

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

WRIT PETITION (WP) NO.2438 OF 2018

1) Shri Vasant S/o Motiram (**Dead**)

thr. LR's Saharkar, Aged about
79 years, Occ. Agriculturist,
R/o. Mangalwari Peth,
At Post Umred, Tah. Umred,
District Nagpur.

1] Rajeshwar s/o Vasant Saharkar,
Aged about 56 years,
Occ. Business, R/o Mangalwaripeth,
Umred, Tah. Umred, District – Nagpur.

(amended as per Court's
Order dt.06.01.2023)

2] Sau. Pushpa w/o Kamlakar Hedau,
Aged about 51 years, Occ. Household,
R/o Gaziabad, Delhi.

3] Dilip s/o Vasant Saharkar,
Aged about 48 years, Occ. Business
R/o. Jogithana, Umred, Tah. Umred, District -
Nagpur.

4] Vinod s/o Vasant Saharkar,
Aged about 45 years, Occ. Business
R/o Mangalwaripeth, Umred,
Tah. Umred, District – Nagpur.

5] Chandrashekhar s/o Vasant Saharkar,
Aged about 42 years, Occ. Business,
R/o Mangalwaripeth, Umred,
Tah. Umred, District – Nagpur.

.... Petitioner(s)

// VERSUS //

1) District Superintendent of Land Records,
Nagpur.

- 2) The Municipal Council, Umred,
Tah. Umred, District Nagpur, through
its Chief Officer.
- 3) Taluka Inspector of Land Record,
Umred, Tah. Umred, District Nagpur.

... Respondent(s)

Shri A.S. Dhore, Advocate for the Petitioner
Shri D.P. Thakare, Addl.G.P. for the Respondent Nos.1 and 3/State
Ms B.P. Maldhure, Advocate for the respondent No.2

CORAM : ANIL S. KILOR, J.
DATED : 15th March 2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. The order dated 31.03.2018 passed by the District Superintendent of Land Records, Nagpur, condoning the delay in filing revenue appeal, is under challenge, in this writ petition.
4. The brief facts of the present case are as under:

It is the case of the petitioner that, he purchased land
Bhumapan No.36636, Sheet No.77 at Mouza Umred on

01.02.1974. On 05.02.2003, the Taluka Inspector of Land Records, Kalmeshwar passed an order, directing to correct the revenue record and thereby, recorded the name of the petitioner as Bhudharak (owner) in place of Municipal Council, Umred.

5. On 15.02.2011, the order dated 05.02.2003 was challenged before the District Superintendent of Land Records, Nagpur/respondent No.1 by filing proceeding under Section 257 of the Maharashtra Land Revenue Code, 1966 (for short “the MLR Code”), the same was rejected on the ground of tenability and further it was held that against the order dated 05.02.2003, appeal under Section 247 of the MLR Code is maintainable and not under Section 257 of the MLR Code.

6. Thereafter, the Municipal Council, Umred instead of filling the appeal before the respondent No.1 under Section 247 of the MLR Code, challenged the order dated 15.02.2011 before the Deputy Director of Land Records, Nagpur.

7. The said appeal was dismissed with an observation that the approach of the Municipal Council has casual and negligent.

8. Thereafter, the respondent No.2/Municipal Council filed an appeal before the respondent No.1 on 08.06.2016 along with application for condonation of delay.

9. The respondent No.1, after hearing the petitioner, passed an impugned order dated 31.03.2018, condoning the delay caused in filing the appeal, the same is the subject matter in the present petition.

10. The learned counsel for the petitioner points out that the delay in filing the appeal is more than 13 years and as such, there is an inordinate delay. It is pointed out that without recording any reason to condone the delay, it has been condoned.

11. It is pointed out that the only ground on which the delay is condoned, is that, the Municipal Council is a public body and the respondent No.1 is duty bound to protect the interest of the Municipal Council.

12. It is submitted that there is not a single observation made by the respondent No.1 that, the explanation offered by the

respondent No.2 for causing delay in filing appeal, was found satisfactory and sufficient for condoning the delay. He therefore, submits that in a most casual manner, the respondent No.2 has condoned the huge delay of 13 years.

13. The learned counsel for the petitioner has further pointed out that after the first proceeding which was not entertained by the respondent No.1 on the ground that the proceeding under Section 257 of the MLR Code is not maintainable and the proceeding under Section 247 of the MLR Code, is maintainable, vide order dated 15.02.2011, no steps were taken by the Municipal Council for four years and first time on 22.05.2015, the appeal was filed before the wrong authority and therefore, again it was dismissed as not tenable, vide order dated 15.02.2016.

