

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

WRIT PETITION NO.1799 OF 2017

Manohar Ganpat Patil and Ors.

..Petitioners

Versus

Union of India

..Respondent

Mr. Ashutosh Gole i/by Girish J. Paryani, for the Petitioners.

CORAM : NITIN W. SAMBRE, J.

DATE : 6th APRIL, 2022

PC.

1. Heard Mr. Ashutosh Gole, learned counsel for the petitioners.

2. Petitioners after having suffered an order of eviction passed by the Estate Officer under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as “the said Act” for the sake brevity) chose to prefer a suit being RCS No.3 of 2009. The order of Estate officer was passed on 11th February, 2006, whereas the suit was preferred in 2009 claiming that the structure which is occupied by the petitioners is not covered by the order of the Estate Officer. As such, declaration and injunction was sought to the above effect. After the dismissal of the suit on 22nd November, 2011, an appeal preferred by the petitioners being Civil Appeal No.11 of 2011 was also dismissed on 25th July, 2014.

3. After the aforesaid rituals were over, the petitioners have taken recourse to the provisions of Section 9 of the said Act thereby preferring an appeal challenging the order of Estate Officer, which was time barred. The appeal was accompanied with a prayer for condonation of delay which is rejected vide impugned order dated 23rd February, 2016 passed by the learned District Judge-1, Vasai. As such, this petition.

4. Contentions of learned counsel for the petitioners are, considering the fact that the petitioners were pursuing remedy before wrong forum that too under incorrect advise, the Court below, so also the Appellate Court has failed to consider aforesaid facts while dealing with the prayer for condonation of delay. According to him, it can be *prima facie* demonstrated that the order of eviction is not in relation to the structure in question. The Court below ought to have condoned the delay. He would invite attention of this Court to the certain facts that the premises from which the eviction of the petitioners is sought are in his settled possession for last 70 years.

5. I have considered aforesaid submissions.

6. Perusal of the order dated 11th February, 2006 passed by the Estate Officer depicts that the petitioners were served with the notice and the Estate Officer has passed a reasoned order. From 2006 till 2014 when the appeal has been preferred under Section 9

of the said Act along with application for condonation of delay, it is claimed that the petitioners were pursuing the suit. I have perused the orders passed in the suit by the Trial Court, so also Appellate Court. Prayers in the suit were not in relation to the questioning legality of the order passed by the Estate Officer passed on 11th February, 2006, but declaration was claimed that the order of the Estate Officer does not pertain to the suit property. The judgment of the Appellate Court is not questioned by the petitioners before the proper forum. As such, the order of the Estate Officer remained in operation as same was not questioned till the appeal under Eviction Act was preferred.

7. This Court is required to be sensitive to the fact that the suit referred above was preferred on 9th March, 2009, whereas the order of Estate Officer was passed on 11th February, 2006. As such, the petitioners owes explanation for not questioning order passed by the Estate Officer from 11th February, 2006 till the filing of the appeal under Section 9 of the said Act, which is in 2014 i.e. for eight years. There is no convincing reason from the petitioner which warrants exercise of discretion so as to condone the delay. The order impugned appears to be in tune with the aforesaid observations of the learned District Judge. No case for interference is made out.

8. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]