

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

WRIT PETITION NO. 31 OF 2016

Vijayprakash Shrinivas Totla ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

**WITH
WRIT PETITION NO. 8301 OF 2016**

Shankarlal Kanhaiyalal Totla
(Died) Through L.Rs.
Geetabai Shankarlal Totla and Others ..PETITIONERS

VERSUS

Somnath Nagnathappa Halge and Others ..RESPONDENTS

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Mr. S.S. Rathi, Advocate for petitioner in WP 31/2016 and for Respondent No.4 in WP 8301/2016.

Mr. A.S. Bajaj, Advocate for Respondent Nos. 4 to 12 in WP 8301/2016 and for petitioners in WP 8301/2016.

Mr. R.S. Deshmukh, Advocate for Respondent No.3 in WP 31/2016 and for Respondent No.1 in WP 8301/2016.

Mr. Javed Abdul Hamid Deshmukh, Advocate for Respondent No.14.

Mr. S.K. Tambe, A.G.P. for State in both matters.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th JULY, 2017**

ORDER :

1. Though I have heard learned Counsel for the respective sides at length on 12th July, 2017 and again on this date, I am not required to advert to their entire submissions in the light of the fact that the order passed by this

Court on 13th December, 2006 in Writ Petition No. 2415 of 1992, 3134 of 2000 and 2415 of 1992, has not been complied with.

2. When this Court passed the order on 13th December, 2006 upon considering the controversy, it was specifically observed in paragraph no.8 as under:-

“8) The intervenor i.e. Somnathappa S/o Nagnathappa Halge may prefer appeal before the Government against said orders of the Tahasildar, if he so desires. The rights of the petitioners and respondent Mohd. Issamoddin will be subject to result of such appeal that may be preferred by the intervenor- Somnathappa. Liberty is granted to him for filing of such appeal in accordance with the law. It is made clear that he had filed intervention application in this court on 16/11/1992 and was prosecuting the same till this date. The question of delay condonation shall be decided by the Government on its own merits. No orders as to costs. Both the Petitions are accordingly disposed of. Civil Applications are also disposed off.”

3. It appears that the intervenor viz. Somnath Nagnathappa Halge has sought to reopen an issue which was settled in 1967, by filing an intervention application on 16th November, 1992. The delay appears to be of 25 years. It was in this backdrop that this Court had directed the government to decide the issue of delay condonation on its own merits.

4. In paragraph no.13 of the impugned order passed by the Hon'ble Minister dated 06th October, 2015 which has been stayed by this Court, contention of the petitioner has been noted that the applicant before the Hon'ble Minister i.e. the intervenor had not filed an application for condonation of delay. Mr. Deshmukh, learned Counsel for the intervenor submits that the original file was destroyed on account of a fire that occurred in Mantralaya a few years ago. Parties would therefore be in a difficult position to state as to whether such application was filed or not.

5. I am not required to consider the above controversy for the fact that the impugned order does not indicate as to whether the Hon'ble Minister has dealt with any application for condonation of delay, much less having applied his mind to the aspect of condonation of delay, though this Court has specifically directed so in paragraph no.8.

6. In the light of the above, the impugned order dated 06th October, 2015 is quashed and set aside. Both these petitions are partly allowed only for the reason that the issue of condonation of delay has not been dealt with by the Hon'ble Minister. Consequentially, Appeal 2014/P.K.90/J-7 A is remitted to the office of the Hon'ble Minister, Ministry of Revenue, State of Maharashtra. The

litigating sides agree to appear before the Hon'ble Minister on 08th September, 2017 at 03.00 p.m. Formal notices need not be issued to the litigating sides.

7 he intervenor – Somnath Nagnathappa Halge shall tender an application for condonation of delay on 08th September, 2017 and shall not seek extension of time. Thereafter, the Hon'ble Minister would hear all the litigating sides specifically on the application for condonation of delay, after giving reasonable opportunity of hearing to all the litigating sides. He would then proceed to deal with the appeal on its own merits. It needs to be noted that this Court has not expressed any opinion about, either the delay or the merits of the matter and hence all contentions of the litigating sides are kept open. Both petitions are disposed of accordingly.

(RAVINDRA V GHUGE, J.)

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