

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

WRIT PETITION NO.1726/2021

Janata Shikshan Sanstha, Siregaon Bandh, Tahsil Arjuni Morgaon, District
Gondia, through its President Shri Chameshwar Dudhramji Gahane and
another
...Versus...
Shri Ashok Soma Zode and others

WITH
WRIT PETITION NO.3081/2021

Janata Shikshan Sanstha, Siregaon Bandh, Tahsil Arjuni Morgaon, District
Gondia, through its President Shri Chameshwar Dudhramji Gahane and
another
...Versus...
Ku. Kusum Lahanu Nahmurte and others

WITH
WRIT PETITION NO.3082/2021

Janata Shikshan Sanstha, Siregaon Bandh, Tahsil Arjuni Morgaon, District
Gondia, through is President Shri Chameshwar Dudhramji Gahane and another
...Versus...
Ku. Anuratha Mukharu Meshram and others

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

Court's or Judge's orders

Shri A.Z. Jibhkate, Advocate for petitioners
Shri A.P. Raghute, Advocate for respondent no.1
Mrs. M.A. Barabde, AGP for respondent nos.2 and 3

CORAM : AVINASH G. GHAROTE, J.
DATE : 10/02/2023

1. It is not disputed that the dates are same in all the matters and therefore all the matters are decided by this common order.

2. The petitions challenge the rejection of the application for setting aside *ex parte* order, dated 10/03/2021 (pg.196) in Writ Petition No.1726/2021. Shri A.Z. Jibhkate, learned counsel for the petitioners submits that the matters were proceeded *ex parte* on 10/07/2019 due to absence of the petitioners herein, on account of the illness of the President and Secretary of the petitioner-Trust, in respect of which, documents were placed on record, which have not been considered in their proper perspective, while rejecting the application for setting aside *ex parte* judgment. He submits that since the petitioners have good case on merits, the impugned judgment and the judgment dated 11/07/2019, passed by the learned School Tribunal be set aside and the petitioners be granted an opportunity to contest the appeals. It is further submitted that any inconvenience, which may have been caused to the respondents, can be compensated by suitable costs, for which the petitioners are ready to compensate each of the respondent no.1 by Rs.50,000/-.

3. Shri A.P. Raghute, learned counsel for the respondent no.1 in all the petitions disputes the above position and submits that no sufficient cause has been shown for the delay and therefore the petitions need to be dismissed.

4. The notices of the appeals, were issued on 04/12/2018 and the date fixed was 05/01/2019. The record indicates that the petitioners were served on 08/01/2019 i.e. after the date fixed and on account of the ailment of the President and Secretary, they did not file appearance, as a result of which, an *ex parte* order was passed on 10/07/2019 and the *ex parte* judgment was passed on 11/07/2019. An application for setting aside the *ex parte* judgment came to be filed on 09/08/2019, which has been rejected by the order dated 10/03/2021 (pg.196). The documents on record from page 134 to 138 indicate that the Secretary of the petitioner-Trust was suffering from DUB with huge uterine fibroid and had undergone surgery for its removal and was advised bed-rest for three months from 27/12/2018 to 27/03/2019. The President of the petitioner-Trust had undergone coronary angiography and was also advised bed- rest. This would indicate that there was sufficient cause shown for non-representation.

5. That being the position, the judgment dated 10/03/2021 rejecting the application for setting aside *ex parte* judgment is hereby quashed and set aside and the application is allowed, resulting in setting aside the *ex parte* judgment dated 11/07/2019. The appeals are restored to its original file, however, subject to sum of Rs.50,000/- payable by the petitioners to the respondent no.1 in each of the petitions.

6. Shri A.Z. Jibhkate, learned counsel for the petitioners has today tendered three demand drafts of Rs.50,000/- each in favour of the respondent no.1 in each of the petitions, the receipt of which is acknowledged by Shri A.P. Raghute, learned counsel for the respondent no.1.

7. The writ petitions are therefore allowed in the above terms. The parties are directed to appear before the School Tribunal on 20/02/2023 and no further notice of appearance shall be required.

8. The written statements/written submissions opposing the appeals, if any, by the present petitioners shall be placed on record of the learned School Tribunal by 27/02/2023.

9. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar