

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3434 OF 2016

Shre Coop. Housing Society Ltd.	]	
Ganesh Gawde Road,	]	
Mulund (West)	]	
Mumbai – 400 080	]	
Through its _____	]	 Petitioner.

Versus

1]	State of Maharashtra	]	
	Through, District Superintendent	]	
	Land Records,	]	
	Mumbai Suburban District	]	
		]	
2]	Mr. Mahesh Ingale	]	
	Superintendent of Land Records	]	
	Mumbai Suburban District	]	
	Administrative Building	]	
	10 th Floor, Opp. Chetana College	]	
	Mumbai – 400 051	]	
		]	
3]	Mr. Mahesh Bawa	]	
4]	Mr. Sumeet Bawa	]	
5]	Mrs. Archana Bhalla	]	
		]	
	Respondent No.3, 4 & 5 are	]	
	all Indian inhabitants, Adults	]	
	Residing a S-322 A.	]	
	Panchasheel Park,	]	
	New Delhi – 110017, and also	]	
	Having their address at Mumbai	]	
	At 15, Mature Chhaya, 70	]	
	Marine Drive, Mumbai – 400 002	]	
		]	
6]	City Survey Officer,	]	
	Mumbai Suburban District	]	
	Topiwala College Compound	]	
	Sarojini Naidu Road,	]	
	Mulund (West), Mumbai 400 080	]	 Respondents.

Ms. Tanmayee Gadre a/w Mr. Sandeep Bhimekar a/w Mr. Dinesh Parmar i/by DSR Legal for the Petitioner.

Mrs. S S Bhende, AGP for the Respondent Nos.1 and 2.

Mr. M M Vashi, Senior Advocate a/w Mr. Paresh Shah, Ms. Leena Mirasi and Ms. Tanmayee Salekar i/by M/s. Shah and Sanghvi for the Respondent Nos.3 to 5.

CORAM : R. M. SAVANT, J.

DATE : 21st March 2016

ORAL JUDGMENT

1 Rule, considering the challenge raised in the above Petition made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 30/01/2016 passed by the District Superintendent of Land Records, Mumbai Suburban District, Mumbai by which order the application for condonation of delay in filing the Appeal against the entry made in respect of plot No.84A in the city survey records came to be condoned.

3 It is not necessary to burden this order with unnecessary details having regard to the final directions to be issued. In an earlier round the Petitioner had filed Writ Petition No.3487 of 2014 which was heard along with Writ Petition No.3434 of 2014 filed by one Narendrakumar Jethalal Gala which Petitions were also filed against the Respondent Nos.3 to 5. The challenge in the said writ petitions was to the orders dated 31/01/2014 passed by the District Superintendent of Land Records by which orders the application for

condonation of delay filed by the Respondent Nos. 1 to 4 in Writ Petition No.3434 of 2014 i.e. the present Respondent Nos. 3 to 5 came to be allowed. This Court had remanded the matter back to the Superintendent of Land Records for a de-novo consideration of the application as this Court had found that the said orders were bereft of any reason as to why the delay in filing the Appeals was required to be condoned. This Court had also observed that though the replies were filed opposing the condonation of delay, the same were not taken into consideration by the Superintendent of Land Records. This Court had therefore observed that whilst considering the application for condonation of delay the approach of the Court or the authority has to be judicious and the Court or the authority is required to take into consideration the case pleaded by either side i.e. party seeking condonation of delay and party opposing it and thereafter come to a conclusion whether the delay is required to be condoned or not. The sine-qua-non of the same being whether the test of sufficient cause being shown was satisfied. This Court had therefore remanded the matter back to the Superintendent of Land Records, Mumbai Suburban District, Mumbai to take into consideration the pleadings as well as the contentions raised by the respective parties and thereafter by passing a speaking order, decide the application for condonation of delay.

4 It is pursuant to the said remand that the impugned order dated 30/01/2016 has been passed by the Superintendent of Land Records. Against

the order passed by the Superintendent of Land Records, a remedy by way of further Appeal before the Deputy Director of Land Records is available. However, in the instant case, it was sought to be contended on behalf of the Petitioner that the mandate of the order dated 15/07/2015 passed by this Court was not followed and therefore this Court should exercise its writ jurisdiction. It was also sought to be contended that whilst passing the impugned order the principles of natural justice have not been followed inasmuch as the hearing has not been granted to the Petitioner as it is the contention of the Petitioner that the advocate for the Petitioner was asked to wait outside whilst the proceedings were going on before the Superintendent of Land Records. It is in the background of the aforesaid contentions that this Court deemed it appropriate to consider the above Petition on merits.

