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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12234 OF 2019**

1. Baban Vishnu Shivale
Since deceased through Legal Heirs

1A. Balasaheb Baban Shivale
Age :55 years,Occ. Busi/Agri

1B. Dilip Baban Shivale
Age : 51years, Occ. Bus/Agri
Both r/o at Village Tulapur
Tal. Haveli, District: Pune

..... Petitioners

Versus

1. Anil Sukhleswar Markale
Age : Adult,R/o. Sarita Nagari,
Parvati, Pune – 9

2. Arun Sukhleswar Markale
Age : Adult, R/o. Rajyog CHSL,
Pune Satara Road, Pune

3. Narendra Sukhleswar Markale
Age : Adult
R/o. Ravivarpeth, Pune-411002

4. Dnyaneshwar Kachreshwar Markale
Age : Adult, R/o. Talegaon Dabhade
Tal. Maval, District: Pune

..... Respondents

Mr. R. A. Thorat, Senior Advocate a/w. Mr. Rohan Barge for the Petitioners.

Mr. Dilip Bodake for the Respondent Nos. 1 to 4.

CORAM : GAURI GODSE, J.

DATE : 12th APRIL 2024

ORAL JUDGMENT:

1. This petition was argued on 8th April 2024 and was directed to be listed today for passing order. I have heard Mr.Thorat, Senior Advocate for the petitioners and Mr. Bodake for respondent nos. 1 to 4.

2. This petition is filed by the heirs and legal representatives of the deceased original tenant invoking jurisdiction under Article 227 of the Constitution of India to challenge the order passed by the Maharashtra Revenue Tribunal ("MRT") allowing the revision application filed by the respondents/landlord. By the impugned order, the learned member of the MRT has allowed the revision application filed by the respondents-landlord and set aside the order of remand passed by the Sub-Divisional Officer ("SDO"). The learned SDO had allowed the appeal filed by the deceased tenant. The order passed under Section 32F(1) of The Maharashtra Tenancy and Agricultural Lands Act, 1948 ("The Tenancy Act") in favour of the respondents was set aside. The matter

was remanded back to the Agriculture Land Tribunal (“ALT”). The impugned order passed by the MRT is dated 14th September 2016. The petition was filed sometime in July 2019. No notice was issued in the petition. However, respondents appeared in the petition and filed their affidavit-in-reply.

3. The petition was adjourned on two occasions at the request of the petitioners. On 9th February 2024, when the petition was listed for admission, learned counsel for the respondents had raised a preliminary objection that the petition suffers from delay and laches and hence may not be entertained. It was submitted that the petitioners had made a false statement on page 7 of the memo of the petition that they were not aware of the legal proceeding before the MRT. In support of the submissions that the petitioners had made a false statement, the learned counsel for respondents relied upon page 134 of his affidavit indicating that the respondents had filed an application dated 31st August 2012 before the MRT and had taken time to engage an Advocate.

4. Learned counsel for the respondents thus submitted that the petitioners were aware of the proceedings before the MRT. It was

further pointed out that pursuant to the impugned order, the respondents had initiated proceedings under Section 32P of the Tenancy Act, and possession of the suit land was handed over on 13th August 2019 after following the necessary procedure and recording panchnama.

5. After the petition was heard on the preliminary objection, the learned Advocate for the petitioners requested time to file an affidavit-in-rejoinder by way of the last chance to explain the petitioners' response to the preliminary objection raised by the respondents. There was a strong objection on behalf of the respondents for grant of such time as respondents had filed their affidavit-in-reply raising this objection in the year 2019, and the petitioners did not attempt to explain the false and incorrect statements made in the petition. However, by way of last chance, by passing a detailed order on 9th February 2024, the petitioners were granted time to file an affidavit-in-rejoinder on payment of costs to the respondents. Pursuant to such liberty, petitioners filed an affidavit-in-rejoinder.

