

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

REVIEW APPLICATION NO.168 OF 2014
IN
WRIT PETITION NO.6295 OF 2013
WITH
CIVIL APPLICATION NO.11884 OF 2019
IN
REVIEW APPLICATION NO.168 OF 2014

Trimbakdas s/o Shankarlal Zanwar,
Age : 63 years, Occupation : Agri,
R/o Ausa, Tq.Ausa,
District Latur.

...REVIEW APPLICANT

Since the review applicant died during the
pendency this Review Application, his
following L.Rs. are brought on record:-

1. Smt.Padma w/o Trimbakdas Zanwar,
Age : 58 years, Occup : Household.
2. Brijmohan s/o Trimbakdas Zanwar,
Age : 39 years, Occup : Medical Practice.
3. Sow.Rachana w/o Anup Baheti,
Age : 34 years, Occup : Household.

All R/o Aditya Sanskruti Society,
Ambejogai Road, Latur,
District Latur.

-VERSUS-

1. Himayat s/o Noor Islam Patel,
Age : 60 years, Occupation : Agri,
R/o Ausa, Tq.Ausa, Dist. Latur.

2. Tahsildar, Ausa,
District Latur.

...RESPONDENTS

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Shri V.D.Salunke, Advocate for the Review Applicant and his
legal heirs.

Shri V.D. Hon, Senior Advocate h/f Shri A.V. Hon, Advocate for
Respondent No.1.

Shri S.G. Sangle, AGP for Respondent No.2.

...

CORAM : RAVINDRA V. GHUGE, J.

Reserved on :- 03rd September, 2021

Pronounced on :- 07th September, 2021

JUDGMENT :-

1. Civil Application No.11884/2019 praying for liberty
to bring the legal heirs of the deceased Review Applicant on
record, is allowed. Addition be carried out forthwith.

2. On 11.12.2015, this Court had passed the following
order:-

*“Learned Advocate for the applicant/petitioner
seeks an adjournment beyond vacation.*

2. *Mr.Hon, learned Advocate appearing on behalf
of respondent No.1 submits that pendency of
this review petition is likely to preclude the
competent authorities from proceeding with
the acquisition of land under the Highways
Authorities Act.*

3. *It is trite law that pendency of a review*

petition does not operate as a stay of the judgment sought to be reviewed.

4. *As such, stand over to 12/01/2016 at the request of the applicant.”*

3. On 03.08.2016, this Court had passed the following order :-

- “1. *Call for the record and proceedings in Case No.1997/TNC/CR-55 from the Office of the Tahsildar at Ausa, Dist.Latur and in Appeal No.11/Land Reforms/593, from the Office of the Dy.Collector (Land Reforms) Latur, Dist.Latur decided on 21/07/2011.*
2. *Stand over to 31/08/2016. Hamdast granted at the request of the applicant.*

4. On 20.11.2017, considering the request of the applicant, the following order was passed :-

- “1. *Mr.Salunke, learned Advocate submits that the complete record file from the Maharashtra Revenue Tribunal, Aurangabad in Case No.48/B/2011/L, decided on 24/06/2013, has not been forwarded to this Court in its totality.*
2. *Considering the above, it is directed that the complete record and proceedings, barring the record which has already reached this Court, decided by the Learned Maharashtra Revenue Tribunal, Aurangabad on 24/06/2013 in Case No.48/B/2011/L shall be transmitted to this Court. Registry of this Court shall initiate appropriate steps for implementation of this direction.*
3. *Stand over to 12/01/2018.*
4. *The learned Advocates representing the litigating sides are permitted to inspect the record available with the Record Section*

concerning this review application.”

5. On 05.03.2021, taking note of the submissions of the applicant as regards the reference to the documents, the following order was passed:-

- “1. *Shri Khande, learned advocate, mentions on behalf of Shri Salunke, learned advocate representing the applicant, that he is held up in a special bench matter today. He is otherwise ready with the matter. The record and proceeding has been perused and important documents have been flagged.*
2. *Shri Hon, learned senior advocate, submits that because of the pendency of this Review Application, despite this Court having noted that the pendency of the review shall not be an impediment for any proceeding to be continued, the acquisition proceedings are not taking shape. Consequentially, the respondents, who have lost their land in acquisition, are unable to receive their compensation.*
3. *In view of the above, both the sides shall prepare their written notes of submissions and exchange their notes by 17.03.2021 and file them in the registry of this Court. On 19.03.2021, both the parties would make references to the documents, which they seek to highlight/ point out from the record and proceedings.*
4. *Stand over to 19.03.2021.”*

Thereafter, due to the restricted hearings as per the SOP, this matter could not be heard.

