

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4312 OF 2022

Madhukar s/o Motiram Olivkar and others

Vs.

State of Maharashtra, through Department of Revenue and Forest, Maharashtra State
Mantralaya, Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J. B. Kasat, Advocate for petitioners.
Mr. N. R. Rode, AGP for respondent nos.1 to 5.
Mr. Y. J. Chandurkar, Advocate for respondent no.6

CORAM : AVINASH G. GHAROTE, J.

DATE : 18/08/2022

1. The petition challenges the order dated 3.3.2015 by the learned Sub-Divisional Officer, whereby the appeal of the respondent no.6 has been accepted, which order has been upheld by the Additional Collector, the Divisional Commissioner as well as the State Government.

2. Mr. Kasat, learned counsel for the petitioner points out that along with the Revenue Appeal under Section 247 filed by the respondent no.6, an application for condonation of delay was also filed on 6.9.2014 seeking to condone the delay of 7 years and 6 months (page 24), however without considering that application, the learned Sub-Divisional Officer by the order dated 3.3.2015 has allowed the appeal itself which order has

been confirmed by the respondent nos.1 to 3.

3. Mr. Chandurkar, learned counsel for respondent no.6 submits, that no fault can be found with the action of the learned Sub-Divisional Officer since the entertaining of an appeal and deciding on merits itself would mean that the delay stood condoned.

4. I am afraid that I am unable to agree with the submission of respondent no.6 and specifically, when application was already pending before the learned Sub-Divisional Officer for condonation of delay in which reply was also filed by the present petitioners on 8.12.2014 (page 33), it was his duty to have decided the application first. The quantum of delay is also not meager but substantial in nature, and therefore any order thereupon was liable to be reasoned order. However, since the application itself has not been decided, the subsequent orders passed by the respondent nos.1 to 4, cannot be sustained, in light of what has been held in ***Shankar Ramrao Rangnekar Vs. Narayan Sakharam Sawant and others*, 2013 (1) Mh. L.J. 706** (para 8), considering which, the impugned orders passed by respondent nos.1 to 4 are hereby quashed and set aside and the matter is remanded back to the respondent no.4 for hearing and deciding the application for condonation of delay first.

(3)

917.wp.4312.2022

5. The parties shall appear before the learned Sub-Divisional Officer on 26.8.2022.

6. The petitioners shall place the copy of this order before the learned Sub-Divisional Officer to apprise him the same.

JUDGE

Sarkate