14. He further points out that even thereafter, the Municipal Council did not take any steps to file appeal before the respondent no.1 for four months. He thus, submits that there was a complete casualness on the part of the petitioner for taking recourse under the provisions of the MLR Code.

15. It is submitted that once the rights of the parties are crystallized, unless a proper explanation is provided for causing delay, the authority concerned or the Court cannot condone the delay. He therefore submits that the impugned order needs to be quashed and set aside.

16. On the other hand, the learned counsel for the Municipal Council/respondent No.2 submits that the Municipal Council had no knowledge about the order dated 05.02.2003 and when they got knowledge, the steps were taken.

17. It is submitted that the land was in the name of the Municipal Council, Umred which was illegally transferred in the name of the petitioner under the grab of correction of revenue entries. She therefore, submits that considering the nature of illegality, the respondent No.1 has rightly condoned the delay.

18. The learned AGP supports the impugned order and submits that no legal infirmity has been committed by the respondent No.1 in condoning the delay.

19. In the light of the rival contentions of the parties, I have perused the record and the impugned order.

20. From record, it is evident that the order which is sought to be challenged in appeal before the respondent No.1 is dated 05.02.2003 and the appeal was filed on 08.06.2016 i.e. after 13 years.

21. As far as the knowledge of the Municipal Council is concerned, it is evident that, the first proceeding against the said order was filed after 7 years i.e. in the month of September-2010, which was not entertained and it was dismissed vide order dated 15.02.2011 by the respondent No.1, on the ground that the proceeding under Section 257 of the MLR Code is not maintainable, whereas, the appeal under Section 247 of the MLR Code, is maintainable, vide order dated 15.02.2011.

22. Thereafter, for four years, the Municipal Council remained silent and no appeal was filed under Section 247 of the MLR Code. In May-2015 the appeal was filed before the Deputy Director of Land Records, Nagpur, which was dismissed.

Thereafter, again for four months, the Municipal Council did not take any steps to file appeal before the respondent No.1.

23. Thus, I find substance in the submission of the learned counsel for the petitioner that at every stage, there was an unexplained huge delay on the part of the respondent No.2/Municipal Council.

24. It is a settled law that the State which represents the collective cause of the community does not deserve a litigant-non-grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression “sufficient cause”

25. The Co-ordinate Bench of this Court, in the case of ***State of Maharashtra & Ors. Vs. Onkar Manaji Kokani¹***, has observed thus:

“12. In Postmaster General and Ors. vs. Living Media India Limited and anr., reported in [(2012) 3 SCC 563] : [2012 ALL SCR 892], the Hon'ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by

1 2018(2) ALL MR 44

observing that department cannot take advantage of various earlier decisions where a very liberal approach was adopted when it came to condone delay on the part of Government agencies. The Hon'ble Supreme Court observed that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. It is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government department. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Hon'ble Supreme Court held that, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

26. In the teeth of above observations I revert back to the facts of the present case. In the present matter, the

respondent No.1 has condoned the delay on the ground that the respondent No.2/Municipal Council is a public body and thereby, ignoring the period of delay, which admittedly an inordinate delay, the delay has been condoned.

27. There is not a single observation made by the respondent No.1 that reasons cited by the Municipal Council for causing delay in filing appeal found satisfactory and sufficient for condoning the delay. In absence of such finding and without considering the law in this regard, the order came to be passed by the respondent No.1, condoning the delay, is erroneous and liable to be quashed and set aside.

28. At this stage, the learned counsel for the respondent No.2 prays for remand the matter and for grant of liberty to explain the delay.

29. Considering the request and the nature of dispute, I am of the opinion that the matter be remanded back to the respondent No.1 to decide the application for condonation of delay afresh, after giving sufficient opportunity to both the parties, including

filing of additional affidavit or amendment to the application to explain the delay, to which the petitioners have every right to file reply. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The order dated 31.03.2018 passed by the District Superintendent of Land Records, Nagpur, is hereby quashed and set aside.
- (iii) The petition is disposed of in the above terms.
- (iv) It is needless to mention here that the respondent No.1/District Superintendent of Land Records, Nagpur shall not get influenced by observations made in this order and shall decide the application on its own merits as per law.

[ANIL S. KILOR, J.]