

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 203 OF 2019

1. Vaibhavi Hemant Patil
Age : 62 years, Occu.: Retired.
2. Pallavi Hemant Patil alias Pallavi
Abhijeet Mhatre
Age : 35 years, Occu. : Advocate
Both Adult, Indian Inhabitant,
residing at – Flat No.01, Ankur Building,
G. M. Road, Mhatre Wadi, Dahisar(West)
Mumbai – 400 068.

...Petitioners

Versus

1. Dy. Collector (Appeals)
Mumbai Suburban District Having office
at : Office of the Collector, M.S.D.
Administrative Building, 10th Floor,
Government Colony, Bandra (E),
Mumbai – 400 051.
2. Chetan Sudhakar Pathare
age : not known, Occu.: not known,
Residing at : A-5, Kirti CHS Ltd., C.S.T.
Road, Kalina, Santacruz(East),
Mumbai – 400 098

...Respondents

Mr. Vinduprakash Pandey, a/w Mr. Pramodkumar Pandey
and Mr. Vivek Tripathi, I/b Legal Edge LLP, for the
Petitioners.

Smt. Vaishali S. Nimbalkar, AGP for Respondent no.1.
Mr. Vishal Kanade, a/w Mr. Akshay Puranik, Mr. Amol
Bavare, Ms. Vrushali Pokharna, I/b Pragnya Legal, for
Respondent no.2.

CORAM: N. J. JAMADAR, J.

DATED: 12th JULY, 2019.

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the
consent of the Counsels for the parties heard finally.

2. By this petition under Article 227 of the Constitution of India, the Petitioners assail the legality, propriety and correctness of an order passed by the Deputy Collector (Appeals), Mumbai Suburban District, on 27th December, 2017, whereby the Deputy Collector has condoned the delay of about 11 years in preferring an appeal against the order passed by the Sub-Divisional Officer, Mumbai Suburban District, on 7th January, 2006.

3. The challenge to the impugned order directly invoking the writ jurisdiction of this Court arises in the backdrop of the following facts;

The Petitioner herein had filed an application to mutate her name to the land bearing Survey No.285A, Hissa No.1/3, Survey No.149, Hissa No.4 and 7, Survey no.178, Hissa No.11 and Survey No.139, Hissa No.14 of village Dahisar, Tehsil Borivali, Mumbai Suburban District, on the strength of the Will allegedly executed by her father and grand-father. The said application came to be allowed and Mutation Entry No.7124 came to certified on 30th January, 2003. Smt. Rajashri Sudhakar Pathare, the mother of Respondent no.2 Mr. Chetan Sudhakar Pathare, challenged said mutation by preferring an appeal before the Sub-Divisional Officer,

Mumbai Suburban District bearing Appeal No.RTS/REV/A-50/2004. The Sub-Divisional Officer by order dated 7th November, 2006 did not interfere with the certification of Mutation Entry No.7124 and was persuaded to drop the said proceedings.

4. It is the case of the Petitioners that, after lapse of about 11 years, Respondent no.2 herein, preferred an appeal before the Deputy Collector (Appeals) Mumbai Suburban District, Appeal No.C/RTS/ ADMN/A-05 of 2017, along with an application for condonation of delay without ascribing any justifiable reason therein. The Petitioners resisted said application by pointing out the unjustifiability of the prayer for condonation of delay. The Petitioners relied upon certain binding precedents. However, the Deputy Collector (Appeals), was persuaded to allow the application for condonation of delay by the impugned order without considering the objections raised by the Petitioners and even without advertng to the legal position brought to the notice of the Appellate authority. Hence, the impugned order is alleged to be in flagrant violation of the principles of natural justice and consequentially amenable to the writ jurisdiction of this Court.

5. Heard Mr. Pandey, the learned Counsel for the Petitioners, Smt. Nimbalkar, the learned AGP for the State/ Respondent no.1 and Mr. Kanade, the learned Counsel for Respondent no.2.

