

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3488 OF 2019**

Sameer Anand Mere	.. Petitioner
Versus	
The State of Maharashtra & ors	.. Respondents

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Mr. David A. Joseph I/b David Associates for the petitioners.
Mr.D.S. Sakholkar I/b Mr.S.A. Waradkar for respondent no.4.
Ms.Nisha Mehra, AGP for respondent nos.1 to 3.

**CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.**

DATED : 13th JANUARY, 2020.

ORDER:- [Per Smt. Bharati Dangre, J.]

1 The subject matter of the petition is land bearing Survey No.21 corresponding CTS No.127, 127/1 to 9 situated at village Pahadi, Eksar, Taluka Borivali, Mumbai Suburban district. The petitioner before us who claims to be the co-owner of the said property along with eight other persons and whose names are reflected in the property cards issued as “Imla Malluk” is aggrieved by the order dated 31st August 2018 passed by the Superintendent of Land Records, Mumbai Suburban District, by which the said authority has admitted the Appeal filed by the

respondent no.4 by condoning an enormous delay of 47 years without a sufficient cause being shown to condone the same.

2 The land in question had two owners i.e. Devji Hiraji Kowli and Narayan Deora Kowli. The 7/12 extracts recorded the name of one Raghu Navsha Mere as a protected tenant and the 7/12 extract in the kul and khand column makes a reference to its use as 'Agriculture'. The Revenue entries placed on record reveal that the said land was put to use for cultivation of rice from 1944-51 and for the year 1954-59. In the year 1968, the 7/12 extract record a Non-agricultural entry (N.A). The entries in the land record are certified by the Talathi of Moregaon, Tahsil Borivali. A certificate of purchase was issued by the agricultural land tribunal in favour of Mr.Raghu Navsha in exercise of powers under Section 32(M) of the Bombay Agricultural and Tenancy Act, 1948 and he was declared as a deemed purchaser. The usual restriction of the land not being permitted to be transferred by way of sale, gift, exchange, mortgage, lease or assignment without previous permission of the Collector was a part of the said certificate issued on 21st May 1952. The said restriction continued its existence in the subsequent 7/12 extracts.

3 Mr.Raghunath Navsha Mere, a deemed purchaser of the land expired on 27th September 1967 and the names of his legal heirs got mutated in the revenue records as land holders.

Gangubai Raghunath Mere, wife of Raghunath Navsha Mere died on 17th January 1999, resulting into the names of her legal heirs being brought on the revenue record. The petitioners are the heirs of the deemed purchaser Raghu Navsha and the revenue entries record their names.

4 The Respondent No.4 instituted an Appeal under Section 247 of the Maharashtra Land revenue Code, 1966 which was registered as Appeal No.589 of 2018 and this appeal was accompanied with an application seeking condonation of delay of 49 years in instituting the Appeal. The Appeal prayed for cancellation and deletion of the names of the respondent no.1 Mr.Soma Jetha with respect to CTS No.127/1 to 4 and the name of the petitioners in respect of CTS Nos.127/5 to 9 from the records of the said survey officer.

5 The appellant who instituted this Appeal claimed to be the purchaser of the property from one Mr.Kanhaiyalal Bhuva and Dhirajlal Joshi by registered deed of conveyance dated 7th September 2011 which, according to him, is registered in the record property card on 30th May 2012 in the office of City Survey, Goregaon. The Appeal alleged that the said plot of land is occupied by unauthorized occupants/slum dwellers and the appellants were intending to develop the said property under the Slum Rehabilitation Scheme and accordingly, submitted a

proposal to the Slum Rehabilitation Authority on 22nd December 2017. The appeal contained an averment that when the property card was transferred in the name of the appellant, it was revealed that the name of the respondents are mutated in the property card and being aggrieved, the Appeal is filed alleging that the names are wrongly recorded. If meaningfully read the grounds in the appeal can be broadly summarized to convey that the entries are wrongly recorded and the City Survey Officer had failed to consider and appreciate that the property is covered within a slum and the respondents are only hutment dwellers on the said piece of land and it is the appellant who is the owner of the said property and the respondents are merely the encroachers/occupants.

