



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10893 OF 2023

Rajendra Changdeo Nikat & Ors. ...Petitioners
Versus
Sharadchandra Damodar Thipase & Ors. ...Respondents

Mr. V. S. Talkute, for the Petitioners.

Mrs. V. S. Nimbalkar, AGP, for the State/Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATED : 25th OCTOBER 2023

P.C. :

1. Heard Mr. Talkute, learned counsel appearing for the Petitioners and learned AGP appearing for the Respondent-State.
2. By the present Writ Petition, the Petitioners are challenging the legality and validity of order dated 2nd November 2015 passed by the learned Member (Judicial), Maharashtra Revenue Tribunal, Mumbai on Deputation to, Maharashtra Revenue Tribunal, Pune(hereinafter referred to as **“the MRT”**). The learned MRT has passed the following operative order on 2nd November 2015:-

ORDER

“The revision is partly allowed.

The order passed by the Sub-Divisional Officer,

Sonali

Madha Sub Dn., Kurduwadi, in T.A. No.2/2007, dt.29/2/2008 is set aside.

Matter remanded back to the Ld. SDO Madha-Kurduwadi, SDO after receiving the papers from this tribunal and after appearance of the party, he shall frame a separate issue regarding condonation of delay which is caused in filing the appeal. The opponent-tenant has also be given opportunity to file say to application of condonation of delay.

Ld. SDO to hear both the parties and on the basis of oral/documentary evidence and after hearing both the parties shall decide the issue of limitation/delay. If Ld. SDO will come to the conclusion that delay is required to be condone on the basis of justifiable ground, which are being presented in the application by the applicant, he shall condone the delay and thereafter only shall decide the appeal before him on merit.

Since the matter is very old and there are many round of litigation, Ld. SDO shall decide the matter as early as possible, but not later than 31/1/2016.

Both the parties are directed to appear before Ld. SDO on or before 23/11/2015. On that day the appellant is suppose to file an application for condonation of delay.

No order as to costs.

R & P if called from the Tribunals below be sent back forthwith.

Sonali

Intimation of this order be sent to both the parties & Tribunals below by the registry of this Tribunal.”

(Emphasis added)

3. Thus, the learned MRT by said order dated 2nd November 2015 remanded back the matter to the learned Sub-Divisional Officer (hereinafter referred to as “**the SDO**”). Thereafter, the present Petitioners have participated in the proceedings before the learned SDO and learned SDO by order dated 12th June 2017 thereafter, again remanded the matter to the learned Tahsildar, Karmala.

4. It is significant to note that the present Petitioners have also appeared in the proceedings before the learned Tahsildar, Karmala. Learned Tahsildar, Karmala by order dated 5th September 2019 set aside the certificate issued under Section 32M of the Bombay Tenancy and Agricultural Lands Act, 1948 and passed consequential order. The said order passed by learned Tahsildar, has been challenged by the present Petitioners before the learned SDO. Learned SDO has again by order dated 29th October 2021 set aside the order of learned Tahsildar and again remanded back the matter to the learned Tahsildar.

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5. By the present Writ Petition, the Petitioners are inter alia impugning the order dated 2nd November 2015 passed by the learned MRT. There is delay of about 7 years in filing the Writ Petition. Apart from that, the Petitioners have accepted the order dated 2nd November 2015 passed by the learned MRT and have participated in the proceedings before the learned SDO after remand and thereafter subsequent orders have been passed. The Petitioners may be aggrieved by order dated 29th October 2021 passed by the learned SDO. However, there is alternate remedy to challenge said order.

6. Accordingly, there is no substance in the Writ Petition challenging impugned order dated 2nd November 2015 passed by the learned MRT. The Writ Petition is dismissed, however with no order as to costs.

7. It is clarified that this Court has not considered the merits of the case and all contentions on merits are expressly kept open.

[MADHAV J. JAMDAR, J.]