

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5550 OF 2015

Balkrishna Babaji Khade & Anr.] Petitioners

Vs.

State of Maharashtra & Ors.] Respondents

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Mr. Vijayprakash Yadav i/b Mr. Shukla Devmani Jagdish, for the petitioner.

Mr. S.D. Rayrikar, A.G.P for respondents No.1 to 3.

Mr. G.S. Godbole, Senior Advocate a/w Mr. Shailendra Singh i/b Consultia, for respondents No.4 and 5.

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CORAM : R.G. KETKAR, J.

DATE : 20TH APRIL, 2017.

P.C.

Heard Mr. Yadav, learned Counsel for the petitioners,
Mr. Rayrikar, learned A.G.P for respondents No.1 to 3 and Mr. G.S.
Godbole, learned Senior Counsel for respondents No.4 and 5 at
length.

2. By this petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 25th August, 1995 passed by the President, Maharashtra Slum Areas [Improvement, Clearance and Re-development] Tribunal, Mumbai [for short 'Tribunal'] as also the judgment and order dated 13th December, 1995 passed by the Tribunal. By order dated 25th August, 1995, the Tribunal condoned the delay in filing the appeal in the year 1994 challenging the declaration made under Section 4 (3) of the Maharashtra Slum Areas [Improvement, Clearance and Re-development] Act, 1971 [for short 'Act'] published in the year 1976. By order dated 13th December, 1995, Tribunal allowed the appeal and set aside the declaration so far as it relates to respondents No.4 and 5's property involved in the appeal and remitted the matter to the Competent Authority for proper inquiry.

3. Rule. Learned Counsel appearing for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

4. The matter was heard at length on 19th April, 2017 as

also today. Mr. Godbole states that Mr. Harsh Shah, partner of respondent No.5 is present in the Court. He has tendered photocopy of the PAN card, which is taken on record and marked as 'X' for identification. Upon taking instructions from him, he submitted that impugned orders may be set aside. Respondents No.4 and 5 may be permitted to amend the application for condonation of delay. He further submits that there are 160 tenements in the property of the respondents No.4 and 5. He states that the petitioners will be impleaded in the appeal and application for condonation of delay in a representative capacity. He states that respondents No.4 and 5 will issue public notice in the newspapers 'Indian Express' in English and 'Loksatta' in Marathi.

5. Mr. Yadav states that after impleadment of the petitioners as respondents in the appeal and application for condonation of delay, they will file reply to the amendment application for condonation of delay within four weeks from service of the amended application.

6. In view thereof, by consent of the parties, petition is disposed of in the following terms:

- [1] Orders dated 25th August, 1995 and 13th December, 1995 passed by the President Maharashtra [Improvement, Clearance and Redevelopment] Tribunal are set aside;
- [2] Application for condonation of delay and appeal filed by respondents No.4 and 5 are restored to its original position;
- [3] Respondents No.4 and 5 are permitted to amend the appeal memo and application for condonation of delay within two weeks from today, as also implead the petitioners as respondents in the appeal memo and application for condonation of delay during this period;
- [4] Respondents No.4 and 5 shall issue public notice in 'Indian Express' in English and 'Loksatta' in Marathi edition for suing the present petitioners in a representative capacity under Order-I, Rule-8 of the C.P.C. Respondents No. 4 and 5 are at liberty to move the Tribunal for issuing public notice.
- [5] Petitioners will file their reply to the amended application for condonation of delay within three

weeks from receipt of the amended application;

[6] Parties assure that they will appear before the Tribunal on 4th May, 2017 and for that purpose, no fresh notice will be issued to them.

[7] Tribunal is requested to decide application for condonation of delay as also the appeal within eight weeks from today.

[8] All the contentions of the parties on merits are expressly kept open.

[9] Rule is made absolute accordingly with no order as to costs.

[10] All the parties, including Tribunal to act upon authenticated copy of this order.

[R.G. KETKAR, J.]