6. Pertinent to note that the application for condonation of delay which sought to condone the delay of 49 years seeks condonation of delay on the ground that the appellants were not aware about the names of the respondent nos.1 and 2 being recorded in the property card till 30th May 2012 and the delay has occurred since the land is occupied by unauthorized occupants including the respondent nos.1 and 2 and when the proposal for rehabilitation was submitted by the appellant to the Slum Rehabilitation Authority and which was approved on 22nd December 2017 the authority directed removal of name of respondents from the "Ittar Haque" from the records of the

property and hence the delay of 49 years was prayed to be condoned.

7 The District Superintendent, Land Records, Mumbai without deciding the application for condonation of delay proceeded to examine the Appeal on merits. On recording the contention of the parties which included the reply opposing the application for condonation of delay filed by the respondent, the authority expressed some doubt about the entries recorded in the year 1968 as regards Survey No.127, 127/1 to 9 which record the names of one Kanhaiyalal H. Bhuvra and Dhirajlal N. Doshi as land holder. Subsequently, the *pherphar* have been effected on 23rd February 2012 and the authority proceeds to record that on Survey no.127, the name of Smt. Ramdevi Murli Upadhyay, Shri Rampyare Murli Upadhyay, Shri Yadunath Upadhyay and Shri Lalbahadur Murli Upadhyay are recorded whereas in the Other Rights Column of Survey No. 127/1 to 4, the name of Soma Jetha is recorded and entry of Survey No.127/5 to 9 record the name of Smt. Gangubai Raghunath Mere and other persons.

8 The impugned order records that the disputed land admeasuring 280.20 sq.m, as a consequence of the registered sale deed dated 7th September 2011 and *pherphar* No.66 dated 30th May 2012 stands in the name of the appellants before the authority. The impugned order records that perusal of the City

Survey records and in particular pherphar No.1323 dated 10th January 1964 in reference to 30 gunthas land from Survey No.22, it refers to an entry of a sale deed dated 19th December 1963 by which one Purshottam Shankar Patel has purchased the land from Raghu Navsha Nere and entry to that effect is to be found in the City Survey.

Recording this as creating a doubt and on the pretext that this calls for a detailed inquiry and a decision on merits, the District Superintendent, Land Record found it fit to condone the delay though not explained. He therefore, admits the Appeal by condoning the delay.

9 On perusal of the impugned order, we do not find any justification being recorded for condoning the delay of 49 years and we say so since when we have perused the application for condonation of delay where no reason is found to be cited. The Revenue entries effected as early as in the year 1964-1968 are sought to be revoked by a person who claims to be purchaser of the property in the year 2011. The respondent no.2 merely on the cloud of suspicion, which he records by noting some stray entries in the pherphar arrives at a conclusion that a detailed inquiry is called for. The document placed on record which is an agreement of lease dated 10th April 1965, in favour of Kanhaiyalal Bhuvra and Dhirajlal N. Doshi as lessors and one Murli Baldev

Bhaiya as lessee in respect of land bearing Survey Nos.21 and 22 situated at Goregaon Pahadi admeasuring 24000 yards contains the recital tracing the right of Raghunath Navsha in respect of 30 gunthas in Survey No.22. The recitals in the said lease, therefore trace the title of the present petitioners and merely by raising a doubt about the existence of the entries, we do not find any justification in the impugned order to reopen the entries after 49 years without even attempting to justify the delay caused, in seeking to revoke the said entries.

The rights of the parties being crystallized 47 years back cannot be opened on an application being filed on the basis that the properties purchased on 7th September 2011 and all the earlier entries in favour of the petitioners are to be written off and that too without attempting to convince the authority of the sufficient cause to condone the delay.

10 We are convinced that the impugned order dated 31st August 2018 passed by the respondent no.2 cannot be sustained. Resultantly, the same is quashed and set aside. Writ Petition is allowed in aforesaid terms.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE