

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2731 OF 2020**

Sambhaji Anant Mestri  
Since Deceased Through Legal heirs  
1A. Ravindra Sambhaji Mestri and Ors. ...Petitioners

Versus

Babaji Dhondabarao Kadam And Ors. ...Respondents

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Mr. Shashank C. Mangle, for the Petitioners.

Mr. Aniket Ranade for the respondents.

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**CORAM : AVINASH G. GHAROTE, J.  
DATE : 25<sup>th</sup> JUNE 2024**

**P.C.:**

1. Heard Mr. Mangle, the learned counsel for the petitioners and Mr. Ranade, the learned counsel for the respondents.
2. The petition questions the order dated 16.08.2018, passed by the learned Sub Divisional Officer (SDO), Rajapur, whereby an application for condonation of delay of 16 years to challenge the order dated 26.04.1989 passed under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (MT & AL

Act) holding that the petitioners as tenants of the land in question, has been condoned.

3. Learned counsel for the petitioners submits that in consequence to the order dated 26.04.1989, there was no necessity for the said order to be communicated to the respondent nos.1 and 2. He submits that even otherwise the said order was communicated to the parties by the Agricultural Land Tribunal (ALT) for which he relies upon a communication dated 06.05.1989 (page-76) of the compilation submitted by the petitioners and therefore would indicate that the similar communication ought to have been received by respondent nos.1 and 2. He also relies upon the order sheet (pages-43 & 44) of the aforesaid compilation to indicate that the respondent nos.1 and 2 had appeared in the proceedings and therefore they were aware of the order dated 26.04.1989.

4. Though a perusal of the order sheet indicates that the respondent Nos.1 & 2 had made a request for grant of an adjournment to the ALT by communication dated 04.01.1989, which was granted no further intimation, of the date on which the matter was thereafter fixed appears to have been issued to

them which has resulted in their absence from the proceeding before the ALT. The order sheet which has been filed by the learned counsel for the petitioners at page-44 of the compilation also does not indicate that the matter was at any time listed for evidence or arguments. On 03.04.1989 when the matter was listed, the presence of the petitioner was recorded and the respondents were shown as absent and the matter was posted for further inquiry on 26.04.1989. The order sheet also does not indicate as to what further inquiry was made on 26.04.1989, however the very fact that the order by the ALT came to be passed on 26.04.1989 itself would indicate no inquiry whatsoever was ever done and the order was passed. It is also necessary to note, that inspite of the order dated 26.04.1989 being in his favour, the petitioners did not take any steps to get his name mutated in the revenue records in place of the respondents Nos.1 & 2 and it is only when the proceedings for fixation of purchase price were commenced that the respondents acquired knowledge upon being noticed by the authorities. There is one more factor, which impels me to dismiss the petition and that is indicated by the fact that the present petitioner and after him his legal heirs were parties to

Regular Civil Suit No.20/2006, initiated by Sambhaji Anant Mestri in which permanent injunction of possession of the suit property in respect of which the tenancy is claimed was filed and the finding was recorded by the learned civil court that the said Sambhaji Anant Mestri was not in lawful possession of the said property, by the judgment and decree dated 10.02.2011. Regular Civil appeal filed by him against this being R.C.A. No.31/2011 also came to be dismissed on 16.06.2015. The record however indicates, that though this was in specific knowledge of the petitioners this position has been suppressed by them and has not been disclosed in the petition. The question of lawful possession has a great bearing upon a finding of tenancy to be rendered by the ALT and the authorities under the MT & AL Act in view of which, this will have to be considered by the authorities while deciding the appeal before the SDO. The conduct of the petitioners, in suppression of these judgment and decrees also requires to be noted for the purpose of exercising the discretionary power. Considering the above position, I do not find any reason to interfere in the impugned orders, as an opportunity needs to be granted to the respondents, to point out the correct

factual position to the SDO for testing the order of the ALT, in which the present petitioners, it appears has miserably failed as the judgments of the civil Court do not appear to have been brought to the notice of either the SDO or the MRT. The petition is therefore dismissed. No costs.

**(AVINASH G. GHAROTE, J.)**