6. I have considered the submissions of the learned advocates appearing for the respective sides for quite sometime

and have noted their contentions set out in their Written Notes of Submissions.

7. In the light of the law crystallized by the Honourable Supreme Court in *Lily Thomas vs. Union of India*, AIR 2000 SC 1650, *Kamlesh Verma vs. Mayawati and others*, 2013 ALL SCR 3411, *N.Anantha Reddy vs. Anshu Kathuria*, 2014 AIR SCW 1058, *Perry Kansagra vs. Smriti Madan Kansagra*, 2019(20) SCC 753, *Shri Ram Sahu (Dead) vs. Vinod Kumar Rawat and others*, 2020 (6) Bom. CR 425 (SC) and *Yashwant Sinha and others vs. Central Bureau of Investigation*, (2020) 2 SCC 338, a review petition is not to be entertained so as to enable the parties to reargue the writ petition. So also, if material documents before the Trial Court were not cited or are discovered for the first time, before the High Court, a review could be entertained.

8. Having noted the submissions of the learned advocate for the applicant and the learned Senior Advocate on behalf of respondent No.1 and upon perusal of the Written Notes of Submissions, it is apparent that both the sides have practically reargued their cases in the writ proceedings.

9. Notwithstanding the above, the learned advocate for the applicant has relied upon the documents, which are a part of

Case No.1997/TNC/CR-55 in the office of the Tahasildar at Ausa, District Latur and from Appeal No.11/ Land Reforms/ 593, in the office of the Deputy Collector (Land Reforms), Latur. These relevant documents marked and flagged by the parties, are as under:-

(a) 7/12 extract

(b) The order of the Tahasildar dated 02.04.1997 on the application of the respondents dated 07.01.1997 (wrongly typed as 07.11.1997) with regard to the entries in the cultivation column to the extent of 15 acres land.

(c) The notings in Case No.97/TNC/CR-55, wherein there is allegedly no proof of tenancy.

(d) The affidavit with regard to the Vakalatnama of advocate Shri S.K.Inamdar giving a consent to fix the price under Section 38-A of the Hyderabad Tenancy and Agricultural Lands Act, so as to allege a fraud on the part of advocate S.K.Inamdar and advocate N.G.Lohare.

(e) The alleged bogus affidavit, which the Tahasildar accepted as a consent and passed an order on 10.10.1997 declaring respondent No.1 as a tenant purchaser of the land.

10. I have perused the documents (five of them, as have been flagged with written markings by the learned advocate for the applicant). These documents, according to the applicant, would indicate a fraud played by respondent No.1. However, there is no explanation forthcoming as to why has the applicant refrained from registering a complaint before an appropriate forum or the Police Station alleging fraud on the part of respondent No.1. Moreover, barring the portion of the land at issue with regard to which respondent No.1 was declared a tenant purchaser, who has purchased the land after the price was fixed, the present applicant had sold out his remaining portion of land admeasuring 12 acres. It appears that the applicant, after a delay of 13 years and 09 months, has chosen to question the right of respondent No.1 in the backdrop of the acquisition proceedings under the National Highways Act which would fetch respondent No.1, compensation for having lost the said land in acquisition.

11. The thrust of the applicant's submissions is clearly on the aspect of delay. There is no dispute that he had approached the Deputy Collector (Land Records) after 13 years and 09 months from the date of the change in revenue records showing respondent No.1 as the tenant purchaser. The delay was

condoned ex-parte by the Deputy Collector vide order dated 21.07.2011. The aggrieved respondent preferred the revision before the Maharashtra Revenue Tribunal. The applicant filed a pursis stating that the order of the Deputy Collector may be set aside and the matter may be remanded for a fresh hearing. As the Tribunal did not entertain such a pursis, the applicant had approached the learned Division Bench of this Court (Coram : A.S.Oka (as His Lordship then was) and Sunil P. Deshmukh, JJ) by filing Writ Petition No.4042/2012. On 09.05.2012, the learned Division Bench passed the following order:-

- “1] *Heard learned counsel for the petitioner. The petitioner preferred an appeal before the Sub Divisional Officer. There was a delay of more than 13 years in preferring the appeal. By order dated 21st July, 2011, the said delay has been condoned by the Sub Divisional Officer. Being aggrieved by the said judgment and order, the 1st respondent preferred a Revisional Application before the Maharashtra Revenue Tribunal, at Aurangabad.*
- 2] *The submission of the learned counsel is that, the only contention raised by the 1st respondent before the Revisional Authority is that the delay was condoned without notice to the 1st respondent. He stated that, a pursis was filed before the Revisional Authority consenting for an order of remand with a direction to the Appellate Authority to decide the application for condonation of delay afresh. He submitted that notwithstanding the said consent given by the petitioner, the Revision Application is not being disposed of.*
- 3] *We have considered the submissions. The challenge before the M.R.T. Is to an order whereby the Appellate Authority has condoned the delay of*

more than 13 years. It is true that the main contention raised in the Revision Application is that the 1st respondent was not heard before the delay was condoned.

