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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13481 OF 2022

Kusum Uttam Kale & Ors … Petitioners

V/s.

The Maharashtra Revenue Tribunal & Ors … Respondents

Mr. Vivek Kantawala a/w Mr. Amey Patil i/by Vivek Kantawala & Co., for Petitioners.

Mr. Atul Damale, Sr. Advocate i/by Mr. Viraj V. Hake, for Respondent Nos.4 & 5.

Mr. Sanjay D. Rayrikar, AGP, for State/Respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 9, 2024

P.C.:

1. **Rule**.

2. Rule is made returnable forthwith by consent of the parties.

3. Challenge in this writ petition is to the order passed by the Maharashtra Revenue Tribunal, Pune in Revision Application No.7 of 2021 thereby condoning delay of 11 years in challenging certificate under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948.

4. On 29 November 2006 on an application filed by the legal heirs, the authority under Tenancy Act fixed the purchase price and issued certificate. On 5 December 2006 certificate under Section 32M was issued which included names of respondent Nos.4 & 5 along with petitioners. In furtherance of such certificate under Section 32M which is conclusive proof of title, mutation entry entered names of respondent Nos.4 and 5 along with petitioners were recorded.

5. In 2011 respondent No.4 and 5 filed RTS Appeal No.74 of 2011 challenging names of petitioners in 7/12 extract. In furtherance of certificate under Section 32M of the said Act. After exhausting remedy of appeal the Revisional Authority observed that remedy of respondent No.5 is to challenge certificate issued under Section 32G and not to challenge revenue entry in exercise power under Section 149 of the Maharashtra Land Revenue Code, 1966. Respondent Nos.4 & 5, therefore, on 25 January 2018 filed an appeal before Sub-Divisional Authority challenging 32G & 32M certificates jointly issued in favour of petitioners and respondent Nos.4 and 5 along with application for condonation of delay. On 26 July 2021, the Appellate Authority rejected application for condonation of delay. However, the Revisional Authority on 26 May 2022 allowed the application for condonation of delay granting benefit of Section 14 of the Limitation Act, 1963.

6. Heard learned Advocate for the petitioners and learned senior Advocate for respondent Nos.4 and 5, in my opinion, the Revisional Authority misconducted itself by granting benefit of Section 14 of the Limitation Act, 1963. It needs to be noted that subject matter of appeal in 2011 in earlier round of litigation was entering names of petitioners along with respondent Nos.4 and 5. The said proceeding was essentially under the provisions of Maharashtra Land Revenue Code, 1966.

7. Undoubtedly, in the said proceeding, no challenge to certificates issued under Section 32G and 32M was raised. In absence of challenge to certificates under Section 32G and 32M, the Tribunal could not have granted benefit under Section 14 of the Limitation Act, 1963 to respondent No.4 and 5.

8. Learned senior Advocate for respondent No.5 submitted that, even if application under Section 14 of the Limitation Act, 1963 is excluded respondent Nos.4 and 5 have made sufficient cause within the meaning of Section 5 of the Limitation Act, 1963 by pointing to the Tribunal that respondent Nos.4 and 4 were prosecuting wrong remedy based on wrong legal advise and, therefore, such prosecution of wrong remedy based on wrong legal advise constitutes sufficient cause.

9. The Tribunal has not adverted to Section 5 of the Limitation Act, 1963 in the context of sufficient cause. However, even if this Court considers the submission on behalf of respondent Nos.4 and 5 that prosecuting wrong remedy based on wrong legal advise constitutes sufficient cause, in my opinion, in absence of challenge to certificates under Section 32G and 32M before authorities under Maharashtra Land Revenue Code, 1966 cannot be termed as sufficient cause as the scope of inquiry before the authorities under the Maharashtra Land Revenue Code, 1966 would be restricted to the parameters under Section 150 of the Maharashtra Land

Revenue Code, 1966.

10. In the facts of the case, period of 11 years cannot be condoned on the ground that respondent Nos.4 and 5 were under wrong legal advise. Therefore, the Revisional Tribunal committed error of jurisdiction by allowing the revision application and condoning delay. Hence, the petitioners have made out a case for setting aside the interim order.

11. Rule is, therefore, made absolute in terms of prayer clause (b).

(AMIT BORKAR, J.)