# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

***CIVIL APPELLATE JURISDICTION***

**WRIT PETITION NO. 10914 OF 2017**

**Akhtar Hasan Rizvi ….. Petitioner**

**VERSUS**

**Harish R. Bhattad & Ors. ….. Respondents**

Mr.G.S.Godbole, a/w. Mr.Drupad S.Patil, Mr.Mahesh Mishra, i/b. Mr.Ravi Thankaian for the Petitioner.

Mr.A.V.Anturkar, Senior Advocate, i/b. Mr.Sugandh B.Deshmukh for the Respondent no.1.

Mr.S.D.Rayrikar, A.G.P. for the Respondent nos. 2 to 5.

**CORAM : R.D. DHANUKA, J.**
**RESERVED ON : 2nd APRIL, 2018**
**PRONOUNCED ON : 24th APRIL, 2018**

**ORDER :**

Rule. Mr.Anturkar, learned senior counsel for the respondent no.1 waives service. Mr.Rayrikar, waives service for the respondent nos. 2 to 5. writ petition is heard finally by consent of parties.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 26th July, 2017 passed by the learned Minister Revenue Department, State of Maharashtra thereby confirming the order dated 23rd December,2013 passed by the Additional Commissioner, Konkan Division, Mumbai by which the learned Additional Commissioner, Konkan Division, Mumbai had allowed the appeal filed by the respondent no.1 thereby

setting aside the order dated 19th August, 2013 passed by the learned Deputy Collector, (Appeals) Mumbai Suburban District allowing the application for condonation of delay filed by the petitioner in filing second RTS appeal under the provisions of Maharashtra Land Revenue Code, 1996. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. It is the case of the petitioner that Shri Hariraiji Krishnajivanji Goswami and 54 others executed a deed of conveyance dated 28th February, 2006 in favour of the petitioner in respect of the land bearing CTS Nos.225 and 226 situated at Village Poisar, Kandivali admeasuring 35308.12 sq.mtrs. The said deed of conveyance was registered with the office of the Joint Sub-Registrar, Borivali. On 12th March,2007, the original owner of the said land executed a Deed of Rectification in favour of the petitioner for correcting area of land from 35308.12 sq.mtrs. to 31666 sq.mtrs. and presented the same for registration. The said Deed of Registration was registered on 20th March,2007. The name of the petitioner was recorded in the revenue record through the Mutation Entry No.693. The said mutation entry had been certified on 8th July, 2008.

4. Sometime in the month of August 2009, the respondent no.1 filed RTS No. 40 of 2009 before the learned Sub Divisional Officer impugning the said Mutation Entry No.693 in favour of the petitioner. It is the case of the petitioner that there was delay of about one year by the respondent no.1 in filing the said appeal. It is the case of the petitioner that the learned advocate for the petitioner who was going to appear in the said RTS No. 40 of 2009 was not in a position to attend the hearing on 28th March,2011 and had filed an application for adjournment. The learned Sub Divisional Officer however rejected the said application for adjournment and closed the matter for orders.

5. On 4th July, 2011, the learned Sub Divisional Officer allowed the said RTS Appeal No. 40 of 2009 filed by the respondent no.1. It is the case of the petitioner that no intimation under section 250 of the Maharashtra Land Revenue Code, 1966 was given to the petitioner of passing of the said order allegedly passed on 4th July, 2011. The matter was also not listed before the learned Sub Divisional Officer on 4th July, 2011 for passing an order. Clause (4) of the operative part of the said order dated 4th July, 2011 recorded that 'the decision be informed to all concerned parties'. The petitioner did not receive any intimation of the said order as directed in the said order dated 4th July, 2011.

6. It is the case of the petitioner that only on 4th December,2012, the petitioner came to know about the said order dated 4th July, 2011 and therefore he immediately applied for the certified copies of the said order.

7. On 22nd May, 2013, the petitioner filed 2nd RTS Appeal before the learned Deputy Collector, Mumbai. Since there was delay in filing the said appeal, the petitioner filed an application for condonation of delay. It was the case of the petitioner that the petitioner was not aware about the said order dated 4th July, 2011 till 4th December, 2012. In the said application for condonation of delay, the petitioner averred that he had handed over the papers to an advocate for preparing a draft of the appeal. The said advocate however took some time for drafting the said appeal memo. The petitioner being the president of the educational trust was busy in administrative work. The appeal thus could not be lodged within the period of limitation. The application for condonation of delay was vehemently opposed by the respondent no.1 by filing a reply on 17th July, 2013.