6. Learned counsel for the respondents filed a response to the affidavit-in-rejoinder of the petitioners and contended that the

petitioners, instead of explaining the false statement made in the petition, reiterated their false statement and further falsely contended that the notice of the proceeding under Section 32P was not served upon the petitioners. In support of the submissions that all the notices were served upon the petitioners, the respondents, through an affidavit dated 1st March 2024, placed on record copies of the notices issued to the petitioners by ALT and postal acknowledgment indicating that the notices were served upon the petitioners in the year 2017 and the order passed in the proceeding under Section 32P of the Tenancy Act was also served upon the petitioners on 4th July 2018.

7. In such circumstances, the petition was heard at length on the preliminary objection raised that the petition suffers from delay and latches.

8. The respondents are the heirs and legal representatives of the original landlady ('Saibai'). Since the landlady was a widow, no proceeding under Section 32G was initiated. Saibai expired on 2nd January 1992. From the relevant dates reiterated in the impugned order, it appears that one Vishnu was the original tenant, who had expired on 4th September 1958. After his death, his son Madhav was

cultivating the suit land. Madhav died issueless sometime in 1963/64. It appears that thereafter, his brother Dattu was cultivating the suit land, and after his death, his brother Baban was cultivating the suit land. Baban expired on 30th October 2006. The petitioners are sons of the deceased Baban.

9. The respondents had initiated proceedings under Section 32F, contending that the petitioners had lost the right to purchase the suit land. Deceased Baban had contested the said application, which the ALT allowed on 25th January 2001. By Judgment and order dated 25th January 2001, ALT allowed the respondents' application under Section 32F of the Tenancy Act, declaring that the tenant's right to purchase had been extinguished for want of notice.

10. Aggrieved by the said declaration, the deceased Baban preferred an appeal before the learned SDO. The said appeal was allowed on 22nd May 2002. The learned SDO set aside the ALT's order, and the matter was remitted back to the ALT for deciding the question raised in the impugned order on the point of proceeding under Section 32G, the title of the original landlady, and the rent paid by the tenant. Feeling aggrieved by the said order of remand, the respondents filed

the revision application under Section 76 of the Tenancy Act before the MRT. Deceased Baban, who had preferred an appeal before the SDO expired during the pendency of the revision application before the MRT. The present petitioners were brought on record as heirs and legal representatives of the deceased Baban. Though served they failed to appear and argue revision application before the MRT. Hence, after hearing the respondents, MRT allowed the revision application, and the order of remand passed by the SDO was set aside. The said order of MRT is impugned in the present petition.

11. The order of MRT is dated 14th September 2016. The present petition was filed sometime in August 2019. Thus, the preliminary objection raised on behalf of the respondents is required to be examined with regard to the aforesaid dates.

12. Learned counsel for the petitioners submitted that they were aware of the pendency of the proceeding before the MRT; however, they were never served with copies of the proceedings hence the petitioner no. 1(B) had filed an application before the MRT requesting time to engage an Advocate. With reference to the preliminary

objection raised on behalf of respondents that the petitioners had made a false statement on page 7 of the memo of the petition that they were unaware of the legal proceeding, learned counsel for the petitioners submitted that the respondents had misinterpreted the said statement.

13. Learned counsel for the petitioners submitted that the averment on page 7 of the memo of the petition indicates that the petitioners were unaware of the legal proceedings which would mean that they were not served with the proceeding. He submitted that the averment in paragraph 7 of the memo of the petition is supported by the application dated 31st August 2012 signed by the petitioner no. 1(B) and filed before MRT. According to him, the said application also raised similar grounds that they were not served with the papers and documents of the revision application, and hence, they had requested time to engage an Advocate.

14. Learned counsel for the petitioners further relied upon the explanation given in paragraph 7 of the memo of the petition, thereby stating that the petitioners learnt about the impugned order only in January 2019 and accordingly applied for certified copies on

5th January 2019. It is further submitted that on receipt of the certified copies on 15th April 2019 steps were taken to file the present petition. Learned counsel for the petitioners further relied upon a rejoinder filed pursuant to the liberty granted by order dated 9th February 2024. The said affidavit-in-rejoinder indicates that they again reiterated that the petitioners were not aware of the Advocate who had been appointed by the deceased tenant, i.e. Baban and hence, they were unaware of the case before the MRT. It is thus submitted that no false statement is made on behalf of the petitioners, and only after the knowledge of the impugned orders the petitioners have taken immediate steps to file this petition.

