



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1875 OF 2024

ARVIND VINAYAK MACHE
VERSUS
THE STATE OF MAHARASHTRA, THROUGH THE HON'BLE REVENUE
MINISTER AND OTHERS

...
Advocate for the Petitioner : Mr. Vijay P. Latange
A.G.P. for Respondents No.1 to 3 : Mr. P. D. Patil

..
AND
WRIT PETITION NO. 1876 OF 2024

BHANUDAS KESHAV MACHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA, THROUGH THE HON'BLE REVENUE
MINISTER AND OTHERS

...
Advocate for the Petitioners : Mr. Vijay P. Latange
A.G.P. for Respondents No.1 to 3 : Ms. A. S. Mantri

CORAM : S. G. MEHARE, J.

DATE : 20-03-2024

PER COURT :-

1. Heard the learned counsel for the petitioners and the learned A.G.P for respondents No.1 to 3/State.
2. Petitioners have approached this Court, against the order of respondent No.3/ Sub-Divisional Officer (Probationary), Shrigonda, District Ahmednagar, condoning the delay in preferring the appeal, passed in R.T.S. Applications No.178 and 165 of 2023, dated 29.12.2023.

3. Learned counsel for the petitioners submits that a statutory remedy is available; however, many litigations have cropped up, and after a lapse of many years, the revenue record was changed. Therefore, though the alternate remedy is available, this Court may invoke the jurisdiction under Article 226 of the Constitution of India.

4. To bolster his arguments, he relied on the case of ***M/s. Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority, A.I.R. 2023 Supreme Court 781***, wherein the Hon'ble Supreme Court observed that "The mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition 'not maintainable'. Availability of an alternative remedy does not operate as an absolute bar to the 'maintainability' of a writ petition, and the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than the rule of law. The 'entertainability' and 'maintainability' of a writ petition are distinct concepts. The object of 'maintainability' goes to the root of the matter, and if such an objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question

of 'entertainability; is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition, despite being maintainable, may not be entertained by a High Court for very many reasons, or relief could even be refused to the petitioner, despite setting up a sound legal point, if a grant of the claimed relief would not further public interest."

5. It has been further observed that, "Where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available."

6. In paragraph 6, the Hon'ble Supreme Court referred to paragraph No.15 of the decision reported in **(1998) 8 S.C.C. 1 : (A.I.R. 1999 SC 22) [Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others]** and has carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same reads as under:

- (i) where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) where there is a violation of principles of natural justice;
- (iii) where the orders of the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Learned counsel for the petitioners further relied on the case of **Santoshkumar Shivgonda Patil and others vs. Balasaheb Tukaram Shevale and others, A.I.R. 2009 S.C. (Supp) 2471.**

In this case, it has been held that no time limit is prescribed for the exercise of revisional power. However, ordinarily, the reasonable period within which power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code, 1966. However, a question arose before the Hon'ble Supreme Court: Could the power of revision under Section 257 of MLRC be exercised at any time, although no time has been prescribed for the exercise of such power? The Hon'ble Supreme Court referred to the case of **State of Gujarat v. Patil Raghav Natha, A.I.R. 1969 SC 1297**, with reference to Sections 65 and 211 of the Bombay Land Revenue Act, 1879, and finally held that "It seems to be fairly settled that if a statute does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time."

8. In the case at hand it appears that the controversy involved was on the disputed facts. Every party has a right to explain the

delay. The length of delay does not matter, but the reasons for the delay matter, and that is always to be tested on hearing both sides. The landmark judgment on this point is of **Collector, Land Acquisition, Anantnag v. Katiji, (1987) 2 SCC 107**. The petitioners have no grounds as carved out in the case of **Whirlpool** (supra). The petitioners had no complaint that the authority denied them an opportunity to hear. It is also not the case that the S.D.O. has passed the orders were not within its jurisdiction.

9. In view of the facts of the case, this Court is of the view that the petition does not pass the tests on the touchstone of the ratio laid down by the Hon'ble Supreme Court in a case **M/s. Godrej** (supra). So far as the case of **Santoshkumar** (supra) is concerned, perhaps it might not have been brought to the notice of the revisional authority. The Legislature has set up a hierarchy for the purpose of proper administration of justice. The provisions for appeal and revision have also been made in the Acts. At the cost of repetition, it may be said that the delay is a mixed question of facts and law. Therefore, it would be inappropriate at the hands of this Court to deal with the issue under the writ jurisdiction without availing the statutory remedy available to the petitioners.

10. For the above reasons, this Court is of the view that this is

not a matter to exercise discretion under Article 226 of the Constitution of India. Therefore, the petitions cannot be entertained as a statutory remedy is available to the petitioners. Hence, the petitions stand disposed of.

(S. G. MEHARE)
JUDGE

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