

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3753 OF 2024.

Lakadya Dharma Vartha Dec Thr Legal Heir And Ors ...Petitioners.

Versus

Shaikhali Shaikh Mohamed Varekar Dec Thr Legal Heir And Ors ...Respondents.

Mr. Ranjit Thorat Senior Advocate a/w Mr. Sandeep S Salunkhe for the Petitioners.

Mr. A. A. Kumbhakoni Senior Advocate a/w Mr. Rakesh V. Misal a/w Adv. Rupali Jadhav, Adv. Vaishnavi Tiwari i/by RVM Legal for the Respondent No. 4.

Mr. S. G. Karandikar a/w Adv. Amrut Joshi i/by Jitendra Oak for Respondent No. 5.

Coram : Sharmila U. Deshmukh, J.

Date : October 14, 2024.

P. C. :

1. Heard.
2. By this Petition, the challenge is to the order dated 3rd October 2023, passed by the Maharashtra Revenue Tribunal, Mumbai in Revision Application No. TNC/REV/THN/39 of 2020, and order of Sub-Divisional Officer dated 10th March 2015, passed in Tenancy Appeal No. 51 of 2014, and order dated 1st November 2012, passed by the Tahsildar and A.L.T., Thane, in Tenancy Case No. 32-G/KAVESAR/05 of 2011.
3. The facts of the case are that the Petitioners claims that the predecessor of the Petitioners were cultivating the suit lands prior

to 1940 and by Mutation Entry No. 458 the name of the predecessor of the Petitioners was recorded as a tenant. Subsequently upon the death of the Original Tenant the legal heirs started cultivating the land and thereafter the Petitioners continued cultivating the land till the year 2004. It is further pleaded that Mutation Entry No. 522 and 823 came to be certified by the Revenue Authorities deleting the name of the predecessor of Petitioners as tenants. An Application under Section 32-G came to be filed by the Petitioners contending that the Petitioners were cultivating the land and deemed to be tenants of the suit property. By order dated 1st November 2012, the Tahsildar and ALT dismissed the Application by considering the Mutation Entries Nos. 522 and 823 by which the name of the Predecessor of Petitioners came to be deleted, which had not been challenged.

4. Being aggrieved, the Petitioners preferred Tenancy Appeal No. 51 of 2014 before the Sub-Divisional Officer which dismissed the Tenancy Appeal and the operative part of the order records that the Appeal is dismissed on the ground of limitation. As against this, Tenancy Revision Application came to be filed before the MRT which dismissed the Revision Application vide the impugned order dated 3rd October 2023.

5. Mr. Thorat, learned Senior Advocate appearing for the Petitioners would submit that before the Sub-Divisional Officer, the

only issue for consideration was condonation of delay of 2 years which was caused in preferring the appeal which was sufficiently explained in the Application for condonation of delay stating that the order of the Tahsildar dated 9th October 2012, was not received and was received only on 15th September 2014. He would further draw the attention of this Court to the findings of the Sub-Divisional Officer and would submit that the Sub-Divisional Officer while deciding an Application for condonation of delay has decided the merits of the matter and thereafter dismissed the appeal on the ground of limitation. He submits that the MRT has followed the same course and after considering the merits of the matter by holding that the Petitioners have not sought any declaration of tenancy and it is difficult to come to the conclusion that the Petitioners were tenants, has thereafter decided the matter on merits as well as the issue of limitation. He submits that such a course is not permissible for the authorities drawing support from the decision of this Court in the case of ***Shankar Ramrao Rangnekar vs. Narayan Sakharam Sawant***¹ and the decision of the Apex Court in the case of ***Commissioner, Nagar Parishad, Bhilwara vs. Labour Court, Bhilwara***.²

6. *Per contra* Mr. Kumbhakoni, learned Senior Advocate would point out that the Petition filed under Article 227 of the Constitution

1 [2013 (1) Mh.L.J. 706

2 2009 AIR SCW 1456

of India ought not to be entertained as there is no substantial failure of justice warranting interference by this Court. He submits that the Petitioner's reliance on the Mutation Entry No. 458 is misplaced in as much as the said Mutation Entry was not even certified. He submits that for a period of almost 56 years no steps have been taken by the Petitioners to seek any declaration of tenancy and in the meantime the property has changed hands and was converted to non agricultural and has undergone development and construction has been carried out by the Respondent No. 4. He submits that setting aside the impugned order and relegating the parties to the authorities would amount to travesty of justice as no document have been produced by the Petitioners to show that they were in cultivation of land in order to any rights as tenant.

7. Mr. Karandikar, would adopt the submissions of Mr. Kumbhakoni, and would further submit that apart from the single Mutation Entry No. 458 there is nothing brought on record to demonstrate that the Petitioner was in lawful cultivation of the land which is the requirement under Section 32-G of the Tenancy Act. He would further point out that the sole Mutation Entry on which reliance is placed by the Petitioners is not been certified and stood cancelled. He submits that no case for grant of any tenancy is made out and therefore there is no question of the delay being condoned by

considering the explanation tendered.

8. Considered the submissions and perused the record.

9. Although Mr. Kumbhakoni was at pains to demonstrate that as there is absolutely no merit in the claim raised by the Petitioners the present Petition should not be entertained as there is no substantial failure of justice, the fact remains that to appreciate the said submissions, it would be necessary for this Court to examine the merits of the matter as has been done by the authorities under the Tenancy Act which would run contrary to the well settled principle which has been laid down by the Single Judge of this Court and also the Apex Court. In the case of ***Shankar Ramrao Rangnekar (supra)*** the learned Single Judge has held that when there is a delay, the condonation of delay is required to be considered first and thereafter the Tribunal would get the jurisdiction to consider the controversy on merits only after such delay is condoned. Similar view has been taken by the Apex Court in the case of ***Commissioner, Nagar Parishad, Bhilwara (supra)*** where the Apex Court set aside the order of the Division Bench of this Court which has dismissed the Appeal filed by the Appellant on the sole ground of limitation and has held that while deciding an Application for condonation of delay the High Court ought not to have gone in the merits of the case and would have only seen whether sufficient cause has been shown for condoning the delay in

filing the appeal before it.

10. Considering the well settled position of law it is not open for this Court to enter into the merits of the matter to consider whether the Petitioners have in fact any case in proceedings under Section 32-G of the Tenancy Act. The Sub-Divisional Officer, and Learned Member of MRT has while deciding the Application for condonation of delay have considered the merits of the matter and has thereafter declined to condone the delay which has been held by the Apex Court to be impermissible. I am therefore not inclined to follow the same course and delve into the merits of the matter. What was required to be done by the Authorities was to examine whether sufficient cause has been made out for condoning the delay and as the Authorities has entered into the merits of the matter whilst adjudicating the application for condonation of delay. The Authorities have exceeded their jurisdiction warranting interference under Article 227 of Constitution of India.

11. In light of the above, the impugned order of the Sub-Divisional Officer dated 10th March, 2015 as well as the order of the MRT dated 3rd October 2023, are hereby quashed and set aside. The Tenancy Appeal No. 51 of 2014, is remitted to the Sub-Divisional Officer to consider the Application for condonation of delay. Considering that the matter is remitted to Sub-Divisional Officer, it is

requested to consider the same expeditiously.

12. Writ Petition stands allowed in the above terms.

13. Civil/Interim Application, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]