

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6195 OF 2018

Shri. Arjun Pandurang Baravkar
and anr.

...Petitioners

V/s.

Shri. Nageshwar Devsthan Trust
and Ors.

..Respondents

Mr. P.B. Shah i/by. Ms. Gunjan Shah, for the Petitioners.

Mr. Sandeep S. Salunkhe, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 October 2023.

P.C. :

1. The challenge in the present petition is to the order dated 29 January 2018 passed by the Maharashtra Revenue Tribunal, Pune rejecting Revision preferred by the Petitioners. In their Revision, the Petitioners had challenged the order dated 27 May 2016 passed by the Sub-Divisional Officer condoning the delay in filing the Tenancy Appeal. In the Tenancy Appeal, the Respondents have challenged the order dated 19 March 1993 passed by the Agricultural Lands Tribunal-cum-Tehsildar fixing

the purchase price of the land in question under the provisions of Section 32G of the Maharashtra Tenancy and Agricultural Lands Act. Since there was delay in filing the Tenancy Appeal, the application for condonation of delay was filed. By order dated 27 May 2016, the Sub-Divisional Officer has proceeded to condone the delay. Aggrieved by the decision of the Sub-Divisional Officer, the Petitioner preferred Revision before the Maharashtra Revenue Tribunal, which has been rejected by order dated 29 January 2018, which is the subject matter of challenge in the present petition.

2. I have heard Mr. Shah, learned counsel for the Petitioner. He would contend that the Respondent did not make out any case for seeking condonation of inordinate delay of over 20 years in filing the tenancy case. According to Mr. Shah, the only reason cited in the application for condonation of delay was illiteracy of the Trustees when infact one of the Trustees is Graduate in Commerce whereas another Trustee has completed education upto 12th standard. Mr. Shah would further submit that the land in question is not the property of the Trust. He would invite my attention to the Schedule of the Trust in which the land in question does not figure. He would submit that the proceedings for inclusion of the present land in the Trust Schedule are still pending. That once the land in question does not figure in the Schedule of the Trust, no material existed before the Sub-Divisional Officer to presume that the land is of the Trust and on that count, sought condonation of inordinate delay of 20 years in filing the Tenancy Appeal could not be granted. He would submit

that there is no pleading in the application seeking condonation of delay about the exact date on which the Respondents acquired knowledge of passing of the order dated 19 March 1993. He would submit that in case of another similar situated tenant, similar proceedings of the Trust have been rejected not just on the ground of delay but also on merits. He would therefore pray for setting aside the orders passed by the Maharashtra Revenue Tribunal and Sub-Divisional Officer.

3. Mr. Salunkhe, the learned counsel appearing for the Respondents on the other hand would oppose the petition and support the orders passed by the Tribunal and the Sub-Divisional Officer.

4. After having considered the submissions canvassed by the learned counsels for the parties and on perusal of the orders passed by the Sub-Divisional Officer and Maharashtra Revenue Tribunal, it is seen that the moot question involved in the Tenancy Appeal filed by the Respondents is whether the land in question is the property of the Trust or not. The Sub-Divisional officer has taken into consideration some of the revenue entries for the purpose of arriving at a *prima-facie* conclusion that the name of the Trust was reflected in the revenue records at some point of time. The Sub-Divisional Officer has also taken into consideration the fact that while fixing the purchase price vide order dated 19 March 1993, the Agricultural Lands Tribunal-cum-Tehsildar directed that the name of the Tenant/

Purchaser should be reflected in 'other rights' column since the property belongs to the Trust. The Sub-Divisional Officer also took into consideration the Government Resolution issued on 30 July 2010 directing verification of various land of Trust which have been illegally transferred in the name of private persons. Considering all these factors, the Sub-Divisional Officer has proceeded to condone the delay.

5. On the basis of the findings recorded by the Sub-Divisional Officer, it is sought to be contended that a presumption is already raised that the land actually belongs to the Trust. In my view, the said findings cannot be used for the purpose of drawing any presumption that the land in question is the property of the Trust. This is something which needs to be determined while deciding the merits of the matter. The observations made by the Sub-Divisional Officer are only for the purpose of determining the issue whether the delay in filing the Tenancy Appeal could have been condoned or not. Admittedly, the Trust was not impleaded in the proceedings filed before the ALT which resulted in passing of order dated 19 March 1993. Therefore there was no reason for the Trust to acquire the knowledge of the order dated 19 March 1993. By condoning delay, the Sub-Divisional Officer wants to verify whether the land is Trust's property or not. If it is established that the land is of the Trust, the same would change the entire perspective of the case. Therefore, since the issue sought to be raised by the Trust is of substantial importance, the Sub-Divisional Officer has correctly granted an

opportunity to the Trust to plead its case by condoning the delay. In my view, therefore no patent error can be traced in the approach of the Sub-Divisional Officer in condoning the delay.

6. Mr. Shah has placed reliance on the judgment of the Apex Court in **Majji Sannemma @ Sanyasirao V/s. Reddy Sridevi & Ors. . 2022 (1) Mh.L.J. 433 (S.C.)**. However the said judgment deals with the issue of condonation of delay in filing the Second Appeal, where Appellant was a party to the proceedings before the lower Court. In the present case, it is an admitted position that the Respondents were not impleaded as parties in proceedings before the ALT-cum-Tehsildar which resulted in passing of order dated 19 March 1993. Therefore, the judgment of the Apex Court would have no application to the facts of the present case.

7. Mr. Shah has also relied upon the judgment of this Court in **Baban Rambhau Tikande & Anr. V/s. Shrivithal Mandir Swakul Sali Samaj Public Trust, Pune (2020) Mah. LJ 115**. However, the said decision would be relevant for the purpose of determining the issue as to whether the land in question is a Trust property or not. This would form part of decision making process while examining the merits of the Tenancy Appeal. At this juncture, I do not wish to go into the issue as to whether the land in question is indeed Trust's property or not. Mr. Shah has also contended that the G.R. dated 30 July 2010 has subsequently been modified. This is something which the Sub-Divisional Officer will take into consideration while deciding

the Tenancy Appeal on merits. All contentions with the regard to the said issue are required to be examined by the Sub-Divisional officer while examining the merits of the matter.

8. Since no patent error can be traced in the order passed by the Sub-Divisional Officer and ALT-cum-Tehsildar, the present petition cannot be entertained. The Writ Petition is accordingly **dismissed** with no order as to costs.

9. After the order is pronounced, Mr. Shah would pray for continuation of the interim order staying the proceedings before the Sub-Divisional Officer for a period of six weeks to enable the Petitioner to test the present order before the Apex Court. The prayer is opposed by Mr. Salunkhe. Considering the fact that the proceedings are already pending for considerable period of time, the request of Mr. Shah is rejected.

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SANDEEP V. MARNE, J.