

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10501 OF 2015**

Dnyneshwar Laxman Pasalkar and ors. : Petitioners.

versus

Smt. Barkabai Kondiba Pathare

since deceased through LRs

Smt.Savitrabai Uttam Gawade and ors. : Respondents.

Mr. Sanjiv A Sawant for the Petitioners.

Mr. G S Godbole with Mr. Drupad S Patil for the Respondent Nos.2A to 2E.

Mr. S D Rayrikar, AGP, for the Respondent No.9.

CORAM : R. M. SAVANT, J.

DATE : 14th March 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 24/07/2015 passed by the learned Member of the Maharashtra Revenue Tribunal by which order the learned Member has rejected the application for condonation of delay in filing the Revision Application before the Maharashtra Revenue Tribunal..

2 The Petitioners claim to have each purchased plots admeasuring 1000 sq.ft. by registered sale deeds executed in their favour in or about 12/12/2001 from the original landlords of the land in question i.e. the branches of the Gaikwad family i.e. one Rajaram Gaikwad and Nanasaheb Gaikwad through is son Ramesh. The Respondent Nos. 2A to 2E are claiming through one Barkabai Pathare and Rambhau Pathare who were the protected tenants in respect of the lands in question. The said tenants had filed

proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act (for short “the said Act”) before the Tahsildar and ALT, Haveli, Dist. Pune against the original landlords. The said proceedings culminated in the order dated 29/06/2002 passed by the Tahsildar and Agricultural Lands Tribunal (“ALT” for short) Haveli. Thereafter a further order came to be passed on 18/07/2002 fixing the purchase price at Rs.4415/- and a certificate under Section 32M of the said Act has been issued on 18/07/2002 in favour of the said tenants. The original landlord i.e. Nanasaheb Kalu Gaikwad challenged the said order dated 29/06/2002 by filing Tenancy Appeal No.11 of 2002 before the Sub Divisional Officer. The said Appeal came to be dismissed by the Sub Divisional Officer (for short “the SDO”), Haveli, Dist. Pune by the order dated 10/11/2003. It seems that the said Nanasaheb Gaikwad thereafter filed a Revision Application being No.161 of 2003 in the Maharashtra Revenue Tribunal (for short “the MRT”). The said Revision Application came to be unconditionally withdrawn by the said Nanasaheb Kalu Gaikwad on 17/07/2010 resulting in the order dated 29/06/2002 as confirmed by the order dated 10/11/2003 becoming final and binding. In so far as the Petitioners are concerned, the Petitioners filed an application for intervention in the said Revision Application No.161 of 2003 on 17/12/2011 i.e. long after the Revision Application was unconditionally withdrawn by Nanasaheb Gaikwad on 17/07/2010. In view of the fact that the Revision Application was non-existent, the Petitioners' application for intervention was accordingly

rejected by the MRT by observing that the Petitioners can file independent proceedings. The Petitioners thereafter ventured to file a Revision Application before the MRT challenging the order dated 10/11/2003 passed by the SDO in Appeal. In view of the fact that there was a delay in challenging the said order on 10/11/2003, the Petitioners filed an application for condonation of delay. It is required to be noted that the Applicants before the MRT were 19 in number. The sum and substance of the case of the Applicants was that on the names of the Applicant Nos.2 to 10 being deleted from the revenue record that the Applicants became aware of the said order dated 10/11/2003 passed by the SDO. It was also the case of the Applicants that they had filed an application for intervention in the Revision Application filed by the original landlords which application came to be rejected by the MRT by order dated 19/12/2011 and therefore the Applicants have now filed the Revision Application challenging the orders passed under Section 32G of the said Act by the authorities below. Hence the knowledge of the orders passed by the authorities was sought to be crystallized by the Applicants as being in August 2011. In the said application it is stated that the dispute in respect of the entries in the revenue record was pending before the Additional Collector. It is required to be noted that the application filed by the Petitioners for condonation of delay was supported by an affidavit filed by one of the Applicant i.e. Applicant No.1 Bharat Govind Suryavanshi. In the said affidavit in support of the application, the case of the Applicants was sought to be reiterated viz. that it is on the

names of the Applicant Nos.2 to 10 being sought to be deleted in August 2011, that the Applicants became aware of the orders passed by the tenancy authorities.

3 On behalf of the tenants i.e. the Respondents herein, a reply came to be filed opposing the Application. The case of the Petitioners was sought to be questioned by the Respondents. The Respondents have adverted to the fact that the Applicant Nos.2 to 10 are the parties to the Consent Deeds dated 20/09/2011 by which they have consented to the Agreements executed by the Respondents in favour of the third parties. It is contended in the said reply that the tenants have become owners of the said lands by virtue of the orders passed by the tenancy authorities. It is further contended that the so called Agreements by which the Applicants have purchased the plots are in violation of the tenancy law. It is on the said basis that the application for condonation of delay was sought to be opposed on behalf of the Respondents.

4 The learned Member of the MRT has considered the said application and as indicated above has by the impugned order dated 24/07/2015 rejected the said application. The learned Member of the MRT has held that the delay is from the year 2003 to 2012 when the Revision Application was filed and the said delay being huge could not be condoned. The learned Member of the MRT has also observed that the manner in which

the Revision Application was sought to be filed by the Petitioners shows the utter negligence and carelessness on the part of the Petitioners in challenging the orders passed in the year 2003 in the year 2012.

5 At this stage, it is required to be noted that though originally there were 19 Applicants before the MRT, the instant Writ Petition has been filed by only 5 Applicants. The Applicant Nos.2 to 10 who are the signatories to the Consent Deeds and in respect of whom the averments for seeking condonation of delay have been made have not chosen to file any proceedings to question the order dated 11/10/2003 passed by the SDO in Appeal.

