

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD***

WRIT PETITION NO. 7754 OF 2018

Virbhadra s/o Chanappa Shingare
& others

... Petitioners

Versus

Shivayya s/o Virayya Swami

... Respondent

Mr. R.D. Biradar, Advocate for the Petitioners.

Mrs. M.D. Thube Mhase, Advocate for the Respondent.

Coram : N.M. Jamdar, J.

Date : 6 December 2018

Oral Order :

1. By this petition, petitioners have challenged the order passed by the learned District Judge, Nilanga, rejecting the Miscellaneous Civil Application No. 27/2016 seeking condonation of delay of 10 years 1 month and 18 days to file an appeal challenging the grant of the scheme on 12 December 2005. The learned District Judge has rejected the application on the ground that the petitioners have suppressed material facts.

2. In the Civil Application for condonation of delay, it is stated that the Enquiry No. 460/2005, pursuant to which, the scheme

was sanctioned, was not known to the applicants-petitioners and, the applicants came to know about the same on 23 March 2016 and thereafter, the application was filed. This application is supported by an affidavit. Learned counsel for the petitioners has relied on the decision of the Apex Court rendered in the case of *T. Vijendradas and another vs. M. Subramaniam and others*.¹

3. Learned counsel for respondent has pointed out in the reply affidavit that the petitioners had knowledge about the sanction of the scheme right from the beginning and had infact filed an application challenging the very same scheme in the year 2008, which was subsequently withdrawn. Thereafter again, the petitioners moved a fresh scheme on 15 February 2016, which was also withdrawn. Learned counsel for respondent submits that all these facts have been suppressed and a bold statement is made that the petitioners were not aware of the grant of the scheme.

4. This petition is an abuse of the process of law. Petitioners have clearly stated that they came to know about the scheme sanctioned on 12 December 2005 on 23 March 2016. This statement, on the face of it, is false as the petitioners had earlier filed

¹ 2008(1) ALL MR 446

the very same application in the year 2008, which was withdrawn. Then again filed a fresh scheme which was withdrawn. Petitioners were involved in the litigation from the beginning.

5. Litigant must approach the Court with clean hands. There must be sanctity to the statements made on oath. When such blatantly false statement is made by a litigant, he is not entitled to the equitable relief. As regards the decision in case of *T. Vijendradas and another vs. M. Subramaniam and others* relied upon by the petitioners is concerned, it is regarding nullity of an order obtained by playing fraud. How it is relevant to the present case is not explained. The fraud, if any in the matter, is by the petitioners.

6. When the petition was heard on the last date, it was put to the petitioners as to whether the petitioners intend to pursue the petition in the light of this clear suppression. The petitioners have chosen to pursue the petition.

7. In these circumstances, the writ petition is dismissed with cost of ₹ 25,000/-. Petitioners shall deposit an amount of ₹ 25,000/- with the Registry of this Court within a period of six weeks from today. If the amount of cost is not deposited, the concerned Collector

will recover the same as arrears of land revenue. The Registry of this Court to ensure that the cost is paid and recovered and for the purpose, matter be placed by the Registrar (Judl.) for reporting compliance after six weeks.

N.M. Jamdar, J.