

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12132 OF 2016

Mahadu S. Raykar, since deceased,
through L.Rs. - Vitthal M. Raykar & Ors.

...Petitioners

V/s.

Smt.Gopikabai S. Raykar & Ors.

...Respondents

Mr.Sanjiv A. Sawant for the Petitioners.

Mr.Nikhil Chavan for the Respondent Nos.1 to 4.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.5 and 6.

CORAM : R.D. DHANUKA, J.

DATE : 5TH JUNE, 2018.

P.C. :-

1. Rule. Mr.Chavan, waives service for the respondent nos.1 to 4. Mr.Rayrikar, learned A.G.P. waives service for the respondent nos.5 and 6. By consent of parties the petition is heard finally at the admission stage.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 29th September, 2015 passed by the learned Sub-Divisional Officer, Bhore in RTS Proceedings No.381 of 2013 thereby allowing the application for condonation of delay of about 20 years filed by the respondent nos.1

to 4 in the RTS proceedings. Some of the relevant facts for the purpose of deciding this petition are as under :

3. It is the case of the petitioners that the name of the petitioners were recorded in the mutation entry in the year 1972 i.e. mutation entry no.376. Some time in the year 1995, the mutation entry was challenged by the respondent nos.1 to 4 in the Court of the Assistant Collector, Bhore, Sub-Divisional, Pune. The said application was rejected. The respondent nos.1 to 4 challenged the said order before the Additional Collector, Pune on 31st March, 2001 by filing an appeal. The said appeal was allowed to the extent that the order confirming the mutation entry was cancelled. The learned Tahsildar was directed to record mutation entry within three months. The said order was challenged by the petitioners by filing a revision under section 257 of the Maharashtra Land Revenue Code, 1966.

4. By an order dated 2nd March, 2002, the said revision application was allowed. The respondents filed a revision before the Revenue Minister in the year 2008 after expiry of six years. Learned Minister allowed the said revision application. The petitioners filed a writ petition before this Court. By an order dated 29th July, 2013 the said writ petition came to be disposed of by this Court. The impugned order passed by the learned Minister was set aside and the matter was remanded back to the authority.

5. The respondent nos.1 to 4 thereafter filed an application for condonation of delay of 20 years without assigning the reasons. The respondent no.7 allowed the said application and registered the appeal filed by the respondent nos.1 to 4. The petitioners challenged the said order by filing a Writ Petition bearing No.1023 of 2014. By an order dated 13th January, 2015, this Court was pleased to set aside the order dated 12th December, 2013 passed by the learned authority by directing the Sub-Divisional Officer to reconsider the matter afresh. This Court directed that the learned Sub-Divisional Officer shall take into consideration the cause shown by the respondent nos.1 to 4 as well as the objections raised by the petitioner and to determine whether any sufficient cause was shown by the respondent nos.1 to 4 for condoning the delay of 20 years. Pursuant to the said order passed by this Court, the respondent nos.1 to 4 have impugned the order on 29th September, 2015 thereby condoning the delay of 20 years.

6. Mr.Sawant, learned counsel appearing for the petitioner invited my attention to the various orders passed by this Court from time to time and also the authorities condoning the delay of 20 years in the application filed by the respondent nos.1 to 4. He also invited my attention to the application for condonation of delay by the respondent nos.1 to 4 and the reply of the petitioners in the aforesaid

application for condonation of delay. It is submitted that despite the fact that two orders were passed by this Court in the writ petition filed by the petitioners thereby setting aside the orders passed by the authority remanding the matter back to the learned Sub-Divisional Officer with a direction to consider the objections raised by the petitioners and to render a finding whether any sufficient cause was shown by the respondent nos.1 to 4 in filing the appeal after 20 years, the learned Sub-Divisional Officer has not recorded any reasons as to why the delay came to be condoned. He submits that the learned Sub-Divisional Officer has not shown on record as to why the delay ought to have been condoned and he decided the matter on merit. He submits that the Sub-Divisional Officer has also rendered various findings on merits without recording any reason as to why the delay of 20 years ought to have been condoned. He also placed reliance on the judgment of this Court in case of **Manjubai Nivrutti Bhondave & Ors. vs. Ramchandra Mahadu Bhondave & Ors.** delivered on 18th February, 2016 in Second Appeal No.522 of 2014 and also placed reliance on the judgment of the Supreme Court in case of **Balwant Singh vs. Jagdish Singh & Ors., (2010) 8 SCC 685.**

7. The respondent nos.1 to 4 on the other hand submits that since the Sub-Divisional Officer has rendered a finding of fraud against the petitioners while condoning the delay, this Court shall not

interfere with the finding of facts rendered by the learned Sub-Divisional Officer. He submits that initially his clients were not aware of the mutation entry for several years and thus delay was explained by his client.

8. A perusal of the orders passed by this Court in the writ petition filed by the petitioners clearly indicates that the earlier orders condoning the delay of about 20 years came to be set aside on the ground that the reasons were not recorded by the authority while condoning the delay. The last order of this Court while remanding the matter back to the Sub-Divisional Officer clearly indicates that the directions were issued to the Sub-Divisional Officer to consider the reasons recorded by the respondent nos.1 to 4, if any, in the application for condonation of delay and the objections raised by the petitioners and thereafter to render a finding whether sufficient cause was made out by the respondent nos.1 to 4 to explain the delay of 20 years.

9. A perusal of the application filed by the respondent nos.1 to 4 for seeking condonation of delay clearly indicates that there were no reasons recorded in the application for seeking condonation of delay of 20 years or that the same were not at all satisfactory. The learned Sub-Divisional Officer has taken a very casual approach in the matter by making a casual observation in the order that delay of

20 years ought to have been condoned. In my view, the impugned order passed by the learned Sub-Divisional Officer is in violation of the directions issued by this Court in the writ petitions filed by the petitioners. Learned Sub-Divisional Officer has not considered the alleged reasons recorded in the application for condonation of delay and has decided beyond the pleadings filed by the respondent nos.1 to 4 and the petitioners. In my view, the principles laid down by this Court in case of **Manjubai Nivrutti Bhondave & Ors.** (supra) and by the Supreme Court in case of **Balwant Singh** (supra) laying down the guidelines for condonation of delay and explaining what the sufficient cause would be, has totally overlooked by the learned Sub-Divisional Officer. The impugned order is in violation of the principles laid down by the Supreme Court in the aforesaid judgment and thus deserves to be set aside. Recording of reasons is forming part of the principles of natural justice which is grossly violated by the learned Sub-Divisional Officer in the impugned order.

10. I therefore, pass the following order :-

- a). The impugned order dated 29th September, 2015 passed by the learned Sub-Divisional Officer in RTS Proceedings No.381 of 2013 is set aside.
- b). The application for condonation of delay filed by the respondent nos.1 to 4 is dismissed.

- c). Rule is made absolute in aforesaid terms.
- d). There shall be no order as to costs.

(R.D. DHANUKA, J.)