

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 902 OF 2014

1. Vimalbai W/o Kaniram Pawar,
Age 60 years, Occu. Household,
2. Omprakash S/o. Kaniram Pawar,
Age 43 years, Occu. Agri.,
3. Keshav S/o. Kaniram Pawar,
Age 43 years, Occu. Agri.,
4. Ashok S/o. Kaniram Pawar,
Age 35 years, Occu. Agri.,

All R/o. Barad, Tq. Mudhkhed,
District Nanded.

.. Petitioners
(Original Applicants)

Versus

1. Bahubali S/o. Rameshchandra Mahajan
U/G. Rameshchandra Adinath Mahajan
Age Major, Occu. Agri.,
2. Sarjabai W/o. Dilip Mulange,
Age Major, Occu. Agri.,
3. Jyoti W/o. Anant Mulange,
Age Major, Occu. Agri.,
All R/o. Barad, Tq. Mudhkhed,
District Nanded

.. Respondents
(Original Non-applicants)

...

Mr. Vilas P. Sawant, Advocate for petitioners
Mr. G. V. Sukale, Advocate for respondents no. 2 and 3

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 30-11-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally, by consent of the parties.

2. This petition challenges the order dated 28-11-2013 passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad, thereby rejecting the applications filed by the petitioners seeking condonation of delay for bringing legal representatives on record, in Revision No. 63-B-2002-Nanded.

3. Petitioners are the original applicants. Petitioners are legal heirs of original revision-petitioner Goba s/o. Bakshu Pawar and respondents No. 1 to 3 are the original respondents in Revision No. 63-B-2002-Nanded filed before the Maharashtra Revenue Tribunal, Aurangabad. Land Survey No. 68 situated at Barad, Taluka Mudhkhed, District Nanded, admeasuring 11 Acre 18 R out of total admeasuring 32 Acre 36 R (for short, 'suit land'), is the subject matter of the proceedings. One Gulabchand was owner of the suit land and Goba was the tenant. After the death of Gulabchand, since no legal heirs initiated the proceedings for possession of the property from Goba Pawar. In the meanwhile, the heirs of deceased Gulabchand sold the suit land to

respondents No. 2 and 3. Goba, therefore, approached the Tahsildar, Mudhkhed and filed an application seeking certificate under Section 38E of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The certificate was issued in favour of Goba vide order dated 07-06-2001.

4. The respondents challenged the order passed by the Tahsildar by filing Appeal before the Additional Collector, Nanded, which came to be allowed on 17-07-2002 and the order passed by the Tahsildar was set aside. Goba Pawar challenged the order passed by the Additional Collector by filing Revision before the Additional Divisional Commissioner, Aurangabad, which was forwarded to the Maharashtra Revenue Tribunal, Aurangabad, and it was numbered as Revision No. 63-B-2002-Nanded. Goba was in touch with the Advocate, who filed Revision on his behalf, however, he suddenly expired on 10-11-2002, leaving behind wife and two sons as his legal heirs. After the death of Goba, son Kaniram was looking after the Revision petition as another son Lachiram was illiterate. On 23-10-2004, Kaniram died leaving behind the present petitioners as his legal heirs. Thereafter, Lachiram, who was issue-less, expired on 11-10-2012. Since the petitioners are illiterate, they had no knowledge about filing of Revision. After the petitioners got knowledge of the Revision,

they approached the Advocate and informed him about the developments. The petitioners were asked to bring death certificate as well as heirship certificate, which were procured by the petitioners. Thereafter, the applications seeking to set aside the abatement order and bringing them as heirs and legal representative of Goba were filed by the petitioners on 08-05-2013. The said applications came to be rejected. Hence, present petition.

