

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4709 OF 2023.

Narayan Balaji Yerguntalla & Ors.

...Appellants.

Versus

Ichalkaranji Municipal Corporation & Ors.

...Respondents.

*Mr. Prashant P. Kulkarni a/w. Ms. Rachna Mamnani for the petitioners.
Mr. Akshay P. Shinde for respondent No.1.
Ms. T. J. Kapre, AGP for respondent Nos.2 and 3.
Mr. Padmanabh D. Pise a/w. Ms. Sejal A. Hariyan i/b P. Padmanabh &
Associates for respondent Nos.4 to 10 & 12 to 24.*

Coram : Sharmila U. Deshmukh, J.

Date : 2nd July, 2024.

P. C. :

1. By this petition, the challenge is to the order dated 13th December, 2021 passed by the Maharashtra Slum Areas (I. C. & R.) Tribunal by which a delay of approximate 4043 days i.e. about 11 years has been condoned.

2. The facts of the case are that in the year 2007, declaration was issued by respondent No.1 under Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for

short, Slum Act) in respect of the subject property.

3. Application came to be moved by Respondent Nos.4 to 25 being Miscellaneous Application No.20/2018 before the Maharashtra Slum Areas (Improvements, Clearance and Redevelopment) Tribunal challenging the notification of the year 2007 on 1st August 2018 along with an application seeking condonation of delay.

4. The present petitioners, who are slum dwellers on the subject land in respect of which notification was issued were not made party to the proceedings which was filed only against respondent No.1- Ichalkaranji Municipal Council and the Collector. The Slum Tribunal by the impugned order condoned the delay on the solitary ground that the case of the Applicant is that they acquired knowledge of the said notification in the year 2018. With this one sentence of reasoning the delay of almost 11 years came to be condoned on payment of cost of Rs.500/-.

5. Heard Mr. Prashant P. Kulkarni for the petitioners, Mr. Akshay P. Shinde for respondent No.1, Mr. T. J. Kapre, AGP for respondent Nos.2 and 3 and Mr. Padmanabh D. Pise for respondent Nos.4 to 10 & 12 to 24.

6. Learned counsel appearing for the petitioner would submit that the notification was issued in the year 2007 and the respondents-owners had knowledge about the notification which is evident from

the order dated 25th July, 2017 passed by the Division Bench of this Court in petition filed by respondents-owners by which petition came to be rejected. He would further submit that despite having knowledge at least from the year 2017 which is evident from the order of this Court, delay has been condoned on the ground that the Applicant became aware of the notification in the year 2018. He submits that the discretion had therefore been wrongly exercised by the Tribunal which is required to be interfered with in exercise of powers under Article 227 of the Constitution of India.

7. *Per contra*, learned counsel appearing for respondents-owners would submit that it is not their case before the Tribunal that they acquired knowledge in the year 2018. Pointing out to the averments made in the application for condonation of delay, he submits that the respondents were aware about the notification in the year 2007 itself. However as there were various plot owners, the matter was being pursued individually and when the same did not fructify into any favourable order, upon the advice of one well wisher, the petition was filed before this Court and by order dated 25th July 2017, the petitioners became aware of the remedy of the appeal and thereafter appeal came to be filed. He submits that the Tribunal has come to a wrong finding that the date of the knowledge of the notification was in the year '2018' for which the respondents could not be blamed. He

further submits that by Application what was in fact being sought was benefit of Section 14 of the Limitation Act and therefore the delay is required to be condoned by giving benefit of the said provision. He submits that even on merits respondents have a good case as the proposal sent by respondent No.1 Municipal Council to the State Government under Section 37 of the MRTP Act has been rejected. He therefore submits that even considering the facts of the case there is merit which should not be thrown out at the threshold. He relies upon the decision in the case of ***Imam Mirasaheb Nadaf vs. State of Maharashtra and Ors., 2005(1) ALL MR 82*** and ***Satish B. Kadhe and Ors. vs. Maharashtra Slum Areas (Improvement, Clearance and Re-Development) Tribunal, Bombay, (1997 (1) Mh. L. J. 107)*** that Section 14 of the Limitation Act would apply as in that case the same was applied.

8. Considered the submissions and perused the record.

9. By the Application filed by the respondents-owners, in the year 2018 the notification issued under Section 4 of the Slum Act of the year 2007 was sought to be challenged. The provisions of Sub-Section 3 of Section 4 of the Slum Act provides that any person aggrieved by declaration made under Sub-Section 1 of the Slum Act may within 30 days after the declaration in the official gazette apply to the Tribunal and that no such appeal filed after the expiry of 30 days as aforesaid

shall be entertained. Sub-Section (1A) of Section 45 of Slum Act applies Sections 4, 15, 12 & 14 of Limitation Act to filing of every appeal or application made to the Tribunal. The procedure prescribed under Section 4 of the Slum Act provides that where an appeal has been presented, Tribunal is required to publish a public notice in the newspaper in which the slum area is situated and also display at some conspicuous place in slum area calling upon the residents to file their objections to the appeal and it is only after the expiry of the period of 15 days that a day of hearing has to be fixed. In the present case, admittedly after appeal was presented there was no public notice issued and no hearing was given to the slum dwellers.