8. On 19th August, 2013, the learned Deputy Collector passed an order allowing the said application for condonation of delay in favour of the petitioner. The respondent no.1 challenged the said order dated 19th August,2013 by filing an appeal before the learned Additional Commissioner, Konkan Division, Mumbai. The said appeal was opposed by the petitioner by filing affidavit in reply. The learned Additional Commissioner, Konkan Division, Mumbai passed an order on 23rd December, 2013 allowing the said appeal filed by the respondent no.1 and thereby setting aside the order dated 19th August,2013 passed by the learned Deputy Collector. The petitioner filed a writ petition bearing no.2085 of 2014 in this court challenging the said order passed by the learned Additional Collector. The said writ petition was however disposed of by this court thereby permitting the petitioner to file a revision application before the State of Maharashtra. The petitioner accordingly filed a revision application before the learned Revenue Minister, State of Maharashtra. By an order dated 26th July, 2017, the learned Revenue Minister, State of Maharashtra dismissed the said revision application filed by the petitioner. The petitioner has impugned the said order dated 26th July, 2017 passed by the learned Revenue Minister in this writ petition filed under Article 227 of the Constitution of India.

9. Mr.Godbole, learned counsel for the petitioner invited my attention to various annexures to the writ petition including the application for condonation of delay filed by the petitioner, the reply of the respondent no.1 in the said application, order dated 19th August, 2013 passed by the learned Deputy Collector allowing the application for condonation of delay, the order passed by the learned Additional Commissioner allowing the appeal filed by the respondent no.1 and also the order passed by the learned Revenue Minister on 26th July, 2017.

10. It is submitted by the learned counsel for the petitioner that the Deed of Conveyance dated 28th February,2006 executed by the original owner in favour of the petitioner in respect of the lands in question was duly registered and was conclusive to show the title of the petitioner in respect of the lands in question. The said Deed of Conveyance has not been set aside by any competent authority till date. The effect of the said Deed of Conveyance had been rightly given in the revenue record through the mutation entry bearing no.693 in favour of the petitioner. The learned Sub Divisional Officer has however erroneously set aside the said mutation entry.

11. It is submitted that insofar as alleged agreement entered into between the respondent no.1 and the original owner relied upon by the respondent no.1 is concerned, the same is admittedly not a registered document. No cognizance of such alleged agreement thus could be taken by the learned Sub Divisional Officer while setting aside the mutation entry which was recorded in favour of the petitioner. It is submitted that the mere agreement of sale does not create any right, title or interest in the property under section 54 of the Transfer of Property Act, 1882. The respondent no.1 had no locus of any nature whatsoever to challenge the said mutation entry recorded in the name of the petitioner. The respondent no.1 has already filed a civil suit *inter alia* praying for various reliefs in respect of the lands in question in which the petitioner herein is also party defendant. Learned counsel placed reliance on the judgment of Supreme Court in case of ***Suraj Lamp and Industries Private Limited (2) through Director vs. State of Haryana and another, (2012) 1 SCC 656*** and more particularly paragraphs 18 and 19 in support of the submission that an agreement for sale in respect of an immoveable property does not create any right, title or interest in the immoveable property and thus no right, title or interest in the said immoveable property could

be transferred to an agreement for sale whether with possession or without possession and cannot be considered as the conveyance.

12. Insofar as the issue of condonation of delay is concerned, it is submitted that the petitioner had sufficiently explained the delay in the application for condonation of delay dated 17th July, 2013. The petitioner was never intimated about the order passed by the learned Sub Divisional Officer though there was a specific order passed by the learned Sub Divisional Officer that both the parties shall be intimated about the said order. He placed reliance on sections 149, 150 and 154 of the Maharashtra Land Revenue Code. It is submitted that the learned Deputy Collector (Appeals) had passed a detailed order on the said application for condonation of delay filed by the petitioner and had rightly condoned the said delay. The said order could not have been interfered with by the learned Additional Commissioner as well as by the learned Revenue Minister.

13. It is submitted that since no intimation of the impugned order passed by the learned Sub Divisional Officer was received by the petitioner from the office of the Sub Divisional Officer, the petitioner had computed the number of days of delay from the date of knowledge of the said order. The authorities could not point out any record before the learned Deputy Collector, Additional Commissioner and also before the learned Revenue Minister to show that any intimation of the order passed by the learned Sub Divisional Officer was given to the petitioner. If the date of the knowledge is not considered for the purpose of commencement of the period of limitation, there would be delay of about 1 year 4 months in filing the said appeal.