6. At the outset, the learned Counsel for Respondent no.2 raised objection to the tenability of writ petition on the count of existence of an efficacious alternate remedy. It was submitted that in view of the provisions contained in Section 247 and 257 of the Maharashtra Land Revenue Code (hereinafter referred to as 'the Code'), there is a statutory remedy before the authorities provided under the Code. In this backdrop, the learned Counsel for Respondent no.2 urged that this Court may not entertain the petition invoking the extra-ordinary jurisdiction.

7. Mr. Pandey, the learned Counsel for the Petitioner, per contra, urged with tenacity that the impugned order is liable to be interfered with in the writ jurisdiction as it is a glaring instance of exercising jurisdiction by the statutory authority in flagrant violation of the principles of natural justice. The learned Counsel for the Petitioners would urge that the stated grounds for condonation of inordinate delay of 11 years were unworthy of consideration. Drawing the attention of the

Court to the endorsement on the copy of the order passed by the First Appellate Authority dated 7th November, 2006, indicating the delivery of certified copy of the said order on 5th December, 2006 itself, it was urged that the claim of Respondent no.2 that he was unaware of the order passed by the First Appellate Authority was plainly incorrect. A bald assertion of financial difficulty made on behalf of Respondent no.2 would not have been a justifiable ground to condone the delay, submitted the learned Counsel for the Petitioners. A serious grievance was made that the Second Appellate Authority had not at all adverted to the binding precedents, which were tendered for perusal on behalf of the Petitioners along with a list of judgments. In this backdrop, according to the learned Counsel for the Petitioners, though an opportunity of hearing was given to the Petitioners, it cannot be said that it was an effective opportunity of hearing and the principles of natural justice were adhered to in letter and spirit.

8. The submission on behalf of the Petitioners that the Second Appellate Authority ought to have elaborately considered the matter, especially in the backdrop of the fact that there was inordinate delay of around 11 years in

preferring the Second Appeal, carries some conviction. Undoubtedly, the Courts and Tribunals lean in favour of condonation of delay so as to advance cause of substantial justice. However, when the delay is inordinate, the Courts and Tribunals are put on guard and seek an appropriate justification so as to make out a sufficient cause for condonation of delay. In the instant case the Appellate Authority has adverted to the principles which govern the jurisdiction as regards the condonation of delay. The judgments, which the Petitioners claim to have relied upon before the Appellate Authority, have not been considered. However, these aspects fall within the ambit of error within the jurisdiction. It cannot be said that the Petitioners were not given an opportunity of hearing. The principles of natural justice cannot be so expanded as to hold that non-consideration of a particular submission amounts to violation of the principle of providing an opportunity of hearing.

9. Having regard the nature of the controversy, instead of invoking the extra-ordinary writ jurisdiction of this Court, in the peculiar facts of the case, it would be appropriate to relegate the Petitioners to approach the statutory authorities. The interest of the Petitioners can be protected by directing

that till the superior statutory authority examines the matter of justifiability of the condonation of delay, the Second Appellate Authority shall not proceed with the hearing of the appeal.

10. The upshot of aforesaid consideration is that the petition stands disposed of with the following directions:

- (i)** The Petitioners shall approach the Appellate or Revisional Authority as may be permissible under the Code.
- (ii)** If the Petitioners file appeal/revision against the impugned order, the Appellate/Revisional Authority shall decide the same on merits and in accordance with law, as expeditiously as possible, and preferably within a period of six months.
- (iii)** If the Petitioners prefer appeal/revision against the impugned order, till the disposal of the said appeal/revision, the Second Appellate Authority i.e. the Deputy Collector (Appeals), shall not proceed with the hearing of Appeal No.C/RTS/ADMN/A-05 of 2017.

(iv) In order to obviate any complications on account of the Second Appellate Authority proceeding with the appeal in the intervening period, it is directed that the proceedings before the Deputy Collector, Mumbai Sub-Urban District, in Appeal No.C-RTS/A/05/2017, shall remain stayed for a period of eight weeks from today.

(v) It is hereby made clear that the Appellate/Revisional Authority shall not be influenced by any of the observations made by this Court in this order, which have been made for the purpose of deciding this petition only.

11. Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]