

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10359 OF 2014**

Chaya Deepak Bhalerao & Ors

..Petitioners

Vs.

Haribhau Shankar Gaikwad & Ors

..Respondents

Mr. S. S. Patil for the Petitioners

Mr. A. A. Garge i/b Mr. Kashyap Bhalerao for the Respondent Nos.2A & 2B

CORAM : R. M. SAVANT, J.

DATE : 13th FEBRUARY, 2017

P.C.

1 The order dated 9-10-2014 passed by the Member (judicial) of the Maharashtra Revenue Tribunal (for short MRT), is taken exception to by way of the above Petition. By the said order the Revision filed by the Petitioners herein came to be dismissed and resultantly the order passed by the SDO dated 31-5-2013 in Tenancy Appeal No.141 of 2012 came to be confirmed.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Respondents herein had made an application under Section 43 of the Bombay Tenancy and Agricultural Lands Act 1948 for purchase of the lands in question. The said application was allowed by the Collector, Thane. The Respondents thereafter filed an application under Section 32M for issuance of a certificate of purchase in respect of the said lands. The said application was made before the ALT and

Tahsildar, Thane who allowed the same by order dated 31-1-1975. The said order was passed by the ALT and Tahsildar by hearing all the parties including the predecessor of the Petitioners herein. The said order dated 31-1-1975 was sought to be challenged by the Petitioners after about 38 years by filing an Appeal before the Sub Divisional Officer (for short SDO). The said Appeal was numbered as Appeal No.149 of 2012. The SDO by order dated 31-5-2013 dismissed the Appeal on the ground that the order passed on 31-1-1975 was passed by the ALT and Tahsildar on hearing all the parties and that the predecessor of the Petitioners had not taken objection to the said order in his life time. The SDO opined that it was not necessary to interfere with the said order after a period of 38 years and accordingly dismissed the Appeal by order dated 31-5-2013.

3 The Petitioners aggrieved by the said order dated 31-5-2013 challenged the same by way of a Revision before the MRT which Revision was numbered as Revision No.421 of 2013. The MRT by the impugned order dated 9-10-2014 dismissed the Revision principally on the ground that no application for condonation of delay was filed by the Petitioners and that there were no averments relating as to why the delay of 38 years has occurred in filing of the Appeal. The MRT however sustained the order passed by the SDO on the ground that the SDO was right in not interfering with the order after a period of 38 years. A reading of the impugned order passed by the MRT therefore

leads to a conclusion that the said order has principally been passed on the ground that the Petitioners have not shown cause for the said delay of 38 years and the MRT has not dealt with the matter on merits.

4 During the course of the hearing of the above Petition, the Learned Counsel appearing for the Respondent Nos.2A & 2B on instructions of Mr. Ashok Haribhau Gaikwad, the Respondent No.3 herein, made a statement that the Respondents have no objection if the order dated 31-5-2013 passed by the SDO being set aside as also the impugned order passed by the MRT and the matter being remanded back to the SDO for a denovo consideration of the application for condonation of delay which was filed before the SDO. To the said course of action the Learned Counsel appearing for the Petitioners has no objection. In view of the fair stand taken by the Learned Counsel appearing on behalf of the Respondents, the above Petition can be disposed of by issuing the following directions :

- (i) The order dated 31-5-2013 passed by the SDO as also the impugned order dated 9-10-2014 passed by the MRT are required to be quashed and set aside and are accordingly quashed and set aside.
- (ii) The matter would be remanded back to the SDO for a denovo consideration of the application for condonation of delay which has been filed by the Petitioners seeking condonation of delay of 38 years and if the delay is condoned then the Appeal.

(iii) The parties to appear before the SDO on 28-2-2017. The SDO to hear and decide the application for condonation of delay latest by 31-4-2017 and if delay is condoned, decide the Appeal expeditiously by giving proper opportunity to the parties.

(iv) The application for condonation of delay and in the event the delay is condoned, the Appeal would be tried on its own merits and in accordance with law.

5 With the aforesaid directions the Writ Petition is disposed of.

[R.M.SAVANT, J]