

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12202 OF 2024.

Shubhangi Shyamsunder More Since Dec Thr Lr ...Petitioner.

Versus

The State Of Maharashtra Dept Of Revenue And ...Respondents.
Forest Thr Principal Secretary And Ors

Mr. Jaydeep Deo for the Petitioner.

Mr. J. P. Patil AGP for the Respondent-State.

Mr. Sudhir Sadavarte for the Respondent No. 13.

Coram : Sharmila U. Deshmukh, J.

Date : November 27, 2024.

P. C. :

1. At the outset, learned Counsel appearing for the Petitioner seeks leave to delete Respondent No. 12 and Respondent Nos. 19 to 22. Leave to delete is granted, at the risk of the Petitioner. Amendment to be carried out forthwith.
2. By consent, Petition is taken up for final disposal as the Respondent No. 13 is the Contesting Respondent.
3. By this Petition, the challenge is to the order dated 31st May 2024, passed by the Respondent No. 1 i.e. the Principal Secretary Department of Revenue and Forest, condoning the delay of 10 years and 4 months caused in preferring the Revision Application.
4. Briefly stated facts of the case are that pursuant to sale

deed of the year 1986 the name of the Petitioner was entered into the 7/12 extract vide Mutation Entry No. 15558. In the year 2007, the Mutation Entry was challenged before the Sub Divisional Officer in RTS Appeal No. 85 of 2007, and the SDO condoned the delay of 21 years and after condoning the delay of 21 years the SDO allowed the RTS Appeal and cancelled the Mutation Entry by order dated 18th March 2008. The order of cancellation of Mutation Entry was challenged by the Petitioner before the Additional Collector in RTS Appeal No. 165 of 2008. By order dated 31st March 2010, Additional Collector allowed the Petitioner's RTS Appeal No. 165 of 2008. In the year 2011 some of the Respondents along with one Shamrao Sarjerao More (now deceased) challenged the order of the Additional Collector dated 31st March 2010, by which the Petitioner's name was reinstated in the 7/12 extract before the Divisional Commissioner. The said RTS Revision Application No. 422 of 2011, was dismissed for default on 14th September 2015.

5. On 20th October 2020 the Respondents including four Respondents herein who were Applicants in previous RTS No. 422 of 2011, filed a fresh Revision Application before the Divisional Commissioner against the order of Additional Collector dated 31st March 2010, along with an Application for condonation of delay which was rejected by order dated 29th July, 2021. The rejection by the Divisional Commissioner came to be challenged before the Hon'ble

Minister which was allowed as against which Petition was filed in this Court and the matter was remanded to the State Government for decision afresh. By the impugned order dated 31st May 2024, the delay of 10 years and 4 months has been condoned.

6. Learned Counsel appearing for the Petitioner has taken this Court through the records and proceedings and would submit that after the dismissal for default in the year 2015 instead of restoring the Revision Application No. 422 of 2011, fresh Revision Application No. 217 of 2020, was filed by suppressing the fact of filing of earlier application as well as dismissal of the same. He submits that some of the Applicants in the Revision Application No. 217 of 2020, were also party to the previous Revision Application No. 422 of 2011, and thus were in know of the earlier proceedings. He would further submit that the second Application itself was not maintainable and the appropriate remedy was to restore the earlier Revision Application. He submits that without any explanation being tendered, the delay of 10 years has been condoned. Pointing out to the reasons of the Respondent No. 1 for condoning the delay he submits that the Respondent No. 1 has only taken into consideration the death of one of the Applicants without noting that they were other applicants and therefore it cannot be said that there was no knowledge.

7. *Per contra*, learned Counsel appearing for the Respondent

No. 13 would submit that as against the order of SDO dated 18th March 2008, as the name of Respondents was shifted to the other right column both parties had challenged the same by way of Revision proceedings and the Petitioner's Revision Application is pending. He submits that therefore no prejudice is caused, if the present revision is also heard on merits. He would further submit that the previous RTS Revision Application No. 422 of 2011, was handled by the said Shamrao Sarjerao More being the constituted attorney and upon the death of the said Shamrao More, the present Respondents were totally unaware of the proceedings and therefore fresh revision was filed against the order of 31st March 2010. He submits that by the impugned order dated 31st May 2024, the RTS Revision Application No. 422 of 2011, has been revived.