15. Learned counsel for the petitioners on the point of delay and latches submitted that there is no period of limitation for filing a Writ Petition. Hence, it is a well-settled principle of law that a party can approach the court within a reasonable time, and it is time and again held that the reasonable time would be three years. It was thus submitted that the petition filed in the year 2019 for challenging the order of 2016 can be entertained.

16. The petitioners disputed the contention regarding handing over

possession to the respondents in the proceeding under Section 32P. Hence, it was submitted on behalf of the petitioners that sufficient explanation was offered regarding the delay in filing the petition. Learned counsel for the petitioners by relying upon the decision of the Hon'ble Supreme Court in the case of ***Vasant Ganpat Padave (Dead) by Legal Representatives and Others Vs Anant Mahadev Sawant (dead) through Legal Representatives and Others***¹, submitted that the petitioners have a good case on merits and, hence, they may be granted liberty of hearing on merits.

17. Learned counsel for the respondents pointed out the relevant averment in the petition as well as the affidavit-in-rejoinder and submitted that the petitioners had made a false statement. Learned counsel for the respondents relied upon the sur-rejoinder filed on behalf of the respondents in response to the affidavit-in-rejoinder of the petitioners.

18. Learned counsel for the respondents submitted that after the impugned order was passed, the respondents initiated proceedings under Section 32P. The said proceedings were numbered as Tenancy

¹ (2019) 19 SCC 577

Misc. Appl. No. SR/5 of 2017. Notice dated 25th July 2017 of the said proceeding was issued to the petitioners by ALT. The said notices were served upon the petitioners on 2nd August 2017. Thereafter, the proceeding under Section 32P was allowed on 28th June 2018. He submitted that by notice dated 28th June 2018, intimation of the order was also issued to the petitioners through ALT. The said intimation was served upon the petitioners on 4th July 2018. Learned counsel for the respondents submitted that all these copies were received from ALT on an application filed by the respondents under the Right To Information Act. Learned counsel for the respondents relied upon the relevant copies annexed to the affidavit in sur-rejoinder to support the aforesaid dates regarding issuance of notice and service of notice upon the petitioners. Thus, learned counsel for the petitioners submitted that even if the petitioners had not bothered to appear before the MRT, in view of service of notice as aforesaid, in any case, the petitioners were made aware of the impugned order on 2nd August 2017 and thereafter on 4th July 2018. He further submitted that pursuant to the order passed under Section 32P, possession was handed over to the respondents on 6th June 2019.

19. Learned counsel for the respondents relied upon copies of the possession receipt and the panchnama recorded at the time of handing over possession to the respondents. Learned counsel for the respondents thus submitted that after possession was handed over on 6th June 2019, the petitioners filed this petition sometime in August 2019. He thus submitted that though the petitioners were aware of the impugned order, they failed to take any steps to challenge the impugned order, and only after possession was handed over they filed this petition raising false contentions only with an intention to defeat the right created in favour of the respondents.

20. Learned counsel for the respondents thus submitted all the documents annexed to the affidavit-in-reply and affidavit-in-sur-rejoinder on behalf of the respondents, makes it clear that the petitioners were aware about the impugned order and the proceeding under Section 32P and have thus filed the present petition by making false averments. He further submitted that in the affidavit-in-rejoinder, the petitioners stated that they resided in Thane and visited the village occasionally to maintain the suit land and, hence, were not aware of the impugned order and judgment passed by the MRT. Learned

counsel for the respondents, however, submitted that in the entire proceeding, as well as the present petition address of the petitioners is mentioned as that of village Tulapur, Taluka Haveli, District-, Pune. He submits that for the first time, by way of an affidavit-in-rejoinder, the petitioners have mentioned their address of Thane. He submits that in none of the proceedings petitioners' address at Thane has been mentioned, and hence, as per the address of the suit land and address of the deceased tenant, notices were served upon the petitioners by ALT.

21. Learned counsel for the respondents further submitted that averment in the affidavit-in-rejoinder indicates that the petitioners were never in possession of the suit land and were never cultivating the same. He submitted that as stated in the additional affidavit dated 26th September 2022, it is the petitioners' case that the suit land was cultivated through one Narayan Bhuse and that the petitioners stated in the said affidavit that the said Narayan Bhuse is in actual possession of the suit land.

