

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

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by RAMESHWAR
LAXMAN
DILWALE

WRIT PETITION NO.12231 OF 2018

Date: 2024.02.23
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Trimbak Laxman Joshi, (since deceased)

Age 79 years, Occu Agriculture, }
Both R/at- Behind Datta Agency, }
Nilkanth Nagar, Haripur, }
Taluka Miraj, District Sangli. }..Petitioner

(Ori. Applicant No.2)

- 1a. Shailaja Trimbak Joshi } RIDER-I
Age 76 yrs, Occu. Agriculture }
R/a.: Yadur, Tal. Chikodi, }
District Belgaom, }
State Karnataka-591 213. }
1b. Rashmi Devendra Kolhatkar }
Age 50 yrs, Occu. Housewife }
R/a.: Kolhatkar Wada, Ranade Bol, }
House No. 4242, Bramhan Puri, }
Miraj. Tal. Miraj, District Sangli. }
1c. Santosh Trimbak Joshi }
Age 46 yrs., Occu. Agriculture & }
Business }
R/a.: House No. 28/3 Nilkanth Nagar, }
Haripur Road, Behind Datta Agency, }
Tal. Miraj, District Sangli 416 416. }
1d. Subodh Trimbak Joshi }
Age 44 yrs, Occu. Agriculture & }

Business }
 R/a.: Yadur, Tal. Chikodi, }
 District Belgaom, }
 State Karnataka – 591 213. } ...Petitioners

Versus

1. The State of Maharashtra, }
 Through its Ministry of }
 Revenue And Forests, }
 Mantralaya, Mumbai 400 023. }
2. The Collector, }
 Raigad District, Raigad. }
3. The Deputy collector, }
 Private Forest Kulaba – Alibaug, }
 and Sub-Divisional Officer, Alibaug }
 Raigad District, Raigad. }
4. The Deputy Forest Officer, }
 Alibaug, Raigad District, Raigad. }
5. Additional Commissioner, Konkan }
 Division, Mumbai. }
6. Learned Sub-Divisional Officer }
 Pen, Sub-Division Pen, Pen } ...Respondents

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Ms. Manjiri S. Parasnis for the petitioner.

Mr. N. K. Rajpurohit, AGP for Respondent Nos.1 to 5-State.

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**CORAM : A.S. CHANDURKAR &
 JITENDRA JAIN, JJ**

DATE : 21st FEBRUARY 2024.

ORAL JUDGMENT : (Per A. S. Chandurkar,J)

1. Rule. Rule is made returnable forthwith and heard learned counsel for the parties.

2. Challenge raised in this writ petition is to the order dated 31/05/2016 that has been passed by the fifth respondent-Additional Commissioner, Konkan Division, Mumbai. By the said order, the Additional Commissioner has dismissed the appeal that was preferred by the petitioners for challenging the order dated 2nd May 2012 passed by the Sub-Divisional Officer, Alibag.

3. It is the case of the petitioners that on 31/10/2010 an application was filed on their behalf under Section 22 A of the Maharashtra Private Forests (Acquisition) Act, 1975 (for short, the Act of 1975) for restoration of lands that were referred to in the order dated 07/10/1980. On 07/10/1980 the Deputy Collector, Kulaba, Alibag was pleased to pass an order seeking to acquire the subject lands under Section 3 of the Act of 1975. It was this order that was the subject matter of challenge in proceedings under Section 22 A of the Act of 1975 before the Sub-Divisional Officer. On 02/05/2012, the Sub-Divisional Officer held that there was a delay in challenging the Order dated 07/10/1980. In Writ Petition

No.1549 of 2011 that was preferred by the petitioners, a direction given was to decide the proceedings filed under Section 22 A of the Act of 1975. Since there was no direction to consider the application for condonation of delay, the proceedings came to be dismissed by the Sub-Divisional Officer. The petitioners being aggrieved by the aforesaid order preferred in appeal before the Additional Commissioner. The Additional Commissioner held that since the Order dated 07/10/1980 had not been challenged, the application preferred by the petitioners was itself infructuous. On that count, the proceedings came to be dismissed. These orders are the subject matter of challenge in the present proceedings.

4. We have heard the learned counsel for the parties and we have perused the documents filed alongwith the writ petition. We have also perused the affidavit in reply filed by Respondent Nos.1 and 4. The record indicates that the petitioners were aggrieved by the order dated 07/10/1980 that was passed invoking provisions of Section 3 of the Act of 1975. The petitioners, therefore, approached the Sub-Divisional Officer under Section 22 A of the Act of 1975 seeking restoration of the lands in question. There was a delay in preferring the said proceedings and hence an application for condonation of

delay was separately moved which is dated 09/02/2011. Since these proceedings that were filed on 31/10/2009 along with the application for condonation of delay were not being adjudicated, the petitioner had filed Writ Petition No.1549 of 2011. On 11/08/2011, a direction was issued to the Sub-Divisional Officer to decide the Application dated 31/10/2009 within a period of three months from the date of receipt of the order. The Sub-Divisional Officer ought to have considered the said proceedings as well as the application for condonation of delay. Instead it was observed that since no direction was issued by this Court to adjudicate the application for condonation of delay, the proceedings itself were not maintainable. On that count, the proceedings were dismissed on 02/05/2012. The Additional Commissioner ought to have considered these aspects but in the impugned order it has merely been observed that the Order dated 07/10/1980 alone had been challenged by the petitioners. On that count, the appeal came to be dismissed.

5. We thus find that though the petitioners had filed a separate application for condonation of delay in filing proceedings under Section 22 A of the Act of 1975, the same has not been adjudicated. As a result, the entire proceedings have been dismissed. In the light

of the order passed on 11/08/2011 in Writ Petition No.1549 of 2011, the Sub-Divisional Officer ought to have considered the application for condonation of delay on its own merits. The Additional Commissioner also failed to consider this aspect which led to dismissal of the proceedings. In these facts, we find that it would be necessary for the Sub-Divisional Officer to decide the application for condonation of delay dated 09/02/2011. In case, the delay is condoned, the proceedings under Section 22 A of the Act of 1975 would be required to be decided on merits. For this reason, it would be necessary to remit the proceedings to the Sub-Divisional Officer for fresh consideration. It may also be stated that the petitioners had approached the Revenue and Forests Department being aggrieved by the order passed by the Additional Commissioner. By the communication dated 02/01/2017 it was stated that the petitioners had filed an appeal against the order dated 31/05/2016 passed by the Additional Commissioner. Since the remedy of filing revision application ought to have been invoked, the appeal as filed was not maintainable. This communication is also liable to be set aside.

6. Accordingly for aforesaid reasons, the following order is passed:

a) the petitioners' application dated 09/02/2011 preferred before the Sub-Divisional Officer seeking condonation of delay in filing proceedings under Section 22 A of the Act of 1975 shall be considered and decided on merits within period of six weeks of receiving copy of this order.

b) If the Sub-Divisional Officer condones the delay as prayed for, the proceedings under Section 22 A of the Act of 1975 shall be decided on its merits in accordance with law within a further period of three months. It is clarified that all points are kept open.

c) To enable aforesaid exercise to be undertaken, the order dated 02/05/2012 passed by the Sub-Divisional Officer as well the order dated 31/05/2016 passed by the Additional Commissioner and communication dated 02/01/2017 are set aside.

7. Rule is made absolute in aforesaid terms with no order as to costs.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]