



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6377 OF 2021

Gangaram Goma Gaikar and Others.

...Petitioners.

Versus

Yasubai Balaram Patil and Others.

...Respondents.

Mr. Rohit D. Joshi for the Petitioner.

*Mr. G. S. Godbole, Senior Advocate a/w Mr. Shon Gadgil and Mr. Aditya Shirke
for the Respondent No. 1 to 5.*

Ms. Vrushali R. Raje, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : April 2, 2024.

P. C. :

1. By this petition exception is taken to the judgment and order dated 18th April 2016 passed by the Maharashtra Revenue Tribunal [for short "MRT"] in Tenancy Revision Application No. 286 of 2014 and the judgment and order dated 9th March 2021 passed by the MRT in Tenancy Review Application No. 4 of 2016 dismissing the revision application and the review filed by the Petitioner.

2. Facts of the case are that an application came to be filed seeking condonation of delay in filing Tenancy Appeal No. 43 of 2013 seeking to challenge the judgment and order dated 30th August 1973

passed by the Tahsildar in Tenancy Case No. 508 of 1973 by which the Respondent No. 1 to 5 were declared as tenants in respect of the suit property. In the application seeking condonation of delay, as far as the explanation for delay is concerned, it was pleaded that after the purchase certificate was issued under section 32M of the Bombay Tenancy and Agricultural Lands Act [for short "BTAL Act"], Mutation Entry No. 1137 was effected in the revenue record which came to the knowledge of the Petitioner and thereafter acting on legal advice instead of filing Tenancy Appeal, challenged the said Mutation Entry under the provisions of the Maharashtra Land Revenue Code, 1966 [for short "MLRC"]. It was further contended that as there was provision of appeal under the Tenancy Act, the appeal came to be rejected and subsequently the tenancy appeal was filed on 11th March 2010.

3. The explanation was not accepted by the SDO and by judgment and order dated 11th July 2014, the SDO dismissed the application holding that no cogent explanation for delay of 36 years has been tendered. The order of SDO was challenged before the MRT by way of revision. The revision application came to be dismissed on 18th April 2016 as against which the review application was filed which came to be partly allowed on 10th May 2016. The said order was challenged by

the Respondent No. 1 to 5 by filing Writ Petition (st) No. 20810 of 2016 and this Court remanded the matter to the MRT for *de novo* consideration of the review application. Upon remand, the MRT dismissed the review application vide judgment and order dated 9th March 2021 which is challenged by way of the present petition.

4. Heard Mr. Rohit Joshi, learned counsel appearing for the Petitioner and Mr. G. S. Godbole, learned Senior Advocate appearing for the Respondent No. 1 to 5.

5. Learned counsel appearing for the Petitioner would submit that the Petitioners are the legal heirs of protected tenant named Kacharu. He submits that the name of Kacharu appears in Mutation Entry No. 374 which shows that as on tiller's day Kacharu was cultivating the land. He submits that on 30th August 1973, the tenancy case filed by the Respondent No. 1 to 5 was allowed without any notice to the Petitioners although they were the legal heirs of the protected tenant. He submits that upon being aware of 32M certificate by virtue of the Mutation Entry No. 1137, the Petitioners inadvertently filed an appeal under the provisions of MLRC which was dismissed as appeal was maintainable under the Tenancy Act. He submits that subsequently the appeal was filed and as such the delay has been sufficiently explained. He submits that even on merits, the Petitioners

have a strong case as they are the legal heirs of the protected tenant who was admittedly cultivating the land on tiller's day, i.e., on 1st April 1957. He submits that without notice to the Petitioner, the proceedings under section 32G have been concluded in favour of the Respondent No.1 to 5. He would submit that the explanation tendered is sufficient to condone the delay especially when the proceedings under the tenancy Act were not to the knowledge of the Petitioner.

