

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7473 OF 2017
WITH
WRIT PETITION NO.7483/2017
WRIT PETITION NO.7484/2017
WRIT PETITION NO.7520/2017
WRIT PETITION NO.7521/2017
WRIT PETITION NO.7522/2017
AND
WRIT PETITION NO.7523/2017

POULLAD MANIK PATIL DIED LRS
VERSUS
RAOSAHEB ASARAM NHALDE AND OTHERS

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Advocate for Petitioners : Shri Londhe S.S.
AGP for Respondents: Shri Shinde B.A.
Advocates for Respondents : S/Shri Pawar A.D., Deshmukh R.M.,
Konawade A.R. and Jadhav C.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 12, 2018

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PER COURT :-

1. The learned Advocates for the respective sides were heard on 4.7.2018 and today, at length.

2. All these petitioners are aggrieved by the impugned orders passed by the Sub Divisional Officer and the Maharashtra Revenue Tribunal, by which, the delay of about 51 years has not been condoned by the authorities below. Consequentially, the claims of these petitioners have not been considered on their merits.

3. Learned counsel for the petitioners points out from the application for condonation of delay filed in RTS Appeals before the Sub Divisional Officer, Amalner that the delay caused is based on the date of knowledge of a fraud played by the respondents as well as by the Revenue authorities dealing with the tenancy matters under the Bombay Tenancy and Agricultural Lands Act. It is stated that as a fraud has been played on these petitioners, they had approached the revenue authorities after they realized that they were cheated by the respondents.

4. The learned counsel has canvassed the petitions on the merits as well, contending that there is no tenancy record available with the revenue department and as such, there is no evidence of the respondents having been put in the lawful possession of the properties at issue. If they are not in the lawful possession, a fraud would give a right to these petitioners to have the lands restored to them and the possession delivered to them, notwithstanding the delay of even 50 years. He has placed reliance upon the following judgments:-

(i) *Hanmanta Daulappa Nimblal Vs. Babasaheb Dajisaheb Londhe* [(1995) 6 SCC 58,

(ii) *Ganpathbai Mahijibhai Solanki Vs. State of Gujarat* [2008 ALL SCR 2583],

(iii) *Chandrabhan Chunilal Agarwal Vs. Shaad Ramgopal Radhavaillabh Agarwal* [2014 (3) Bom. C.R.566],

(iv) *Madhukar Sadbha Shivarkar Vs. State of Maharashtra* =- Civil Appeal No.1751 of 2015 - Supreme Court,

(v) *Union of India Vs. M. Bhaskaran* [AIR 1996 SC 686],

(vi) *R.B.Ramlingam Vs. R.B.Bhavneswari* [JT (2009) 2 167],

(vii) *Bashi Ahmed Chand Shaikh Vs. State of Maharashtra* [2010 (1) Mh.L.J. 500],

(viii) *M/s Kamakshi Builders Vs. M/s Ambedkar Educational Society* [AIR 2007 SC 2191],

(ix) *Manchegowda Vs. State of Karanataka* - [(1984) 3 SCC 301],

(x) *T. Vijendradas and another Vs. M. Subramanian and others* - [2008 (1) All MR 446] and

(xi) Budhansha Madarsha Fakir Vs. The State of Maharashtra - Writ Petition No.9901 of 2010 dated 4.5.2011.

5. Learned Advocates for the respondents as well as the learned AGP, submit that there is no record to indicate that the ancestors of these petitioners were any time in possession of the land. In the absence of any revenue entries indicating their undisputed right, title and interest, merely because a dispute is raised, would not mean that the revenue authorities would unmindfully exercise their jurisdiction.

6. The issue before this Court today, in all these similar petitions, is as regards the delay. In Writ Petition No. 7521 of 2017, the delay is of about 32 years. In rest of the six matters, the delay is of 50 years and 1 months to 50 years and 3 months.

7. The law on condonation of delay has been crystallized in the matters of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649].

8. Even in the case of *Hanmanta (supra)*, the dispute was with regard to an oral lease in 1968-69 and the first proceeding taken out was by the landlord, when he instituted a suit in 1968. It was in this backdrop, that the Honourable Apex Court scrutinized the case in 1995.

9. Even in the case of *Ganpathbai (supra)*, the cause of action suffered a delay of 2200 days in filing a Review Application. The Honourable Apex Court concluded that as the delay was of about 6 years, the case could be scrutinized.

10. In the other judgments cited by the petitioners, the law laid down is somewhat similar with regard to a sufficient cause being shown for condonation of delay.

11. In the matter of *Budhansha (supra)*, this Court was considering the facts of the case and concluded that the delay of 51 years could be gone into by the Divisional Commissioner. In the cases in hand, this Court is considering the entire contentions of the petitioners on the point of delay alone as the causes of action brought before the Court are with regard to the condonation of delay.

12. On perusal of the application for condonation of delay, which is a one and half page application, excluding the title cause and the verification, the petitioners have stated that the limitation concluded on 18.5.1963, considering the order passed on 18.3.1963. All these petitioners and as pointed out by the learned counsel in Writ Petition No. 7520 of 2017 that the petitioner reached the age of 21 years in 1952. If he was aggrieved by any order passed by a Tahsildar with regard to a Vahiwat case in 1963, he could have approached the revenue authorities within 60 days.

13. There are 7 paragraphs set out in the application for condonation of delay. The reasons cited are, that these petitioners did not have a strong economic background, they were carrying the burden of their families, they did not have the documents at their disposal, they could not take proper legal advise and the respondents were always terrorizing them, which created a serious apprehension and threat to their physical existence. Besides these grounds, the petitioners have not stated as to how and why they could not take effective steps for seeking redressal of their grievance for 50 years. They have raised their disputes after reaching the age of about 80 years and more, contending that they got the knowledge of fraud only in 2013

and hence they have taken up the issue after 50 years.

14. In my view, delay cannot be condoned on the basis of sympathy. Law will not assist a sleeping litigant. The respondents have been cultivating the lands from about 1946 through their ancestors and now, by they themselves. From 1946 onwards, the ancestors of these petitioners, as well as these petitioners claim to have no knowledge that all these lands, which are being cultivated by two generations of the respondents for the past more than 70 years, actually belonged to the petitioners' ancestors.

15. In view of the fact situation as recorded above, I do not find that the impugned orders could be termed as being perverse or erroneous. These petitions being devoid of merits are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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