10. In the present case in the application filed by the respondents-owners the explanation tendered for condoning delay of about 11 years is that individual applications were being filed without any fruitful results and thereafter there were various complaints which were filed with Municipal Council, State Government etc. i.e. to various authorities. The application does not set out the relevant details as to when complaints were filed, the party who had filed the complaint and fate of the complaints. A general statement has been made that the complaints were made to the various Authorities and copies of the complaints were filed for the purpose of obtaining the benefit of Section 14 of the Limitation Act. Notably the stand taken is

that the Applicants were not aware of the legal remedies available for challenging the notification. For purpose of obtaining benefit of Section 14 of Limitation Act, it is required to be shown that both prior and subsequent proceedings are prosecuted by same party in good faith and due diligence and failure of prior proceeding was due to defect of jurisdiction or like cause. It is only where the proceedings were initiated before a wrong Forum under *bona fide* mistake that Section 14 of Limitation Act can be pressed into service. Section 14 of Limitation Act cannot be applied in cases of ignorance of law.

11. It is well settled that merely because complaints and representations are made to various Authorities the same would extend the period of limitation. What is required to be shown is that respondents diligently pursued the remedy under a *bona fide* belief that same was the only remedy which was available to them. It needs to be noted that respondent owners are not rustic villagers who could not have obtained legal advice in respect of the appropriate legal remedy. The delay is not of few days or few months but a colossal delay of about 11 years and it is not even their case that they were unaware of the notification of the year 2007. Considering that in the year 2017, they had approached this Court and it is not as if they were totally unaware of the legal path which they have to take for challenging the notification.

12. From paragraph No.6 of the application it appears that there was no consensus between the parties and the consensus arrived only in the month of December 2017 when they had successive meeting and decided to prefer the appeal. The reasons put forth cannot be accepted as there is no explanation much less sufficient explanation for condonation of delay of 11 years. There is distinction between inordinate delay which is unexplained and delay of few days as in the former case, the doctrine of prejudice steps in. It is well settled that every day's delay is not required to be explained but there should be sufficient explanation tendered. In the present case there is an unexplained inordinate delay of 11 years which has been condoned without following prescribed procedure. The impugned order is thus unsustainable.

13. As far as the reliance upon the rejection of the application by the State Government the same was under the provisions of Section 37 of the MRTP Act for releasing the land from reservation and that is something which is required to be pursued by the Municipal Council with the State Government. For that reason, it cannot be said that the notification under Section 4(1) of the Slum Act suffers from any infirmity and thus warrants interference even after delay of about 11 years.

14. It is well settled that in judicial review of the exercise of

discretion what is required to be considered is whether discretion has been properly exercised by the Authority condoning the delay. Considering that the delay has been condoned, without any reasoned findings the discretion has been exercised arbitrarily which is required to be interfered under Article 227 of the Constitution of India.

15. Coming to the judgments which were relied upon in the case of ***Imam Nadaf (supra)*** the Authority in that case while condoning the delay held that the petitioner was not aware of the said notification till the date of knowledge. It is in the absence of knowledge that delay of 23 years has been condoned.

16. As regards the decision in the case of ***Satish Kadhe (supra)*** is concerned, the learned Single Judge of this Court has considered the provisions of Sub-Section 1 of Section 45 as well as Sub-Section 3 of Section 4 of the Slum Act and has held that on sufficient cause being shown delay may be condoned even if the appeal has been filed beyond 30 days from the date of declaration in the official gazette. The said decision is binding upon this Court and as far as limitation is concerned, Section 14 of the Limitation Act would apply. However as noted above for the purpose of Section 14 of the Limitation Act what is required to be shown is that the respondents were pursuing a remedy in an alternate Forum under *bona fide* belief that same is the remedy which is available to them for the purpose of challenging the

notification. From the pleadings in the application seeking condonation of delay, the ingredients of Section 14 of the Limitation Act are missing.

17. In light of the above, Petition succeeds. The discretion exercised by the Slums Tribunal being arbitrary, the impugned order dated 13th December 2021 is quashed and set aside.

18. In view of disposal of petition, Interim/Civil Application, if any, does not survive for consideration and stands disposed of.

[Sharmila U. Deshmukh, J.]