6. *Per contra* Mr. Godbole, learned Senior Advocate appearing for the Respondent No. 1 to 5 would point out that the Tenancy appeal was filed by one Budhya Kacharu Gaikar and Tulshidas Goma Gaikar in which it was admitted that on 31st July 1973 notice was issued to the Appellant. He submits that thereafter the prayers were scored out and the same was sought to be converted into an appeal under the MLRC. He submits that subsequently the appeal which was filed i.e., Tenancy Appeal No. 48 of 2010 was filed only by the present Petitioners and Budhya Kacharu Gaikar was impleaded as the Respondent No.10. He submits that the RTS Appeal was filed on 20th December 2007 whereas the tenancy appeal came to be filed in the year 2010 and for the delay there is no explanation. He would further point out the statements of Budhya Gaikar and Rama Gaikar which are

annexed at page nos. 99 and 101, which statements are recorded in the tenancy proceedings. He submits that it is thus evident that the heirs of Kacharu were well aware of the tenancy proceedings. He submits that the present Petitioners claim to be the legal heirs of one Goma Gaikar who is claimed to be the brother of Kacharu. He submits that the delay having not been sufficiently explained, the impugned order has been rightly passed.

7. Considered the submissions and perused the record.

8. The admitted position is that one Kacharu was the protected tenant as on tiller's date. The genealogy informed to this Court is that Kacharu had two sons, Rama and Budhya, and Goma Gaikar through whom the present Petitioners are claiming is stated to be the brother of Kacharu.

9. In the Tenancy Appeal proceedings of the year 2006, Budhya who was son of Kacharu and one Tulshidas who is son of Goma Gaikar have specifically pleaded that on 31st July 1973 in pursuance of the notice received, the Appellants were present in the Court. Thus, vital piece of admission is given by the Appellants in those proceedings that the notice of tenancy proceedings of 1973 was to the knowledge of Budhya Kacharu and Tulshidas Goma Gaikar in the year 1973 itself.

It is rightly pointed out by Mr. Godbole that subsequently when the Tenancy Appeal No. 48 of 2010 was filed, the same came to be filed only by the present Petitioners whereas Budhya Kacharu Gaikar was impleaded as the Respondent No. 10. The appeal under the MLRC was dismissed on 20th December 2007 whereas the tenancy appeal was filed on 11th March 2010. The facts make all the difference. It is clear that the proceedings of 1973 were to the knowledge of the Appellants as admitted in tenancy appeal of the year 2006. It appears that to overcome the admission of the knowledge acquired about the proceedings of the year 1973, in the subsequent proceedings, Budhya Kacharu was impleaded as the Respondent No. 10 and the present petitioners had filed the tenancy appeal. In the tenancy appeal, the only explanation for condonation of delay of 36 years is that they had no knowledge of the proceedings and the same was acquired only when the Mutation Entry No. 1137 came to their knowledge pursuant to which the RTS Appeal was filed in the year 2007. Pleadings in the said application are clearly contrary to the admissions in the tenancy appeal. The SDO has held that there is no explanation sufficient enough for condonation of delay of 36 years caused in preferring the application. The MRT has upheld the findings of the SDO and has refused to interfere.

10. It is well settled that different parameters apply where the proceedings are being adjudicated for the purpose of considering whether a sufficient cause has been made out for condonation of delay and whether the order itself is being challenged inasmuch as in the first case what is required to be considered by the authority is whether there is sufficient cause for condoning the delay and in the later case what is required to be considered is whether the discretion which has been exercised by the lower authority, suffers from any infirmity. In the present case, as discussed above, in the RTS Appeal of the year 2006 itself there is an admission of the knowledge of tenancy proceedings of the year 1973. In the Tenancy Appeal No. 48 of 2010, which has been filed after the dismissal of RTS Appeal in the year 2007, there is no explanation firstly tendered for the delay from the year 2007 to 2010 and secondly no sufficient cause being shown for the delay from the year 1973 to 2010, i.e. for the period of 36 years. As there is no sufficient reason given for the delay, the SDO and the MRT have exercised the discretion judicially and have refused to condone the delay. There is no infirmity demonstrated in the discretion exercised by the SDO and the MRT in refusing to condone the delay. The explanation tendered, to say the least, amounts to suppression of facts. As such no indulgence, at least by this Court, can be shown to the Petitioners. The SDO and the MRT have upon

consideration of the explanation held that there is no sufficient cause shown to condone the delay. The statements which are at page No. 99 and 101 are more than sufficient to not warrant interference in the orders passed by the SDO and the MRT.

11. In the light of above, there is no infirmity in the impugned orders. Petition stands dismissed.

[Sharmila U. Deshmukh, J.]