- 4] *In a matter like this, where the Appellate Authority has purportedly condoned the delay of 13 years or more, the order of remand cannot be mechanically passed by the Revisional Authority. The Revisional Authority can always look into the case made out in the application for condonation of delay and decide the Revision Application on merits. Only at the time of final hearing of the Revision Application, the Revisional Authority can consider the case for remand.*
- 5] *At this stage, the learned counsel for the petitioner prays that direction be given to the Maharashtra Revenue Tribunal at Aurangabad to decide the Revision Application expeditiously. However, it appears that at present there is no Member available of the Maharashtra Revenue Tribunal at Aurangabad. Therefore, it is for the petitioner for apply to the In-charge Member of the Maharashtra Revenue Tribunal for expediting the hearing of the Revision Application.*
- 6] *Subject to what is observed hereinabove, no case for interference is made out. Writ petition is dismissed.”*

12. Pursuant to the above, the Tribunal framed the following issues:-

- “I) *Whether, the impugned order passed by the learned Deputy Collector (General) is contrary to law?*
....YES
- II) *Whether, there was substantial defect in following the procedure which resulted in miscarriage of justice?*
....YES
- III) *What order?*See Final Order”

13. In view of the above issues, the Tribunal referred to the various citations (six) placed before it by the applicant and by considering the law laid down in the ***Collector, Land Acquisition, Anantnag v/s Mst.Katiji, AIR 1987 SC 1353***, drew the following conclusions:-

- “(xi) After careful perusal of the record of Deputy Collector (LR) and record of litigation before the learned Tahasildar, it is clear that consent has been given by the respondent in both the proceedings before the learned Tahasildar i.e. firstly at the time of taking entry of the name of revision applicant in cultivation column in respect of disputed land and secondly, at the time of declaring him as a tenant purchaser. Admittedly, no criminal procedure has been initiated by respondent against revision applicant in respect of fraud to have been played by revision applicant in obtaining the said order in his favour.
- (xii) Considering the documents placed on record, it is clear that respondent was well aware about the passing of order by the Tahasildar in favour of revision applicant in the year 1997 as he was party to that litigation and accordingly, while executing the sale deed in respect of the land occupied by him from the same survey number he did not show the area of said survey number occupied by the revision applicant. Revision opponent is well educated person and in such situation, it cannot be said that he was not aware about the decision passed by learned Tahasildar.
- (xiii) In view of the above discussion, I conclude that respondent was unable to show sufficient cause for condonation of delay caused in preferring appeal before the learned Deputy Collector

(LR). Not only this, but from record it seems that the learned Deputy Collector (LR) without giving opportunity to other side hurriedly passed the order in favour of revision opponent which shows that the learned Deputy Collector (LR) did not follow the procedure for deciding such application which resulted in miscarriage of justice.

(xiv)

ORDER

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Delay condonation application directed by revision applicant in a proceeding bearing No. quoted supra is rejected. Consequently, the appeal directed by respondent before the learned Deputy Collector (LR) stands dismissed.

24.06.2013”

14. It cannot be lost sight of that the present applicant is an advocate. So also, the Tribunal has considered the record only to assess as to whether, the applicant could be right in alleging that he was unaware about the proceedings by which, respondent No.1 purchased the land as a tenant. After noticing that 15 acres of the land of which the tenant became a purchaser owner, the remaining 12 acres of land which remained with the applicant was sold by him. Had he been unaware about the portion of land (about 15 acres) being purchased by the tenant, he would have dealt with the said land as well. Having sold the 12 acres of land

to which he held a valid title and having kept himself aloof from the land purchased by the tenant, the Tribunal realized that the reasons put forth for condonation of delay of 13 years and 09 months, were frivolous.

15. I have dealt with the above issues in my judgment dated 09.04.2014 (sought to be reviewed) and I noticed that the Tribunal dealt with the proceedings only to the extent of the delay aspect, which was addressed to it. I have also restricted my judgment to the delay aspect. Reference to the documents was made only to closely scrutinize the allegations of the review applicant that a fraud was played and he was unaware of the entire proceedings.

16. As such, this Review Application is devoid of merit and is, therefore, dismissed.

17. The record and proceedings be returned to the respective authorities forthwith.

kps

(RAVINDRA V. GHUGE, J.)