

Shabnoor

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

WRIT PETITION NO.4946 OF 2024

SHABNOOR
AYUB
PATHAN

Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2024.04.18
12:21:21 +0530

Ashok Mohanlal Lunkad

... Petitioner

V/s.

State of Maharashtra & Ors

... Respondents

Mr. Surel S. Shah a/w Mr. Abhay Dhadiwal & Ms. Vidhi Karia i/by Jayakar Partners, for Petitioner.

Mr. Swapnil P. Kamble, AGP for State/Respondent Nos.1 to 3.

Mr. Shrikrishna Ganbalvale i/by Mr. Daljeet Singh Bhatia, for Respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : APRIL 17, 2024

P.C.:

1. The writ petition arises out of exercise of power by the Appellate Authority under Section 247 of the Maharashtra Land Revenue Code, 1966 condoning delay of 6 years in filing Appeal challenging after 6 years of original order passed by the Circle Officer.

2. The Circle Officer based on an Application filed by the petitioner entered entry of *lis pendens* in favour of the petitioner by order dated 5 September 2015. Respondent No.4 challenged the order in the year 2021 by filing an Appeal on 27 October 2021. The reason assigned for condoning delay is that the delay caused is

not mala fide nor deliberate and additional reason of Covid pandemic was also assigned. The Sub-Divisional Officer by the impugned order accepted the cause shown by respondent No.4. The Sub-Divisional Officer relied on the judgment of Coordinate Bench of this Court which according to the Appellate Authority holds that in case of illegality in decision-making process, the Appellate Authority has to condone the delay.

3. According to the petitioner, assigning such reason will render the order passed by Sub-Divisional Officer without jurisdiction qualifying him to invoke power of this Court under Article 227 of the Constitution of India despite availability of efficacious statutory remedy. The law in relation to existence of availability of statutory remedy has been interpreted by the Apex Court in the case of **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or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal v. Superintendent of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.”

4. The Apex Court in paragraph 15 has laid down the parameters for exercise of power of this Court despite availability of alternative statutory remedy. However, it is held that if it is shown that a right is created under the statute and remedy is provided under the statute, in that case ordinarily the person invoking writ jurisdiction will have to adopt statutory remedy.

5. According to the petitioner, considering merits of the impugned order and the basis for condonation of delay would render the order without jurisdiction.

6. The expression ‘without jurisdiction’ as contemplated in **Chhabil Das** (Supra) relying on the judgment in the case of **Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai** reported in (1998) 8 SCC 1 is inherent lack of jurisdiction. Assigning wrong reasons or illegal exercise of power would not render the order without jurisdiction. At the most, the order can be said to be contrary to the settled principles of law.

7. It is not in dispute that the Sub-Divisional Officer is an Appellate Authority under Section 247 of the Maharashtra Land Revenue Code, 1966. The Sub-Divisional Officer has, therefore, power to entertain the Appeal on merits. Therefore, the Appellate Authority has power to condone the delay. Whether the reasons assigned for condoning delay qualify the expression 'sufficient cause' under Section 5 of the Limitation Act, 1963 is the matter to be decided by the statutory Superior Authority available under the provisions of the Act. Since I am of the considered view that condoning delay based on wrong reasons would not render such order without jurisdiction, the petitioner has failed to make out a case for entertaining the writ petition despite availability of alternative statutory remedy. Hence, by keeping all contentions raised by the petitioners open to be agitated before the Superior Authority entertaining challenge against the order dated 23 January 2024, the writ petition stands dismissed.

8. It is made clear that the period spent in prosecuting the present writ petition shall be excluded while considering the Appeal. If such Appeal is filed, the Revisional Authority shall decide the revision expeditiously.

9. No costs.

(AMIT BORKAR, J.)