5. Heard learned Advocate for the petitioners and the learned Advocate for the respondents.

6. The learned Advocate for the petitioners states that, liberal approach needs to be adopted while condoning the delay and the length of delay is immaterial. He, therefore, submits that impugned order be set aside and the delay may be condoned. In support of his submissions, he relied on the following decisions -

(i) ***Collector, Land Acquisition, Anantnag and another Versus Mst. Katiji and others, (1987) 2 Supreme Court Cases 107,*** and (ii) ***Baburao Ganpatrao Shirole since deceased through his L.Rs. Shrirang Dhariyasheel Shirole and others Versus Deccan Education Society, Pune and others, 2013 (1) Mh.L.J. 233.***

7. Per contra, the learned Advocate for the respondents vehemently opposed the petition, contending that there is inordinate delay on the part of petitioners, which is not properly explained, and therefore, the Maharashtra Revenue Tribunal has rightly rejected the delay condonation application as well as application seeking to set aside the abatement order. In support of his submission, he relied on the decisions in the cases of - (i) ***Balwant Singh (Dead) Versus Jagdish Singh and others, AIR 2010 (SC) 3043***, and (ii) ***Shri. Ulhas Vasudeo Falari and others Versus Smt. Anandibai Venkatesh Sawant and others, 2013 (3) All MR 210***.

8. It is not disputed that Goba initially filed the Revision. He expired on 10-11-2002. Thereafter, according to the petitioners, Kaniram was looking after the matter. Even Kaniram expired in the year 2004 and Lachiram, who was another son of Goba, died issue-less on 11-10-2012. Petitioners are the legal heirs of Kaniram. The petitioners being illiterate were not aware of their duty to approach the Maharashtra Revenue Tribunal and to inform Tribunal about the death of Goba, therefore, they belatedly approached by way of application dated 09-07-2013. While approaching the Tribunal, 10 years delay was caused. The Tribunal rejected the application on the ground that the petitioners

ought to have approached within 90 days from the date of death of Goba, no steps were taken by the petitioners since 02-07-2013. The Tribunal rejected the ground of illiteracy of the petitioners for condonation of more than 10 years delay.

9. It is settled legal position that the delay needs to be liberally condoned. While accepting the sufficient cause for delay, the words "sufficient cause" should receive a liberal construction so as to advance substantial justice and the same cannot affect the rights of parties. The ratio in **Baburao Ganpatrao Shirole** (*supra*) supports the case of petitioners.

10. In the case of - **Balwant Singh** (*supra*), by referring to Rule 1 of Order XXII of Code of Civil Procedure, the Hon'ble Apex Court has held that the said provision mandates that the death of a defendant or a plaintiff shall not cause the suit to abate, if the right to sue survives. In other words, in the event of death of a party, where the right to sue does not survive, the suit shall abate and come to an end. In the event, the right to sue survives, the concerned party is expected to take steps in accordance with provisions of this Order. If the appellant shows that sufficient cause for not preferring the application within the prescribed time, application deserves to be allowed. In the above cited case, in paragraph 15, principles laid down in **Perumon Bhagvathy**

Devaswom Versus Bhargavi Amma, (2008) 8 SCC 321, are enumerated.

11. There can not be any dispute about the principles laid down by the Honourable Apex Court in the said decision. This court is of the considered view that in the peculiar facts of this case, sufficient cause is shown by the petitioners for condonation of delay, the delay therefore deserves to be condoned. The respondents can be compensated adequately while condoning the delay.

12. For the afore-stated reasons, following order would meet the ends of justice.

ORDER

- I) The writ petition is allowed.
- II) The impugned order passed by the Maharashtra Revenue Tribunal, Aurangabad on 28-11-2013 in Revision No. 63-B-2002-Nanded, is hereby quashed and set aside.
- III) The applications of the petitioners seeking delay condonation and setting aside the abatement of order, are hereby allowed.

- IV) The amendment be carried out by the petitioners within four weeks from today.
- V) Rule is made absolute in above terms subject to costs of Rs.10,000/- (Rs. Ten Thousand), to be paid by the petitioners to the respondents.

(NITIN B. SURYAWANSHI)
JUDGE

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