6 Heard the learned counsel for the parties.

7 The learned counsel appearing for the Petitioners Shri Sanjiv Sawant would seek to reiterate the case of the Petitioners as urged before the MRT. It was the submission of the learned counsel Shri Sawant that if the knowledge to the Petitioners of the order dated 10/11/2013 is to be taken as August 2011, then the Appeal filed by the Petitioners suffers from only a marginal delay. It was the submission of Shri Sawant that the Petitioners have a good case on merits and therefore the Petitioners ought not to be thrown out on the ground of delay.

8 Per contra, the learned counsel appearing for the Respondent Nos.2A to 2E Shri G S Godbole would seek to draw this Court's attention to the various documents i.e. RTS proceedings relating to the Mutation Entries being made in favour of the Respondents, the Consent Deeds executed by the original Applicant Nos.2 to 10 wherein they had consented to the Respondents executing the documents in favour of the third parties, the averments made in the application for condonation of delay wherein a reference has been made to the RTS proceedings pending between the parties. It was therefore the submission of Shri Godbole on behalf of the Respondent Nos.2A to 2E that the case of the Petitioners that they became aware of the order passed by the SDO dated 10/11/2003 only in August 2011, could not be accepted.

9 Having heard the learned counsel for the parties, I have considered the rival contentions. The question which arises for consideration is, whether a discretion is required to be exercised in favour of the Petitioners by condoning the delay in filing the Revision Application by them. As indicated above, the Tahsildar and ALT, Haveli Dist. Pune has passed the order under Section 32G of the said Act on 29/06/2002 and thereafter the purchase price has been fixed on 18/07/2002 and 32M certificate has also been issued in favour of the Respondents. The original landlord Nanasaheb Kalu Gaikwad had filed Tenancy Appeal being No.11 of 2002 before the SDO which Tenancy Appeal came to be dismissed by the SDO by order dated 10/11/2003. The

original landlord thereafter filed Revision Application before the MRT being Revision Application No.161 of 2003 which Revision Application came to be unconditionally withdrawn by the said original landlord Nanasaheb Kalu Gaikwad on 17/07/2010. It seems that at the same contemporaneous time the RTS proceedings relating to the Mutation Entries were going on between the Applicant Nos.2 to 10 and the Respondent Nos.2A to 2E herein. It seems that the Appeal filed by the Respondents herein before the SDO came to be allowed by the SDO by order dated 31/03/2005. Thereafter the Applicant Nos.2 to 10 had filed an Appeal being RTS Appeal No.543 of 2011 before the Additional Collector. The Applicants thereafter chose to file an application for intervention in the MRT in the disposed of Revision Application filed by the said Nanasaheb Kalu Gaikwad on 17/12/2011. The filing of the application in a disposed of Revision Application can only be attributed to the fact that the proceedings in respect of the Mutation Entries in respect of the lands in question were before the Revenue Authorities and especially the Additional Collector, and therefore probably with a view to keep the tenancy issue alive, that the application for intervention came to be filed by the Petitioners in a disposed of Revision Application. In view of the fact that the Revision Application was non-existent, that the learned Member of the MRT rejected the said intervention application filed by the Applicants amongst whom were the Petitioners and directed the Applicants to adopt appropriate proceedings. It is thereafter that the instant Revision Application has been filed by the 19 Applicants in the MRT and in the

said Revision Application the present application for condonation of delay has been filed.

10 The question that begs an answer is, whether the Petitioners had acquired knowledge of the orders passed by the Tenancy Authorities i.e. the Tahsildar and ALT, Haveli dated 29/06/2002 and by the SDO dated 10/11/2003 only in August 2011 as is the case of the Petitioners. As indicated above, the Applicant Nos.2 to 10 who were before the MRT were prosecuting the RTS proceedings which were arising out of the deletion of the names of the Applicant Nos.2 to 10 in the revenue record. The Appeal filed by the tenants before the SDO was allowed by the SDO and thereafter the parties were in Appeal at the same contemporaneous time as the Revision Application filed by the Petitioners in the MRT along with 14 other purchasers who were the Co-Applicants. It is also required to be born in mind that the Applicant Nos.2 to 10 have executed the Consent Deeds giving their consent to the transactions between the Respondents and the third parties. Though the Petitioners were not parties in the RTS proceedings or were not the executants of the said Consent Deeds, the fact that they were the Co-Applicants and are similarly situated as other Applicants before the MRT having purchased plots of 1000 sq.ft. each, it is impossible to believe that they were not aware of the orders passed by the SDO dated 10/11/2003 confirming the order dated 29/06/2012 passed by the Tahsildar and ALT, Haveli when their Co-Applicants had been

pursuing the RTS proceedings since the year 2003 . The manner in which the application for intervention was filed by the Applicants before the MRT in a disposed of Revision Application impinges upon the bonafides of the case of the Applicants i.e. the Petitioners herein. Though it is well settled that in matters of condonation of delay a highly pedantic and technical approach should be eschewed, and an approach which furthers the case of the substantial justice should be adopted nevertheless the fact remains that the approach should be judicious having regard to the facts and circumstances of the case. In the instant case as indicated above the facts are such that it is impossible to accept the case of the Petitioners that they became aware of the orders passed by the Tenancy Authorities only in August 2011, when the other persons who were similarly situated as they were prosecuting the proceedings before the Revenue Authorities in respect of the Mutation Entries and had also executed the Consent Deeds, thereby giving their consent to the transaction between the Respondents and third parties.

11 In that view of the matter, the discretion cannot be exercised in favour of the Petitioners. The order passed by the learned Member of the MRT therefore does not suffer from any infirmity or illegality for this Court to exercise its writ jurisdiction under Article 227 of the Constitution of India. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]