by the present petitioners one more suit like Special Civil Suit No.202/2007 filed by Sampurnsingh Gill was still pending. They contended that the previous suit was withdrawn by the present petitioners and then compensation was paid to Smt. Vijaya. It is contended that Sampurnsingh Gill had filed suit in the same year, 2007 and he had made present petitioners party to the suit but this circumstance was not considered in the suit of the present petitioners but the Corporation was under impression that rights were not finally decided.

8) The record shows that the suit of the plaintiffs was filed on 29-10-2007 and Sampurnsingh Gill filed the suit on 9-11-2007. Suit of the present petitioners came to be decided on 16-4-2012 and admittedly the petitioners had appeared in the suit filed by Gill. Gill had claimed that he was in possession of this property and he had become owner due to adverse possession and so he was entitled to get compensation. Thus, on one hand record of rights was in favour of Smt Vijaya and admittedly she was put in possession by the present petitioners. It is her case that she was in possession under agreement of sale. On the

other hand there is suit of Sampurnsingh Gill. Previous suit filed against Vijaya was withdrawn by the present petitioners without taking permission of the Court to file fresh suit. All these circumstances need to be considered in the appeal which the Corporation wants to file in District Court. The local body has already paid huge amount, more than Rs. Five lakh to said Vijaya. Vijaya did not appear in the suit filed by the present petitioners. Due to this, possibility is created that the Corporation will be required to pay compensation in respect of the same property to the present petitioners and also to Sampurnsingh Gill if he succeeds in his suit. It is public money and it is noticed that the matters are not seriously contested by local body and public money is lost.

9) Learned counsel for the petitioners placed reliance on following reported cases.

- (1) **2014 (6) Bom. C.R. 23** (Vithal Dharmaji Potalwad v. Akrambee Abdul Raheman);
- (2) **2014 (6) Bom. C.R. 603** (Varhyan Narendra Singh Chhatwal v. Kala Narendra Singh Chhatwal);
- (3) **2012 (1) Mh.L.J. 918** (Nandkishor v. Dhule Municipal Corporation);

- (4) Supreme Court judgment dated 10-1-2014 in **Special Leave Petition (Civil) No.882/2014** (State of U.P. v. Amar Nath Yadav).

10) Facts and circumstances of each and every case are always different. Condonation of delay is a matter of discretion and the District Court has used discretion in favour of the Corporation. The aforesaid circumstances show that there is arguable case with the Corporation and discretion is rightly used. This Court finds nothing to interfere in the order made by the District Court.

11) In the result, the revision is dismissed. Interim relief, if any, is vacated. The District Court to expedite the appeal and in any case within three months from the date of receipt of the order.

Sd/-
(T.V. NALAWADE, J.)

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