

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10832 OF 2017

Vijay Govind Jadhav
And Ors.

...Petitioners

Versus

Suresh Yashwant Jadhav
And Ors.

...Respondents

....

Mr.Rakesh Bhatkar, Advocate for the Petitioners.
Ms. Jyoti Jadhav, AGP, for Respondents No.9 to 11.

....

CORAM : R. G. KETKAR, J.
DATE : 06th OCTOBER, 2017

P.C.

1. Heard Mr.Rakesh Bhatkar, learned counsel for the petitioners and Ms. Jyoti Jadhav, learned A.G.P. for respondents No.9 to 11, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 26.4.2017 passed by the learned Member (Administration), Maharashtra Revenue Tribunal, Mumbai (for short, 'Tribunal') in Revision NO.42 of 2017. By that order, the Tribunal set aside the composite order dated 3.2.2017 passed by the Sub-Divisional Officer, Dapoli (for short, 'SDO') in Tenancy Appeals on the ground that SDO should have decided the issue of condonation

of delay first. Unless the issue of condonation of delay is decided, the SDO had no authority to enter into the merits of the dispute. The Tribunal directed the SDO to first decide the issue of delay by passing separate reasoned order. If he decides to condone the delay then he can decide the matter on merits. On the request made by the respondents before the Tribunal, the Tribunal granted leave to file delay condonation application. It is against this order, the petitioners have instituted present Petition.

3. Initially the proceedings under Section 32-G of the then Bombay Tenancy and Agricultural Lands Act, 1948 were held between Dhondu Sudkoji Pandhare represented by tenant purchaser, his son Govind Dhondu Jadhav on one hand and Kishanji Ramkrishna Dongre, former landlord on the other in respect of land bearing Survey No.164, Pot-Hissa No.2 admeasuring 8 Acres and 8 Gunthas situate at village Dahagaon, Taluka – Mandangad, District – Ratnagiri (for short, 'suit land'). By order dated 20.2.1966, the Additional Mamlatdar and Agricultural Lands Tribunal III, Mandangad fixed the purchase price. It appears that Suresh Yashwant Jadhav alias Pandhare through Power of Attorney Madhukar Balkrishna

Jadhav instituted the proceedings under Section 70(b) of the Act before the Tahsildar, Mandangad against (1) Anant Krishnaji Dongare, (2) Mahimaji Dhondu Jadhav, (3) Govind Dhondu Jadhav, (4) Shantaram Dhondu Jadhav, and (5) Sandip Balaram Jadhav for declaration of tenancy in respect of the suit land. It appears that instead of prosecuting said proceedings, they were withdrawn and Tenancy Appeal No.37/2002 was instituted by (1) Dhondu Sitaram Jadhav alias Pandhare and (2) Suresh Yashwant Jadhav alias Pandhare through Power of Attorney Madhukar Balkrishna Jadhav alias Pandhare against Govind Dhondu Jadhav alias Pandhare under Section 74 of the Act challenging the order dated 20.2.1966. On 19.8.2003, SDO allowed the appeal and remitted the matter to the trial Court for deciding the tenancy rights areawise. In pursuance thereof, the Tahsildar/Additional Tahsildar and ALT, Mandangad decided the proceedings on 11.3.2004. Appellant No.1 Dhondu Jadhav alias Pandhare was declared to be a tenant in respect of 2.5 acres. Appellant No.2 Suresh Jadhav alias Pandhare was declared to be a tenant in respect of 4 Acres and 4 Gunthas land. Aggrieved by this decision, Govind Dhondu Jadhav alias Pandhare preferred Tenancy Appeal No.30/2004 before the SDO. By order

dated 22.2.2005 the appeal was allowed and the matter was remitted to the trial Court for deciding it afresh. It appears that against the order dated 19.8.2003, revision was preferred under Section 76 of the Act before the M.R.T [although the order dated 19.8.2003 was worked out and in pursuance thereof the Tahsildar decided the proceedings on 11.3.2004 and appeal against that order was also decided on 22.2.2005). By order dated 30.9.2008, the M.R.T. Dismissed the Revision Application. Aggrieved by this order, Writ Petition No.954/2009 was instituted by Govind Dhondu Jadhav in this Court. Writ Petition was disposed of by directing the Tahsildar to consider the issue of delay as also rights of the parties in tenancy case decided on 20.2.1966. In pursuance thereof, on 31.3.2011 the Tahsildar passed order declaring tenancy of Govind Dhondu Jadhav, Suresh Yashwant Jadhav and Dhondu Sitaram Jadhav. Against that order, the appeals were preferred before the SDO, Dapoli. By order dated 2.7.2013, the order dated 31.3.2011 was set aside and the matter was remitted to the trial Court. Aggrieved by that decision, Revision was preferred before the MRT. By order dated 21.12.2015, the order dated 2.7.2013 was set aside and the SDO was directed to decide the appeal afresh

in accordance with law. In pursuance thereof, by order dated 3.2.2017 the SDO decided the appeals and confirmed the order dated 31.3.2011 passed by Tahsildar. It is against this order, Revision was preferred before the MRT. By the impugned order dated 26.4.2017, the MRT has remitted the matter to SDO for first deciding the issue of limitation. In the event of condoning the delay then only he has to decide the matter on merits. While remitting the matter, the Tribunal also granted leave to the respondents to file application for condonation of delay. It is against this order, present Petition is instituted.