14. It is submitted that the petitioner had made out a case for condonation of

delay of even the said larger period. He submits that in the impugned order passed by the learned Sub Divisional Officer and thereafter by the learned Additional Commissioner and also in the impugned order passed by the learned Revenue Minister, all these authorities have made various observations and comments and have illegally recorded the findings in respect of the authenticity and validity of the Deed of Conveyance executed in favour of the petitioner and about the conduct of the petitioner without any basis or authority. He submits that in the RTS proceedings, no such findings about the authenticity and validity of the Deed of Conveyance could be rendered by the authorities and the same are *ex-facie* without jurisdiction. The petitioner had good chances of succeeding in the appeal filed by the petitioner against the order of the Sub Divisional Officer and thus the order passed by the Deputy Collector allowing the application for condonation of delay ought not to have been interfered with by the Higher Appellate Authority.

15. Mr.Godbole, learned counsel for the petitioner also placed reliance on the additional affidavit in support of the submission that the petitioner had explained sufficient delay in filing the said appeal against the order of the Sub Divisional Officer. He also placed reliance on the documents obtained by the petitioner under the provisions of Right to Information Act confirming that no intimation of the order passed by the Sub Divisional Officer was served upon the petitioner.

16. Mr.Anturkar, learned senior counsel for the respondent no.1 on the other hand invited my attention to the application for condonation of delay filed by the petitioner and would submit that the petitioner has not at all rendered sufficient reasons for explaining delay of about 600 days in filing an appeal before the Appellate Authority. He submits that merely because the petitioner is a trustee of an educational institution or is a politician, that cannot be the ground for not filing

the appeal within the time prescribed. He submits that the order passed by the learned Deputy Registrar allowing an application for condonation of delay filed by the petitioner was totally erroneous and was thus rightly interfered with by the learned Additional Commissioner and also by the learned Revenue Minister. He submits that there was no delay of only 132 days as falsely canvassed by the petitioner before the learned Deputy Collector or even before the Appellate Authority as well as revisional authority but was of more than 600 days.

17. It is submitted by the learned senior counsel that the petitioner had forged and fabricated various documents which was noticed by the authorities below while setting aside the mutation entry which was in favour of the petitioner and while rejecting the appeal and the revision application filed by the petitioner. The petitioner had executed a Deed of Conveyance in his own favour by exercising his alleged power under an alleged power of attorney. In support of the submission that the authorities had rightly rejected the application for condonation of delay on the ground that no sufficient reason was recorded by the petitioner, learned senior counsel placed reliance on the judgment of Supreme Court ***Esha Bhattarcharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649*** and in particular paragraphs 21.9, 21.11, 21.12 and 22.2 out of several sub paragraphs of paragraph (22) in which the Supreme Court has laid down the principles to be considered while considering an application for condonation of delay made by a party. He submits that none of those principles laid down by the Supreme Court in those paragraphs are satisfied in the facts of this case. On the contrary, the order passed by the learned Deputy Collector was contrary to the principles of Supreme Court laid down in the said judgment which is rightly reversed by the learned Minister.

18. Insofar as the submission of Mr.Godbole, learned counsel for the petitioner that the respondent no.1 did not have any interest in the suit property based on the agreement for sale is concerned, it is submitted by the learned senior counsel that the said agreement for sale was entered into between the original owner and the respondent no.1 much prior in point of time then the Deed of Conveyance having been executed in favour of the petitioner and that also by the petitioner himself in his favour. He submits that under the said agreement for sale, the possession of the land in question was exclusively handed over to the respondent no.1 and thus it is not the mere agreement for sale but a vested interest is created in favour of the respondent no.1 in the land in question. He submits that the possession of the respondent no.1 is recognized by this court and is protected by an order dated 22nd August,2007 in ***Chamber Summons No.1292 of 2007*** in Suit No.678 of 2006 filed by the respondent no.1 and others against the petitioner herein and others. He submits that the said ad-interim order passed by this court has been confirmed by an order dated 10th December,2010 passed by this court in the said Chamber Summons No.1292 of 2007, qua the possession of the respondent no.1 during the pendency of the Suit No.678 of 2006 filed by the respondent no.1 which interim order is in force till today. The said Suit No.678 of 2006 challenging the documents relied upon the petitioner is pending before this court.

19. Learned senior counsel also placed reliance on the order dated 21st December,2017 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune in Application No.244 of 2016 in Appeal No.25 of 2009 filed by the petitioner against the Collector of Stamps, Borivali in respect of the same land in question holding that the said document is liable for penalty in view of the petitioner having failed to deposit the amount of deficit stamp duty within the time

limit prescribed under the provisions of Maharashtra Stamp Act.