22. Learned counsel for the respondents thus submitted that the petitioners were never cultivating the suit land and only with an

intention to defeat the right created in favour of the respondents has filed the present petition at a belated stage by making false averments.

23. He further submitted that this petition is required to be rejected on the point of delay and laches. Learned counsel for the respondents relied upon decision of the Hon'ble Supreme Court in the case of ***Shri K.Jayaram and Others vs. Bangalore Development Authority and Others***². He submitted that it is well settled principle of law that the jurisdiction of this Court invoked under Articles 226 or 227 of the Constitution is extraordinary, equitable and discretionary. Hence, it is imperative that the petitioner approaching the writ court must come with clean hands and place on record the clear facts without concealing or suppressing any material. He thus submitted that if the petitioner withholds some vital or relevant material in order to gain an advantage over the other side, then the litigant would be guilty of playing fraud with the court or the opposite party. The learned counsel for the respondents, in particular, relied upon paragraph 12 of the said decision and submitted that this petition deserves to be dismissed on the ground that the petitioners have not disclosed the true and correct

² 2021 0 Supreme (SC) 804

facts to this court and have not come to the court with clean hands and thus have abused the process of law.

24. I have considered the aforesaid submissions. Perused the papers. The only averment with regard to explaining delay is in clause (I) of paragraph 5 of the petition and paragraph 7 on page 7 of the memo of the petition. The averments in Clause (I) reads as under :

(I) That Baban Vishnu Shivale was looking after the entire matter, and the legal heirs, i.e. Balasaheb and Dilip were not knowing the proceedings. Baban was died on 13/10/2006 and as the present Petitioners were unaware about the legal proceedings, even though they were remain present before Ld. MRT, they could not advanced their argument."

25. With the aforesaid explanation, the petitioners have stated in paragraph 7 of the memo of the petition that they learnt about the impugned order in January 2019 and accordingly applied for the certified copy on 5th January 2019, and the copies were delivered on 1st April 2019. The contents in paragraph 7 further stated that they supplied copies to the Advocate for the petitioners, inquired with the

office of MRT and also the office of the SDO with regard to the papers and proceedings and made attempts for the last two months, but the same could not be traced. Hence, based on available documents, the petitioners had filed the petition. The petition appears to have been affirmed on 11th July 2019 and filed sometime in August 2019. Except for the aforesaid grounds, no other explanation is put forth on behalf of the petitioners to explain the delay.

26. The respondents, by way of affidavit in reply, contended that the averment of the petitioners that they were not aware of the legal proceeding was false and that the petitioners were well aware of the legal proceeding as the petitioners had appeared before the MRT on 31st August 2012, as is evident from their own application dated 31st August 2012 which is annexed on page 134 of the affidavit in reply of the respondents. Thus, a perusal of the said application indicates that after the petitioners were brought on record as heirs and legal representatives of the original tenant, they appeared before the MRT and requested for time.

27. A perusal of the averment in Clause (I) indicates that it is the petitioners' case that they were aware of the legal proceedings and

have remained present before the MRT but could not advance their arguments. In response to the affidavit in reply, the rejoinder affidavit states that the petitioners did not have documents and hence, had prayed for the appointment of a new Advocate. It is also indicated that they were unaware of the case and prayers before the MRT. It is sought to be contended that since the amendment was not carried out in the revision application, there was no question of filing any vakalatnama on behalf of the petitioners. It is further contended that the uncle of the petitioners, i.e. the brother of the deceased Baban, had appeared before the MRT for impleading himself as a party, however, the said application was rejected. Thus, it is sought to be contended that the petitioners were under the bonafide impression that their uncle would take care of the case; hence, they did not appear before the MRT and did not engage their Advocate. For the first time, by way of an affidavit-in-rejoinder, the petitioners claim to have been residing in Thane. Thus, the petitioners have taken contrary stands in the main petition and the affidavit-in-rejoinder.

