

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2222 OF 2024

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2024.02.21
18:10:42
+0530

Rajashree Gokul Jagtap & Anr.

... Petitioners

V/s.

The State of Maharashtra, through
Sub-Divisional Officer & Ors.

... Respondents

Mr. Narayan Rokade for the petitioner.

Ms. D.M. Kapadia, AGP for State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 21, 2024

PC.:

1. The petitioner challenges order passed by the Additional Collector on the ground that in absence of application for condonation of delay, the order passed by the Additional Collector is without jurisdiction. The Apex Court in **Sesh Nath Singh v. Baidybatl Sheoraphuli Cooperative Bank Ltd.** reported in (2021) 7 SCC 313 has held that even in absence of application for condonation of delay, the Authority has power to condone the delay if the facts justify such exercise of power. It is for the Appellate Authority to consider whether necessary facts which permits exercise of such authority in the case of delay of 18 days to be treated as sufficient cause.

2. Moreover, in view of the judgment of the Apex Court in **CIT**

V/s. Chhabil Das Agrawal reported in (2014) 1 SCC 603, the Apex Court in paragraph 15 has held as under:

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal v. Superintendent of Taxes, Dhubri & Ors.* (AIR 1964 SC 1419), *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (1983) 2 SCC 433 case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

3. The Apex Court after considering two Constitutional Bench judgments has held that if the statute provides for dispensation of ventilation of rights, such dispensation must be adopted.

4. The judgment in **Balkrishna Sadashiv Thakur & Ors. v. Prabhakar Sadashiv Thakur & Ors.**, 2021 (5) Mh.L.J. 669 is applicable as in the facts of that case there was inordinate delay of three years and two months. In the facts of present case, the delay, according to the petitioner, is only 18 days. Therefore, it is for the statutory authority to complete the exercise as to whether the order passed by the Additional Collector was proper or not.

5. Learned Advocate for the petitioner states that the petitioner has withdrawn the Revision filed before the Commissioner. It is, therefore, open for the petitioner to apply before the Commissioner by filing separate Revision. If such Revision is filed, the Revisional Authority shall entertain the same on merits.

6. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)