20. It is submitted that since the petitioner has not paid the requisite amount of the stamp duty, no reliance on such document could be placed by the petitioner before the authorities. It is submitted that the respondent no.1 has thus *locus standie* to file an appeal against the mutation entry illegally recorded in favour of the petitioner.

21. It is submitted by the learned senior counsel that since the petitioner had not come to the court with clean hands and had fabricated and forged various documents which are noticed by the authorities below and in view of the fact that all the authorities such as Sub Divisional Officer, Additional Commissioner and the Revenue Minister have passed orders against the petitioner after considering the relevant documents produced by the parties and have rendered various findings of facts which are not perverse and thus cannot be interfered with by this court in this petition filed under Article 227 of the Constitution of India.

22. Mr.Godbole, learned counsel for the petitioner in rejoinder submits that even if the respondent no.1 who claims to be in possession of the land in question which is disputed by the petitioner, merely on the basis of agreement for sale and that also admittedly not having been registered, no right, title or interest of whatsoever nature could have been claimed by the respondent no.1 in the lands in question in comparison to the superior title of the petitioner in respect of the land in question which had been derived by the petitioner under the registered Deed of Conveyance, learned Sub Divisional Officer could not have entertained the appeal filed by the respondent no.1 on the ground of locus.

**REASONS AND CONCLUSIONS**

23. It is not in dispute that the mutation entry which was standing in the name of the petitioner in the revenue record as on 8th July, 2008 was set aside in appeal by the Sub Divisional Officer. It is the case of the petitioner that the said order passed by the Sub Divisional Officer was without hearing the petitioner. In paragraph (4) of the operative part of the said order dated 4th July, 2011, it was clearly provided that the decision be informed to all concerned parties. It is the case of the petitioner that inspite of such specific instructions given in the said order dated 4th July, 2011 passed by the Sub Divisional Officer, the intimation of the said order was not given to the petitioner. It is the case of the petitioner that only when the petitioner came to know about the said order on 4th December, 2012, the petitioner applied for certified copy of the said order and thereafter preferred an appeal on 22nd May,2013 before the learned Deputy Collector. The petitioner has produced certain information obtained from the authority under the provisions of Right to Information Act which would indicate that the intimation of the order passed by the learned Sub Divisional Officer was not given to the petitioner inspite of the specific direction in the said order 4th July, 2011. The cause of action thus in this situation would arise from the date of knowledge of the petitioner about the said order 4th July, 2011 passed by the Sub Divisional Officer on 4th December,2012.

24. Insofar as delay after 4th December,2012 is concerned, it was the case of the petitioner in the application for condonation of delay that he is the president of the educational trust and was busy for administrative work. He had handed over the papers to the advocate for preparing the draft of the appeal who took some time for drafting the appeal memo and therefore the said appeal before the learned Deputy

Collector could not be filed within the period of limitation. Learned senior counsel for the respondents vehemently submitted that even if the petitioner is a trustee of an educational trust and is busy in the administrative work, that cannot be the ground for condonation of delay. It is submitted that the delay was not at all explained by the petitioner.

25. Both the parties through their respective counsel argued before this court about the validity of the conveyance deed in favour of the petitioner and the agreement for sale in favour of the respondent no.1 in respect of the said property. Insofar as order of learned Sub Divisional Officer who has reversed the mutation entry which was recorded in the name of the petitioner is concerned, the learned Sub Divisional Officer while reversing the mutation entry has made various observations about the validity of the registered deed of conveyance in favour of the petitioner and also various other observations about the alleged fraud and fabrication against the petitioner. In my view the revenue authority has no jurisdiction to declare a document of title as invalid for any reason or to make observation of fraud or fabrication while executing such document while dealing with an objection in respect of the mutation entry under the provisions of Maharashtra Land Revenue Code. A perusal of the order passed by the Sub Divisional Officer however indicates that in the said order not only the learned Sub Divisional Officer has made various observations about the validity of a registered conveyance deed as fraudulent but has also made allegations against the petitioner regarding alleged fraudulent rent receipt. The learned Sub Divisional Officer has also declared the said deed of conveyance as illegal and fraudulent, allegedly showing the lesser amount of consideration and showing the lesser amount of stamp duty. It is further held that he NOC obtained from the ULC Department by the petitioner was also bogus. In my *prima facie* view, the learned Sub Divisional

Officer has exceeded his powers while dealing with the appeal filed by the respondent no.1 *inter alia* impugning the mutation entry entered in the name of the petitioner.