28. Affidavit in sur-rejoinder filed on behalf of the respondents indicates that notice of proceeding under Section 32P was served

upon the petitioners and the order was also intimated to the petitioners through ALT. The petitioners do not dispute the documents regarding the service of notice and intimation of the order produced on record. Thus, it is clear that though the petitioners were aware of the impugned order, they sought to make false and misleading statements in the petition and affidavit-in-rejoinder that they were not aware of the proceeding. The petitioners have not come up with any clear stand as to whether they were not aware of the pendency of the proceeding or whether they were not aware of the particulars of the legal proceeding. The petitioners, at some point in time, had claimed that they remained present before the MRT but could not advance their arguments and, at the same time, have taken a stand that they were under the bonafide impression that their uncle would take care of the proceeding and hence did not engage Advocate or did not take care of the proceedings. Contents of the petition and affidavit filed on behalf of the petitioners make it clear that the petitioners never cultivated the suit land. It is their own case that Narayan Bhuse is cultivating the suit land, and he is in possession of the suit land. The copies of the proceedings for execution of the order passed under Section 32P filed

on behalf of the respondents by way of sur-rejoinder indicate that the order is already executed, and possession is handed over to the respondents-landlord. In fact, possession was handed over to the respondents on 6th June 2019. It appears that after possession was handed over to the respondents, the petitioners made an attempt by filing the present petition to defeat the rights created in favour of the respondents.

29. After a perusal of the averment in the petition and the affidavit filed on behalf of the petitioners, I am of the view that the petitioners have not approached this court with clean hands and have made misleading statements in the pleadings. Thus, there is no substance in the submission made by the learned counsel for the petitioners that as there is no period of limitation for filing a Writ Petition, the petitioner has approached this court within a reasonable time, as it is time and again held that the reasonable time would be three years. I do not find any merit in the explanation sought to be tendered on behalf of the petitioners. Thus, there is substance in the preliminary objection raised on behalf of the petitioners. It is a well-settled principle of law that a remedy under Article 227 is a prerogative remedy and is not

a matter of course. It is held by the Hon'ble Supreme Court in ***K.D. Sharma vs. Steel Authority of India Limited and Others***³ that if a party makes a false statement or suppresses material facts or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case. The Hon'ble Supreme Court, in paragraph 36 of the said decision, has held as under:

*“36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on the ground alone and may refuse to enter into the merits of the case by stating. **“We will not listen to your application because of what you have done.”**. The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it”.*

emphasis applied

30. The said decision of the Hon'ble Supreme Court in the case of ***K.D. Sharma*** is also referred to in the decision, which is relied upon by

³ (2008)2 SCC 481

the learned counsel for the respondents. Learned counsel for the respondents has, thus, rightly relied upon the decision of the Hon'ble Supreme Court in the case of ***Shri K. Jayaram***. There is substance in the submissions made by the learned counsel for the respondents that from the aforesaid facts and circumstances, it is imperative that the petitioners have not approached this court with clean hands and not placed on record clear facts and have made misleading averments to gain an advantage over the respondents and defeat their rights.

31. Thus, in view of the aforesaid facts and circumstances, I decline to entertain the petition on merits on the ground that the petitioners have not approached this court with clean hands. The attempt of the petitioners is to gain advantage by defeating the right created in favour of the respondents. The petition thus suffers from delay and latches. Hence, the petition is liable to be dismissed on the preliminary objection raised on behalf of the respondents.

32. In the decision of ***Shalini Shyam Shetty and Another Vs Rajendra Shankar Patil***⁴, the Hon'ble Supreme Court has summarised the scope of interference under Article 227 of the

⁴ (2010) 8 SCC 329

Constitution of India. The relevant extracts from paragraph 49 are as under:

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215], followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible

view. In other words the jurisdiction has to be very sparingly exercised.

emphasis applied

33. I do not find that the Tribunal has committed any jurisdictional error in the present case. There is no violation of the principles of natural justice. Powers under Article 227 are discretionary and equitable reliefs. This is not a fit case for exercising powers under Articles 226 or 227 of the Constitution of India.

34. Hence, for the aforesaid reasons the petition is dismissed.

[GAURI GODSE, J.]

RAJESHWARI
RAMESH
PILLAI

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by RAJESHWARI
RAMESH PILLAI
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