

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

**928 WRIT PETITION NO. 9710 OF 2023**

Lokesh Kantilal Gunware And Others  
**VERSUS**  
The Sub Divisional Officer Shrigonda And Others  
**WITH**

**CIVIL APPLICATION NO. 11139 OF 2023  
IN WP/9710/2023**

Lokesh Kantilal Gunware And Others  
**VERSUS**  
The Sub Divisional Officer Shrigonda And Others  
**WITH**

**CIVIL APPLICATION NO. 11140 OF 2023  
IN WP/9710/2023**

Lokesh Kantilal Gunware And Others  
**VERSUS**  
The Sub Divisional Officer Shrigonda And Others

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Mr. Sanket S. Kulkarni a/w Mr. Rohit Dhongde h/f Mr. Dilip B. Rode, Advocate for the Petitioner.

Mr. Prashant N. Khedkar for Respondent No.3 to 10.

Mr. A. V. Patil for Respondent No. 16 and 21.

Smt. A. S. Deshmukh, AGP for Respondent-State.

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**CORAM : KISHORE C. SANT, J.**

**DATE : NOVEMBER 12, 2024**

**PC.:**

1. Heard the learned Counsel for the parties.
2. By consent of the parties, the petition is taken up for final disposal at the stage of admission.

3. The grievance is raised against an order passed by the learned Sub-Divisional Officer, Shrigonda dated 30<sup>th</sup> June 2023 rejecting the application for condonation of delay of 99 days caused in filing the Revision Application under Section 23(2) of Mamlatdars' Courts Act, 1906.

4. The facts in short are as under:

That the Respondent Nos.3 to 10 had filed an application under Section 5(2) of the Mamlatdars' Courts Act, 1906 before the Tahsildar, Shrigonda without making this petitioners as a party. The Tahsildar by his order allowed the said application and directed petitioners to give road to Respondent Nos.3 to 10. It is the case of the petitioners that they are the owners of the land Gut No.37 situated at Hiradgaon, Tq. Shrigonda from which the road is directed to be given. The petitioners got the knowledge on 13<sup>th</sup> February 2022 of the said order. It was told that the parties are coming alongwith Police force to implement the order passed by the Tahsildar. It is, thereafter, the petitioners approached the Tahsildar and filed an application for copies of the application and the order to be challenged in revision. The said copies were received by petitioners on 15<sup>th</sup> February 2023. It is stated that the judgment and order was passed on 9<sup>th</sup> November 2022. However,

because of lack of knowledge, the petitioners could not approach the Revisional Authority in time. The application for condonation of delay was therefore also to be allowed.

5. The S.D.O. initially granted stay to the order passed by the Tahsildar. However, later on the learned Sub-Divisional Officer by way of impugned order rejected the application by refusing to condone the delay. It is this order which is under challenge in the present petition.

6. Learned Advocate for the petitioners vehemently argued that sufficient cause was shown for condonation of delay. The learned S.D.O. has not considered the reasons for delay. There is no discussion as to how the delay is not satisfactorily explained by the petitioners. He submits that instead of discussing the cause for delay, the learned Officer has considered the subsequent conduct of the petitioners in not attending the dates. He further submits that an order suffers from illegality. The substantive rights of the parties are involved and still revision is not heard on merits. Copy of order is placed alongwith Writ Petition continuing the interim relief which was granted by the learned S.D.O. The said relief though is not continued by this Court, however, statement of Tahsildar is recorded in the order dated 19<sup>th</sup> August 2023 that he shall not

proceed with the execution of the order passed by the Tahsildar dated 9<sup>th</sup> November 2022.

7. This petition is vehemently opposed Mr.Khedkar, the learned Advocate for Respondent Nos.3 to 10. Mr.Patil, the learned Counsel appearing for Respondent Nos. 16 and 21 supports the petitioners. The learned AGP appearing for Respondent No.1 and 2. The remaining Respondents are not present before the Court.

8. Mr.Khedkar, the learned Advocate for the Respondent Nos.3 to 10 submits that the learned S.D.O. has rightly considered the aspect of delay and has rightly held that no sufficient cause is shown to condone the delay. Even the subsequent conduct of the petitioners would show that they did not attend the dates though the contesting respondents appeared before the learned S.D.O. He prayed for rejection of the petition. He also opposes the continuation of any interim relief.

9. Learned AGP supports the order by submitting that the order passed by the learned S.D.O. is passed after the application of mind. The learned AGP also prayed for rejection of the application.

10. After hearing the parties and on going through the order, it is clearly seen that the learned S.D.O. has not discussed anything about the sufficiency of cause for condonation of delay. He has

considered the subsequent conduct of the parties. The petitioners were absent. Even looking at the cause stated by the petitioners, this Court finds that for the reasons stated in the application for condonation of delay are sufficient to condone the delay. It is also necessary to keep in mind that the petitioners had filed revision for securing their substantive rights. When substantive rights of the parties are involved, it is in the interest of justice to decide the case on merits instead of on technical ground. The reason stated is that the petitioners were not the parties to the original proceedings before the Tahsildar. This position is not disputed. It is clear that when the person is not a party to the proceedings, he may not get knowledge of the order passed in a such proceedings. It is possible that the petitioners had no knowledge of any such order till the order was sought to be executed. There is nothing brought on record to show that the petitioners had knowledge of the order passed by the learned Tahsildar. This Court therefore finds that the sufficient reasons are shown to condone the delay. Considering the aforesaid, this Court is inclined to allow the writ petition. Writ Petition is therefore allowed.

11. The authorities are directed to register the proceedings under Section 23 of the Mamlatdars' Courts Act, 1906 filed by the

petitioners.

12. The learned S.D.O. to decide the application for interim relief on merit. Till the application for interim relief is decided, the Tahsildar shall not take any action pursuant to the order dated 9<sup>th</sup> November 2022 passed by Tahsildar.

13. Writ Petition stands disposed of.

14. In view of disposal of Writ Petition, Interim Applications, if any, also stand disposed off.

15. Parties to co-operate in early disposal of the Revision Application. No party shall seek unnecessary adjournment. Revision Application shall be disposed off as earlier as possible and preferably before 31<sup>st</sup> March 2025 in any case.

**(KISHORE C. SANT, J.)**