8. I have considered the submissions and perused the record.

9. Firstly the contention that by the impugned order of 31st May 2024, the Revision Application No. 422 of 2011, is revived is completely misplaced. Perusal of the impugned order dated 31st May 2024, would indicate that by the impugned order, the delay in challenging the order of 31st March 2010, has been condoned which was by way of the subsequent Revision Application No. 217 of 2020. The only issue which was for consideration before the Respondent No. 1 was the rejection of the Application for condonation of delay in filing

the Revision Application No. 217 of 2020, and the same came to be condoned by the impugned order and therefore it is the Revision Application No. 217 of 2020, which was infact permitted to be proceeded on merits by condoning the delay and there is no revival of the earlier Revision Application No. 422 of 2011.

10. The impugned order condoning the delay of about 10 years and 4 months, will have to be seen as to whether the discretion has been rightly exercised by the Respondent No. 1 in favour of Respondents. Perusal of the impugned order would indicate that the Respondent No. 1 has taken into consideration the fact that the said Shamrao Sarjerao More had expired in the year 2012 and thereafter his son had expired and has accepted that the death of the two persons constitute sufficient explanation for the delay. The Respondent No. 1 failed to notice that the Revision Application No. 422 of 2011 was filed by the said Shamrao More on behalf of Applicant Nos. 1 to 7 as the constituted attorney and that the same was filed through an Advocate. It therefore cannot be said that the Respondents therein were unaware of the filing of the said Revision Application. Even though the said Shamrao More had expired in the year 2012 nothing prevented the other Applicants from proceeding with the hearing and it is not shown that thereafter any steps were taken by the Respondents to restore the said proceeding.

11. Instead of that, a fresh revision came to be filed in the year 2020, against the order of the Additional Collector dated 31st March 2010, along with an Application for condonation of delay. Perusal of the pleadings in the said Application would indicate that no explanation has been tendered much less sufficient explanation for the delay of 10 years and 4 months. The Application also does not make any reference to the earlier RTS Revision Application No. 422 of 2011, thus suppressing the fact of filing of earlier Revision and its dismissal. Mr. Sadavarte would submit that the Respondents were unaware of the dismissal, however, what is significant is that Respondents were aware of filing of Revision Application and ought to have diligent after death of Shamrao More. The Revision Application and the Application for delay is not a bonafide application. Paragraph 2 of the said Application pleads that the persons looking after the litigation had expired one by one and therefore there is huge delay. It is also pleaded that, if the matter is heard on merits then no prejudice will be caused to the Petitioner.

12. In a recent decision of the Apex Court in the case of ***Union of India & Anr. Vs. Jahangir Byramji Jeejeebhoy (D)***¹ the Apex Court in the context of delay of about 12 years and 158 days has held that the length of delay is relevant matter which the Court must take into

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consideration while considering whether the delay should be condoned or not. While considering the plea for condonation of delay the Court must not start with the merits of the main matter and the Court owes duty to first ascertain the bonafides of the explanation offered by the party seeking condonation and if only sufficient cause is assigned by the litigant and the opposition of the other side is equally balanced that the Court may bring into it the merits of the matter for the purpose of condoning the delay. The Apex Court has held that rendering substantial justice is not to cause prejudice to opposite party.

13. In light of the clear enunciation of the law, if the case set out in the Application is seen, there is absolutely no explanation for the delay. The Application has been drafted in most casual manner secure under the misconception that delay will be condoned as matter of course. It is well settled that each and every day's of delay is not required to be explained however the explanation must be sufficient and in this case the delay is not about a few days but of 10 years and 4 months and by passage of time rights have accrued in favour of other party and it cannot be heard that no prejudice will be caused by condoning the delay. Despite the Application being completely devoid of merits, the Respondent No.1 has taken into consideration the fact of death of the said Shamrao More and has condoned the delay of 10 years and 4

months which is unsustainable.

14. In light of the above, the impugned order suffers from infirmity and is hereby quashed and set aside.

15. Resultantly, the Application for condonation of delay dated 20th October 2020, stands dismissed.

[Sharmila U. Deshmukh, J.]