

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Writ Petition No. 611 of 2021

Khemchand S/o Prakashchandra Kochar,
Aged about 44 years, Occ. : Business,
R/o. Ram Mandir Ward, Tah. Hinganghat,
District Wardha.

... Petitioner

.. Versus ..

(1) Municipal Council Hinganghat,
Through It's Chief Officer,
Tah. Hinganghat, District Wardha.

(2) The Authorized Valuation Officer,
Municipal Council Hinganghat

(3) Town Planner, Wardha

.... Respondents

Mr. R. K. Thakkar, Advocate for the petitioner
Mr. M. P Kariya, Advocate for respondent 1

CORAM : ROHIT B. DEO, J.
DATED : 25-10-2021

ORAL JUDGMENT

Heard.

2. Rule. Rule made returnable forthwith.

3. Heard finally with consent of learned counsel appearing for the parties.

4. The limited grievance is that the learned Magistrate refused to condone delay of 102 days in preferring appeal under Section 169 of the Maharashtra Municipal Councils, Nagar Pachayats and Industrial Townships Act, 1965 (Act).

5. Section 169 of the Act provides an appellate remedy to a person who is aggrieved by the assessment of property tax. The petitioner was served with demand for Rs. 5,36,064/- (Rupees Five Lacs Thirty Six Thousand and Sixty Four). The appeal ought to have been preferred on or before 13-7-2018. However, the petitioner presented the appeal after the expiry of the limitation and sought condonation of delay on the ground of illness and the consequent inability to approach the counsel.

6. The petitioner placed on record prescription dated 19-9-2018 issued by Dr. Rahul Bhoyar which indicates that since 90 days prior to the said prescription, the petitioner was suffering from lumber issues.

7. While the revisional court has refused to interfere with the order passed by the learned Magistrate and a finding is concurrently recorded that the petitioner has not shown sufficient cause for condonation of delay, I am inclined to allow the petition for two reasons. The first reason is that the averments in the application have gone unrebutted in the

sense that the Municipal Council did not rebut the averments on oath. I have perused the record and it is seen that the Council objected to condonation of delay primarily on the ground that such power is unavailable in the statute and in passing mentioned that the reasons given in support of condonation are false. The averments in the application for condonation of delay are on oath and in the absence of a counter affidavit, particularly, in view of existence of some material to suggest that the petitioner was ill, more liberal approach could have been adopted by the courts below. I am inclined to give an opportunity to the petitioner to test the objection to the tax assessment on merits. The orders impugned are quashed.

8. The delay is condoned subject to petitioner paying costs of Rs. 3,000/- (Rupees Three Thousand) to the Municipal Council.

9. The learned Magistrate shall proceed to decide the appeal on merits as expeditiously as possible.

JUDGE

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