

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

WRIT PETITION NO. 7940 OF 2016

1. Sopan Haribhau Deshmukh .. Petitioners
Age. 81 years, Occ. Agri.,
 2. Ravindra Uttam Deshmukh
Age. 36 years, Occ. Agri.,
 3. Babasaheb Ambadas Deshmukh,
Age. 51 years, Occ. Agri.,
 4. Pandit Ambadas Deshmukh,
Age. 46 years, Occ. Agri.,
 5. Umesh Ambadas Deshmukh
Age. 41 years, Occ. Agri.,
- All R/o. Masajog,
Tq.& Dist. Beed.

Versus

1. The Deputy Collector .. Respondents
(General), Beed.
2. The Tahsildar, Kaij,
Tq. Kaij, Dist. Beed.
3. Anandrao Murlidhar Deshmukh
Age. 66 years, Occ. Agri.,
R/o. Masajog,
Tq. & Dist. Beed.

Mr.N.B. Khandare with Mr. M.P. Tripathi, Advocates for the petitioners.

Mr.S.K. Tambe, A.G.P. for respondent/State.

Mr.R.N. Dhorde, Sr. Counsel i/b. Mr.K.R. Doke, Advocate for respondent No.3.

CORAM : S.B. SHUKRE, J.

DATED : 17.02.2017

ORAL JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith and heard finally by consent.

2. The petitioners are aggrieved by Clause (4) of the operative order dated 28.04.2016 passed by the learned Member (Judicial), M.R.T., Aurangabad in Case No. 16/B/2015/B. The clause (4) reads as under :-

"4. Opportunity is given to the respondent to approach to the learned Dy. Collector (General) for seeking relief under section 98 of the "Tenancy Act" if he is entitled for the same as there is no limitation for filing such application."

3. While the petitioners do not have any objection in giving fresh opportunity to respondent No.4 to approach the Dy. Collector for seeking relief under section 98 of the Tenancy Act, they do have objection to the learned Member of M.R.T. closing the issue of limitation in the revision proceedings itself.

4. Mr.Khandare, learned Counsel for the petitioners submits that the learned Member could not have closed the issue of limitation without giving the reasons and even saying that there is no law which has settled the point that for initiating proceedings under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short "Tenancy Act"), no limitation is prescribed. He submits that the petitioners are not saying that some limitation is prescribed and on that the petitioners have been submitting that they should at least be allowed to raise the issue of limitation before the Dy. Collector, especially when in the opinion of the learned Counsel for the petitioners, the debate on this point is still open.

5. Mr. Dhorde, learned Sr. Counsel for respondent No.4 submits that the question of limitation is no more *res-integra* and it has been settled once and for all by several decisions of different Division Benches of this Court. He submits that these decisions are directly on the point involved in this case i.e. prescription of limitation period for initiating proceedings under section 98 of the Tenancy Act and the Division Benches, following the law laid down by the Hon'ble Apex Court in the case of Santoshkumar Shivgonda Patil & ors. Vs. Balasaheb Tukaram Shevale & Ors., (2009) 9 SCC 352, held that no limitation period has been prescribed for

initiation of such proceedings under the Tenancy Act. He submits that this being the settled position of law, the absence of any reason in the impugned part of the order for expressing a view that no limitation is prescribed for filing of such application is insignificant and in any case could not be construed as having caused prejudice to the petitioners.

6. Learned Counsel for the petitioners, in support of his contention submits that the question of limitation is still debatable and has relied upon the cases of **State of Punjab & ors. Vs. Bhatinda District Co-operative Milk Producers Union Ltd., (2007) 11 SCC 363** and **Jt. Collector Ranga Reddy Dist. & Anr. Vs. D. Narsing Rao & Ors., Civil Appeal No.325-326 of 2015 decided on 13.01.2015**, by the Hon'ble Supreme Court.

7. In all the cases relied upon by the learned Counsel for the petitioners, the observations of the Hon'ble Apex Court relate to exercise of revisional powers by authority and the Hon'ble Supreme Court has taken a view that when such powers are to be exercised by the authority, it must consider the aspect of delay involved in the matter and even though the statute does not prescribe any limitation period for invoking such powers, it must be done within a reasonable period of

time. The Hon'ble Supreme Court has also held that ordinarily, what period of time should be taken to be the reasonable period is of three years. However, my attention has been invited to the decisions of the Division Bench of this Court in the case of Hasan Bin Salam s/o. Salam Bin Abdul Habib Vs. Madhavrao s/o. Rangnathrao Shinde, 2015 (2) Mh.L.J.483, in which the Division Bench has considered various judgments and also the judgment of the Hon'ble Apex Court in the case of Ram Chand Vs. Union of India (1994) 1 SCC 44. The relevant observations of the Supreme Court are also reproduced in this judgment which indicate that in the absence of any specific limitation provided under a statute, necessary implication would be that the general law of limitation provided in the Limitation Act (Act 2 of 1963) would stand excluded. The Hon'ble Apex Court also held that where there is a statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. Following this law laid down by the Hon'ble Supreme Court, the Division Bench of this Court held that as provisions of Section 98 of the Tenancy Act do not prescribe for any limitation, there should be no impediment for entertaining the application filed under it. The Division Bench also followed the similar view taken by another Division Bench in the case of Limbaji Shankar Munde Vs. Bhaurao Baliram

Munde, 2010 (3) Mh.L.J.138. The Division Bench of this Court in the case of **Hasan Bin (Supra)** clarifies the law governing the field and since it is directly on the point, I find that the observation made in the impugned part of the operative order is consistent with the law clarified in this case by the Division Bench of this Court by following the law laid down by Hon'ble Apex Court in **Ram Chand (Supra)**. The observations of the Hon'ble Apex Court in the cases relied upon by the learned Counsel for the petitioners being not directly on section 98 of the Tenancy Act, with due respect, I would say that they would not give any assistance to the petitioners in the instant case.

8. Now as regards the lack of reasons supporting the impugned observations, I must say that factually this is true but effectively it is insignificant having regard to the settled position of law, thereby causing no prejudice to the petitioners.

9. In this view of the matter, I see no merit in the petition. The petition stands dismissed with costs. Rule discharged.

10. At this stage, learned Counsel for the petitioners prays that the interim relief of staying the

proceedings before the learned Dy. Collector be continued for a period of four weeks. There is strong opposition by learned Sr. Counsel. However, considering the fact that the interim relief was in operation all along, its extension by few weeks would not cause any prejudice to any of the parties. Therefore, the interim stay is extended for a period of three weeks from the date of this judgment.

[S.B. SHUKRE,J.]