

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1 OF 2020

Rajendra Gangaram Berde and ors.Petitioners
Vs.
Mahadev Ramchandra Tawade and ors. Respondents

Mr.Ajit N.Jakhadi a/w Mr.Amol Chile, for the Petitioners.
Mr.Sandip J.Ghogare, for Respondent No.1.
Mr.A.B.Kadam, AGP for the Respondent - State.

CORAM : M. S. KARNIK, J.

DATE : 17th MARCH, 2021

P.C. :

. Heard learned Counsel for the Petitioners. The Petitioners are aggrieved by the order dated 09/04/2019 passed by the District Superintendent of Land Records, Ratnagiri condoning the delay of 66 years in filing the Appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short 'Code') .

2. The Respondents herein were aggrieved by the entries in respect of land survey No. 107 Hissa Nos. 24 & 26

pursuant to the sub-division and the entries made in the measurement book. According to the Respondent No.1 and as for the reasons stated in the application for condonation of delay, he was not aware of the sub-division and the entries made in the measurement book. This came to his knowledge only prior to 7 months before filing of the Appeal. Along with the Appeal an application for condonation of delay was filed. The District Superintendent of Land Records, Ratnagiri condoned the delay in filing the Appeal.

3. Learned AGP and learned Counsel for Respondent No.1 raised a preliminary objection that against the impugned order, there is a remedy of filing Appeal under Section 247 of the Code. Learned Counsel for the Petitioners contended that existence of alternate remedy is no bar for challenging the impugned order. According to him, detailed reply was filed opposing the request for condonation of delay which was more than 66 years. None of the submissions taken in reply by the Petitioners are considered. According to him, apart from not considering the contentions taken in reply, even the order condoning the delay is an un-reasoned order. Learned Counsel therefore relied upon the decisions of this Court in the case of Shre Coop.Housing Society Ltd. Vs. State of Maharashtra and ors.

in Writ Petition No. 3434 of 2016 ; Mrs.Janaki Subhash Sawant Vs. District Superintendent Land Record, Sangli and ors. in Writ Petition No. 3333 of 2017 and also decision of Telangana High Court in Writ Petition 6090 of 2019. Learned Counsel also relied on the decision of Hon'ble Supreme Court in the case of **Whirlpool Corporation vs Registrar Of Trade Marks, Mumbai & ors. (1998) 8 SCC 1** wherein it is held that alternate remedy has been consistently held not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Learned Counsel for the Petitioners therefore submitted that in the present case, the exercise of jurisdiction by the Appellate Authority is completely erroneous in as much as none of the submissions made on behalf of the Petitioners in reply to the condonation of delay application are considered and moreover, the impugned order is an un-reasoned order. In such a situation, according to him, existence of alternate remedy cannot be a bar to entertain the present Petition.

4. I have gone through the impugned order. The

Appellate Authority while condoning the delay has observed that the predecessor of Respondent No.1 was not aware of the subdivision and the entries in the measurement book in respect of the Survey No. 107 Hissa No. 26. The Appellate Authority having found substance in the contention of the Respondent No.1 condoned the delay. It is not that there are absolutely no reasons in support of the impugned order condoning the delay. Whether the reasons are just and proper in the given facts is for the Appellate Authority to consider. In my opinion, the law laid down by the Hon'ble Supreme Court in **Whirlpool Corporation case** (supra) will not apply to the facts of the present case.

5. In this view of the matter, the Petitioners are relegated to the alternate remedy of filing Appeal under Section 247 of the Code.

6. It is made clear that all contentions on merits are kept open. In the event, the Appeal is filed, the same be considered on its own merits and without being influenced by any of the observations made by me in this order.

7. The Petitioners have been prosecuting the present

Petition bonafide and therefore in the event the alternate remedy is invoked by the Petitioners within a period of 4 weeks from today, the Respondents not to raise objection of limitation.

8. Writ Petition is disposed of.

(M.S.KARNIK, J.)