

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13210 OF 2023

Dinkar Shankar Kochare Since Decd. Thr.

Lrs. And Ors.

...Petitioners

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. M. L. Patil for the Petitioners.

Mr. S. L. Babar, AGP for Respondent-State.

Mr. R. S. Datar for Respondent No.2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 16th FEBRUARY, 2024

P. C. :

1. By this petition the challenge is to the order dated 9th September 2022 passed by the Maharashtra Revenue Tribunal in Application No. KP 28/2019 rejecting the Application seeking condonation of delay in filing the restoration Application.

2. The facts of the case are that against the cancellation of 32M certificate under the Bombay Tenancy Act, Revision Application came to be filed by the tenants in whose favour purchase certificate was issued along with Application for condonation of delay. The said Application came to be dismissed for non prosecution *vide* 10th December 2019 by the

MRT and Application for restoration of the Revision Application was filed along with Application seeking condonation of delay of 11 months and 10 days in filing the restoration Application. The learned member of MRT upon consideration of the reasons stated in the Application declined to condone the delay of about 11 months caused in filing the restoration Application.

3. Heard Mr. M. L. Patil, learned counsel for the petitioners, Mr. S. L. Babar, AGP for Respondent-State and Mr. R. S. Datar for Respondent No.2.

4. Mr. M. L. Patil, learned counsel for the petitioners submits that Section 32M certificate issued in favour of the tenant came to be cancelled without setting aside the proceedings under Section 32G and as such the matter is meritorious. He further submits that sufficient reason was assigned for the delay in filing the restoration Application. However the learned member of MRT declined to exercise discretion and condone delay.

5. *Per contra*, learned counsel appearing for respondent No.4 has opposed the Application. He submits that the subject land was the

Devasthan land which has come to be illegally transferred and as such pursuant to the Government Resolution Section 32M certificate has been cancelled. He would further submit that after the Revision Application came to be dismissed for non prosecution, there is a substantial delay of about 11 months in filing the Application for restoration which has not been sufficiently explained and as such the impugned order does not warrant any interference.

6. Considered the submissions and perused the records.

7. Undisputed possession is that the Revision Application came to be dismissed on 10th December 2019 for non-prosecution. It appears that the advocate for the petitioner was not present when the matter was called out for hearing and as such the Application came to be rejected. In the Application seeking condonation of delay in filing restoration Application, it is submitted that the litigation was looked after by one Shankar Dinkar Khochare, who was applicant No.1 in Revision Application and due to his death as well as death of applicant no.5, the matter could not be prosecuted diligently. It is further submitted that during this time there was Covid pandemic and also there was floods in the village by reason of which steps could not be taken within time. The

learned member of MRT has assessed the reasons and was not satisfied by the same and has dismissed the Application. It needs to be noted that revisions applicants were agriculturists villagers and as such guided by legal counsel. It appears that the Application came to be dismissed due to fault on the part of the advocate. Further even if the explanations tendered were not satisfactory considering that by the order under challenge Section 32M certificates issued in favour of the revision applicants had been cancelled, the matter was required to be adjudicated on merits. It is well settled that a liberal approach has to be adopted while adjudicating the Applications for condonation of delay particularly when the litigants are villagers and are unaware of the legal procedures. In such cases Court usually adopts liberal approach and it is not necessary that each and every day of delay is required to be explained.

8. Considering the facts of the case, in my opinion the matter is required to be decided on merits and should not have been thrown out at the threshold on the ground of delay in filing the restoration Application.

9. In view of the above, impugned order dated 9th September 2022 is quashed and set aside. The Application dated 23rd December 2021 seeking condonation of delay in filing restoration Application is

allowed. Application for restoration is restored to the file to be decided on merits and in accordance with law.

10. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)