4. In support of this Petition, Mr. Bhatkar strenuously contended that basically tenancy appeal No.37/2002 was filed before the SDO challenging the order dated 20.2.1966 passed by the ALT without filing application for condonation of delay. Appeal was presented after 36 years. This Court as also the Tribunal repeatedly directed the authorities below to decide the issue of limitation. However, by order dated 3.2.2017, the SDO decided the issue of limitation as also went into merits of the case. He submitted that basically as no application for condonation of delay was filed, SDO as also MRT should have dismissed the appeal only on this short ground. Though the

Tribunal correctly set aside the order of SDO on the ground that unless and until the delay is condoned the authority had no jurisdiction to enter into the merits of the case nonetheless it granted liberty to the respondents to file application for condonation of delay before SDO in filing the appeal. He submitted that this course of action is wholly impermissible. In support of these submissions, he relied upon the decision of Apex Court in ***Ramesh Chand Sharma v Udham Singh Kamal and others, AIR 1999 SC 3837*** and in particular paragraphs-5 to 7 thereof. He also relied upon the decision of this Court in ***Ballumal A. Jaisingh v. M/s. J.J. Builders and others, 2003(3) Mh.L.J. 238.***

5. I have considered the submissions advanced by Mr.Bhatkar. I have also perused the material on record. As noted earlier, the proceedings under Section 32-G of the Act for fixation of purchase price was allowed on 20.2.1966. Said proceedings were conducted between Dhondu Sudkoji Pandhare represented by tenant purchaser, his son Govind Dhondu Jadhav on one hand and Kishanji Ramkrishna Dongre, former landlord on the other. The proceedings under Section 70-B of

the Act were filed by Suresh Yashwant Jadhav alias Pandhare through Power of Attorney Madhukar Balkrishna Jadhav against (1) Anant Krishnaji Dongare, (2) Mahimaji Dhondu Jadhav, (3) Govind Dhondu Jadhav, (4) Shantaram Dhondu Jadhav, and (5) Sandip Balaram Jadhav. It appears that said proceedings were withdrawn after the applicant therein realized that the proceedings under Section 32-G were decided on 20.2.1966. Accordingly Tenancy Appeal No.37/2002 was preferred before the SDO against order dated 20.2.1966. Relying upon the above decision, Mr. Bhatkar submitted that in the absence of any application for condonation of delay, SDO ought to have dismissed the appeal. Even otherwise, the Tribunal was not justified in granting leave to file application for condonation of delay.

6. A perusal of decision in **Ramesh Sharma** (supra) shows that Apex Court considered Section 21 of the Administrative Tribunals Act, 1985 which deals with the issue of limitation. In paragraph-7 it was observed thus :

“7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal,

It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see Secretary to Government of India and Ors. v. Shivam Mahadu Gaikwad, 1995 Supp (3) SCC 231.”

7. A perusal of paragraph-7, extracted hereinabove, shows that in the proceedings before the Tribunal, no application for condonation of delay was filed. In the absence of any application under sub-section (3) of Section 21 for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of the O.A. on merits.

8. Even in the case of **Ballumal Jaisingh** (supra) this Court held that the Court can get jurisdiction only if an application for condonation of delay is made. In the absence of an application, the Court will have no jurisdiction to take up the matter and consequently will have no power to condone the delay. Action of condoning delay without any application was an action without jurisdiction.

9. There is no dispute with the proposition laid down by the Apex Court as also by this Court. The question is whether the Tribunal had any power to give any liberty to the respondents to file application for condonation of delay. Mr. Bhatkar was unable to cite any judgment or provision taking contrary view. The fact of the matter is that initially the proceedings under Section 70(b) were filed in the year 2002 which were withdrawn and thereafter appeal was preferred challenging the order dated 20.2.1966. By merely granting leave to file application for condonation of delay does not *ipso facto* mean that SDO will condone the delay. The SDO will hear the parties on this aspect and will pass appropriate order. All contentions of the parties are expressly kept open. Understood thus, I do not find that any case is made out for interfering with the impugned order only on the ground that liberty was granted to the respondents to file application for condonation of delay. Hence, Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)