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

WRIT PETITION NO.12918 OF 2022

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Jayashri Shirish Chaubal ... Petitioner

V/s.

Savalaram Kalu Tamhane
Since Deceased Through Legal Heirs ... Respondents

Mr. Bhushan Walimbe with Mr. Mayank Tripathi for the
petitioner.

Mr. Shashank Mangle i/bv Mr. Yogesh D. Keny for the
respondents.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 8, 2024

P.C.:

1. The petitioner (Landlord) is challenging order passed by the Maharashtra Revenue Tribunal, Mumbai confirming order passed by the Appellate Authority refusing to condone delay of 14 years 4 months in challenging order passed by the Tenancy Authorities under section 70(B) and section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The Additional Tehsildar and Agricultural Lands Tribunal, Kalyan in proceedings bearing Tenancy Case No.88 of 1995 on 1st July 1998 passed an order under section 70(B) of the Bombay Tenancy and Agricultural Lands Act, 1948. In proceedings No.4 of

1998, certificate under section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 was issued in favour of the respondents on 4th December 1998.

3. Challenging both orders, the petitioner filed appeal on 4th December 2012. Along with appeal the petitioner filed application for condonation of delay. The reason furnished by the petitioner for condonation of delay of 14 years 4 months is that the notice of proceedings was never served on the petitioner. Immediately after getting knowledge of the orders, the petitioner had filed the appeal along with the application for condonation of delay.

4. The Appellate Authority, by order dated 5th August 2013, allowed the appeal holding that necessary procedure for rendering the findings under section 70(B) and section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 was not followed.

5. The respondents challenged the order before the Maharashtra Revenue Tribunal, Mumbai. The Tribunal, by order dated 5th February 2015, partly allowed the revision by directing that the Appellate Authority should first decide the application for condonation of delay and then shall decide the appeal on merits.

6. The Appellate Authority, therefore, on 21st March 2017 passed an order refusing to condone the delay as the Appellate Authority recorded a finding that necessary procedure for service of notice was followed though individual notice was not served on the petitioner's address.

7. The petitioner, therefore, challenged the order of Appellate Authority before the Maharashtra Revenue Tribunal. The Tribunal,

by judgment and order dated 25th November 2021, dismissed the revision. Hence, the petitioner has filed present writ petition.

8. Learned advocate for the petitioner submitted that the erstwhile tenant in the property had surrendered his tenancy in favour of the petitioner. The entry in the revenue record as on 1st April 1957 indicates that name of the respondents was not entered in the revenue record on tillers day. Therefore, the orders passed by the Agricultural Lands Tribunal declaring the respondent as tenant under section 70(B) and passing order of granting certificate under section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 were without jurisdiction. He submitted that the respondents-tenants admitted in their examination-in-chief that they had never paid rent to the petitioner and they are not aware about the date or period when they came in possession of the property in dispute. Therefore, according to him, in such case, the provisions of the Limitation Act, 1963 would not apply as the orders are void .

9. Per contra, learned advocate for the respondents-tenants invited my attention to the mutation entries effected on 17th July 1998 recording orders passed by the Agricultural Lands Tribunal on 1st July 1998 under section 70(B) of the Bombay Tenancy and Agricultural Lands Act, 1948. He also invited my attention to mutation entry dated 28th February 2000 incorporates order dated 4th December 1998 passed under section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948. According to him, therefore, the revenue record from 1998 and 2000 refers to passing of orders under section 70(B) and section 32(G) of the

Bombay Tenancy and Agricultural Lands Act, 1948 and therefore, it cannot be said that the petitioner had no knowledge of passing of said orders. He submitted that the application for condonation of delay is devoid of merits.

10. Having considered the submission, in my opinion, the order passed under section 70(B) and section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 cannot be termed as void. The fact as to whether a person whose name is entered in revenue record on 1st April 1957 can be declared as tenant under section 70(B) of the Bombay Tenancy and Agricultural Lands Act, 1948 or certificate can be issued under section 32(G) of the said Act cannot be termed as jurisdictional fact as opposed to adjudicatory fact. The difference between the adjudicatory fact and jurisdictional fact has been explained by the judgment of the Apex Court in the case of **Carona Limited vs. M/s. Parvathy Swaminathan & Sons** reported in (2007) 8 SCC 559. The Apex Court, in paragraphs 29 to 36, held as under:

“Jurisdictional fact and adjudicatory fact

29. But there is distinction between “jurisdictional fact” and “adjudicatory fact” which cannot be ignored. An “adjudicatory fact” is a “fact in issue” and can be determined by a Court, Tribunal or Authority on “merits”, on the basis of evidence adduced by the parties. It is no doubt true that it is very difficult to distinguish “jurisdictional fact” and “fact in issue” or “adjudicatory fact”. Nonetheless the difference between the two cannot be overlooked.

11. Therefore, whether the respondents were tenants on tillers day or not was required was an adjudicatory fact. Absence of

sufficient evidence to arrive at conclusion that the respondents are the tenants in the properties in dispute cannot render such adjudication or order, void or nullity.

12. Having perused the mutation entries of 17th July 1998 and 28th February 2000, it is clear that both mutation entries clearly refer to order dated 1st July 1998 under section 70(B) Bombay Tenancy and Agricultural Lands Act, 1948 and order dated 4th December 1998 passed under section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948. If according to the petitioner, erstwhile tenant had surrendered possession in favour of the petitioner, it implies that the petitioner is in possession of property in dispute. If that be so, the petitioner cannot be heard to say that he was not aware of mutation entry of his land from the year 1998 and 2000 till filing of appeal in the year 2012.

13. Therefore, the reasons assigned in the application for condonation of delay that the petitioner was not aware of the entry of respondent as tenant or mutation entries dated 17th July 1998 and 28th February 2000 till the filing of appeal cannot be accepted.

14. Hence, the exercise of discretion by the authorities below rejecting application for condonation of delay cannot be termed as perverse.

15. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)