5 A perusal of the impugned order passed by the Superintendent of Land Records discloses that below the heading “Submissions on behalf of the Appellants and the Submissions on behalf of the Respondents” the cases of the Appellants i.e. the Respondent Nos.3 to 5 herein and the cases of the Respondent in the said Application i.e. the Petitioner herein have been reproduced. The excerpts from the judgments of the Apex Court as also the provisions of the Maharashtra Land Revenue Code have been referred to. However, in the “Consideration” part of the impugned order, the Superintendent of Land Records has made some observations on the merits of

the matter. The sum and substance of the observations seems to be that though the order was passed for correcting the entries made in the city survey record as long as back in the year 1977, the said orders were not implemented till the Appellants therein filed the instant Appeal against the entry made by the city survey officer on 28/05/1970. The Superintendent of Land Records has referred to various orders passed by the authorities which concern the said Plot No.84A as also the order dated 28/05/1970 showing Plot No.84A as part of Survey No.1000. However, in so far as the grounds for condonation of delay are concerned, there is no finding recorded by the authority except quoting thus :-

“Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.”

Though as indicated above the judgments were cited on behalf of either side, there is no reference to the said judgments in the findings recorded below the heading “Consideration” as also there is no reference to any facts on the basis of which condonation of delay is sought. The Superintendent of Land Records in the impugned order has adverted to various orders passed by various authorities right from the year 1970, the said facts seem to have come to the notice of the authority during the course of the hearing of the said application for condonation of delay. Though undoubtedly it is a well settled principle that

on mere technicality a meritorious matter should not be thrown out nevertheless the fact would remain whether a party seeking condonation of delay has shown sufficient cause for not filing proceedings within the time stipulated by a particular provision. If after considering the reasons mentioned for the delay that the Court or authority comes to the conclusion that the said reasons are the plausible reasons for the delay, and the question then arises before the Court or authority whether to exercise discretion or not that the dictum as contained in the quote referred to by the Superintendent of Land Records would come into play. The problem in the instant case seems to have been compounded in view of the fact that the application made by the Respondent Nos.3 to 5 is bereft of any particulars beyond stating that a Senior Counsel had advised the Appellants i.e. the Respondent Nos.3 to 5 herein to file proceedings in the year 2011 that is how the proceedings were filed in the year 2014.

6 In my view, therefore, the impugned order dated 30/01/2016 is required to be quashed and set aside and is accordingly quashed and set aside, and the matter is relegated back to the Superintendent of Land Records for a de-novo consideration of the application for condonation of delay. The learned counsel appearing for the Respondent Nos.3 to 5 has no objection to the said course of action being followed. In my view, it would be appropriate if the Respondent Nos.3 to 5 are allowed to supplement their application filed for

condonation of delay by filing additional affidavit stating the grounds on which the condonation of said huge delay of 43 years is sought. This would facilitate the Respondent No.1 in considering the application in a more appropriate manner. The said supplementary affidavit to be filed by the Respondent Nos. 3 to 5 herein within three weeks from date. The Petitioner would file its reply to the said affidavit within three weeks thereafter. Since a grievance has been made on behalf of the Petitioner that it was not given proper opportunity by the Superintendent of Land Records, the Superintendent of Land Records is directed to give proper opportunity to the Petitioner both in the matter of filing pleadings as also in the matter of hearing and thereafter decide the said application for condonation of delay. The Superintendent of Land Records would be well advised to deal with the cases pleaded by either of the parties and after considering their respective cases would come to a conclusion as to whether the delay is required to be condoned or not. The said exercise to be completed by the Superintendent of Land Records within a period of 12 weeks from date i.e. on or before 14/06/2016. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with the parties to bear their respective costs.

7 All concerned parties to act upon an ordinary copy of the instant order duly authenticated by the Court Associates/Sheristedar.

[R.M.SAVANT, J]