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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.33521 OF 2017

Sonabai M. Vaity & Ors. ...Petitioners
V/s.
Yamuna Y. Kini & Ors. ...Respondents

Mr.Nitin Gangal for the Petitioners.

Ms.Savina Bangur for the Respondent Nos.1 to 15.

Ms.S.A. Mudbidri for the the Respondent No.17.

CORAM : R.D. DHANUKA, J.
DATE : 4TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 26th July, 2017 passed by the Maharashtra Revenue Tribunal allowing the Revision Application No.215 of 2016 filed by the respondent nos.1 to 14 herein inter-alia impugning the order passed by the Sub-Divisional Officer thereby rejecting the application filed by the respondent nos.1 to 14 for condonation of delay of three years and five months and impugning the order passed by the learned Tahsildar.

2. The respondent nos.1 to 14 claimed to be the co-tenants in respect of the land admeasuring 1.7 acres out of the land admeasuring 2-84-2 out of survey no.228, part (1) and land

admeasuring 1-54-6 out of land bearing CTS no.232, Part (1).

3. On 1st October, 2009, the learned Tahsildar passed an order in favour of the petitioners declaring the petitioners as the tenants under section 70(b) of the Maharashtra Tenancy & Agricultural Lands Act, 1948 (for short "the said Act"). The Sub-Divisional Officer rejected the appeal filed by the respondent no.17. The Maharashtra Revenue Tribunal rejected the revision application filed by the respondent no.17 on 1st October, 2013. The writ petition filed by the respondent no.17 was thereafter rejected on 9th February, 2015. In the special Leave Petition filed by the respondent no.17, the Hon'ble Supreme Court granted liberty to the respondent no.17 to seek review of the order passed by this Court. The said review petition was also thereafter dismissed by this Court by an order dated 12th June, 2016.

4. The respondent no.17 thereafter filed a writ petition *inter-alia* praying for certain documents from the petitioners. The said writ petition was also dismissed by an order dated 6th June, 2017.

5. After expiry of three years and five months, the respondent nos.1 to 15 without obtaining a leave of the learned Tahsildar, filed an appeal directly before the Sub-Divisional Officer and applied for condonation of delay of three years and five months. The said application for condonation of delay was dismissed by the Sub-Divisional Officer. The matter was remanded back by the learned

Maharashtra Revenue Tribunal before the learned Sub-Divisional Officer. Learned Sub-Divisional Officer has once again rejected the application for condonation of delay.

6. The Maharashtra Revenue Tribunal however, allowed the revision application filed by the respondent nos.1 to 14 by an order dated 26th July, 2017.

7. Mr.Gangal, learned counsel appearing for the petitioners invited my attention to various orders passed by various authorities, this Court and the Hon'ble Supreme Court in the earlier round of litigation between the petitioners and the respondent no.17. He also invited my attention to the application for condonation of delay filed by the respondent nos.1 to 14 before the Sub-Divisional Officer and also the findings rendered by the Maharashtra Revenue Tribunal in the impugned order dated 26th July, 2017. He submits that the respondent nos.1 to 14 were fully aware of the litigation between the petitioners and the respondent nos.1 to 14 and filed the said application for condonation of delay after expiry of three years and five months only when the respondent no.17 failed in all the proceedings against the other respondents right up to the Supreme Court. He submits that in the application for condonation of delay for seeking condonation of delay of three years and five months, no explanation was rendered by the respondent nos.1 to 14 as to how they came to know about the

impugned order passed by the learned Tahsildar in favour of the petitioners and why there was delay of three years and five months.

8. Learned counsel invited my attention to the reasons recorded by the Maharashtra Revenue Tribunal on 26th July, 2017 and would submit that those reasons recorded by the Maharashtra Revenue Tribunal are erroneous. The substantial delay of three years and five months were not at all explained in the application for condonation of delay.

9. Learned counsel for the respondent nos.1 to 14 on the other hand submits that the delay was sufficiently explained. Halya, predecessor of the respondent nos.1 to 14 expired and his legal heirs were kept in dart and thus the delay of three years and five months occurred in filing the appeal before the Sub-Divisional Officer was justified.

10. Learned counsel for the respondent no.17 supported the case of the respondent nos.1 to 14 and would submit that by the impugned order dated 26th July, 2017, the learned Sub-Divisional Officer was directed to dispose of the appeal upon remand within a period of six months from the date of appearance. She submits that the learned Sub-Divisional Officer must have decided the said appeal which was remanded by the Maharashtra Revenue Tribunal.

11. Mr.Gangal, learned counsel for the petitioners on

instructions, states that the said appeal has not been decided by the learned Sub-Divisional Officer pursuant to an order of remand dated 26th July, 2017 till date. Statement is accepted.

12. A perusal of the record indicates that the respondent no.17 had lost all through out in several proceedings filed by the respondent no.17 against the petitioners arising out of the order passed by the learned Tahsildar declaring the tenancy of the petitioners under section 70(b) of the said Act.

13. Insofar as the respondent nos.1 to 14 are concerned, those respondents are claiming to be the co-tenants in respect of the portion of the land through Halya admeasuring 17.5 acres out of substantial portion of the land in respect of which the petitioners were declared as the tenants by the learned Tahsildar which order has been upheld right upto the Supreme Court.

14. A perusal of the application for condonation of delay filed by the respondent nos.1 to 14 clearly indicates that there was delay of three years and five months in filing the appeal before the learned Sub-Divisional Officer. No leave was obtained from the learned Tahsildar before filing such appeal. Be that as it may, a perusal of the said application for condonation of delay indicates that they have not justified the gross delay of three years and five months. The respondent nos.1 to 14 are allegedly cultivating the adjoining lands

and thus were aware of the proceedings between the petitioners and the respondent no.17. Be that as it may, the respondent nos.1 to 14 were required to explain the gross delay of three years and five months.

15. With the assistance of the learned counsel for the parties, I have minutely perused the averments made by the respondent nos.1 to 14 in the said application for condonation of delay. The Maharashtra Revenue Tribunal has condoned the substantial period of delay of three years and five months without considering the fact that the delay was not explained in the application for condonation of delay filed by the respondent nos.1 to 14 and have adopted a casual approach in the matter.

16. The tenancy rights in favour of the petitioners of the larger property has been upheld right up to the Supreme Court after several litigations filed by the respondent no.17 against the petitioners on one or other ground.

17. In my view, there was no sufficient reason in the application filed by the respondent nos.1 to 14 in the application for condonation of delay. The Maharashtra Revenue Tribunal thus ought not to have condoned the delay by the impugned order dated 26th July, 2017 by taking a casual approach in the matter.

18. The submission made by Mr.Gangal, learned counsel for

the petitioners that the proceedings before the learned Sub-Divisional Officer upon remand, has not been decided so far and is still pending is accepted.

19. The impugned order dated 26th July, 2017 passed by the Maharashtra Revenue Tribunal is accordingly quashed and set aside. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

20. The application for condonation of delay filed by the respondent nos.1 to 14 is dismissed.

Vasant Anandrao Idhol Digitally signed by Vasant Anandrao Idhol Date: 2018.09.06 16:11:41 +0530

(R.D. DHANUKA, J.)