26. The Deputy Collector (Appeals) has allowed the application for condonation of delay filed by the petitioner after recording various reasons. The said order passed by the learned Deputy Collector however is reversed by the learned Additional Commissioner, Konkan Division, Mumbai which is confirmed by the learned Revenue Minister, Maharashtra State in the revision application filed under section 257 of the Maharashtra Land Revenue Code, 1956. Both the parties through their respective counsel have advanced various submissions on the validity of the document of title relied upon by other party though the limited issue in this petition is whether an application for condonation of delay ought to have been allowed by the learned Additional Commissioner, Konkan Division, Mumbai and also by the learned Revenue Minister or not. This court thus is not required to go into the issue whether the documents relied upon by both the parties in support of their rival claims of title in this writ petition as the same is not the subject matter of the dispute.

27. In my view, insofar as delay in filing the appeal by the petitioner is concerned, the respondents could not point out by producing any proof as to whether the intimation of the order passed by the Sub Divisional Officer was issued to the petitioner as directed in the said order or not. On the contrary, the petitioner has produced the documents obtained by the petitioner under the provisions of the Right to Information Act which would indicate that the petitioner was not served with any such intimation as directed by the Sub Divisional Officer. The subsequent delay from the date of knowledge of the petitioner is not fully and

sufficiently explained by the petitioner. In my view, however the Additional Commissioner and the learned Revenue Minister ought to have considered that the Sub Divisional Officer could not have declared a deed of conveyance which was registered document as illegal, fraudulent and could not have declared the execution of various documents including the rent receipt as fraudulent while dealing with an appeal arising out of mutation entry while dealing with an application for condonation of delay. There would be gross injustice to the petitioner if delay in these circumstances is not condoned and such order passed by the Sub Divisional Officer declaring a registered document as illegal would have attained finality on the ground that the delay in filing an appeal was not sufficiently explained. In these circumstances, in my view the learned Additional Commissioner would have imposed the exemptionary cost upon the petitioner and ought to have condoned the delay in filing an appeal.

28. Neither the learned Additional Commissioner, Konkan Division nor the learned Revenue Minister considered a crucial aspect that the order of the learned Sub Divisional Officer was required to be intimated to the petitioner which was not intimated as is apparent on the face of the record. Both the authorities also did not consider that if delay in this situation would not have been condoned, the impugned order passed by the Sub Divisional Officer which was passed having exercising the jurisdiction would have attain finality and would not have caused prejudice and injustice to the petitioner. The learned Additional Commissioner thus ought to have heard the matter on merits.

29. Insofar as the principles of law laid down by the Supreme Court in case of ***Esha Bhattarcharjee*** (supra) relied upon by Mr.Anturkar, learned senior counsel for the respondent no.1 is concerned, the principles laid down by the Supreme

Court in the said judgment setting out various parameters which shall be considered by the courts while dealing with an application for condonation of delay is not in dispute. However the learned Additional Commissioner and the learned Revenue Minister having failed to consider that the learned Sub Divisional Officer could not have declared a registered document as fraudulent or illegal and could not have rendered various other findings which are rendered in the said order, the delay in the facts of this case ought to have been condoned. I, therefore, pass the following order :-

(a) Order dated 26th July, 2017 passed by the learned Minister, Revenue Department, State of Maharashtra and order dated 23rd December,2013 passed by the learned Additional Commissioner, Konkan Division, Mumbai are set aside.

(b) The application for condonation of delay filed by the petitioner is allowed on the condition that petitioner pays cost of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent no.1 within two weeks from today.

(c) Appeal No. 473 of 2013 filed by the petitioner is restored to file before the learned Additional Commissioner (Konkan Division), Mumbai for disposal in accordance with law.

(d) The learned Additional Commissioner (Konkan Division), Mumbai shall decide the said appeal expeditiously and on its own merits without being influenced by the observations made and the conclusion drawn in the order dated 23rd December,2013 passed by him and also order dated 26th July, 2017 passed by the learned Minister, Revenue Department, State of Maharashtra.

(e) The petitioner as well as the respondent no.1 shall appear before the learned Additional Commissioner, Konkan Division on 7th May, 2018 at 03.00 p.m.

(f) The parties as well as the authorities to act on the authenticated copy of this order.

(g) Writ petition is disposed of in the aforesaid terms.

**(R.D.DHANUKA, J.)**

At the request of the learned counsel for the respondent no.1, the operation of this order is stayed for a period of four weeks from today. If any Special Leave Petition is filed by the respondent no.1, the papers and proceedings and notice shall be served upon the petitioner's advocate in advance.

**(R.D.DHANUKA, J.)**