



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1731 OF 2024

Khushal Ramji Rathod
VERSUS
Dashrath Prakash Rathod And Others

- Mr. S. S. Tope, Advocate for the Petitioner
- Mr. B. S. Chondhekar, Advocate for Respondent Nos. 1 to 4
- Mr. N. D. Raje, AGP for the Respondent Nos. 5 to 9/State

CORAM : R. M. JOSHI, J
DATE : FEBRUARY 24, 2025

PER COURT :

1. The question arises in this Petition as to whether merely because the Petitioner is a agriculturist, his application for condonation of delay can be allowed even if he fails to substantiate the reasonable and sufficient ground for condonation thereof. Further question arises as to whether the length of delay could only decisive factor for the purpose of condonation thereof and nature of proceedings would be relevant or not, while deciding such application.

2. Herein this case, original proceedings are

filed under Section 5 of the Mamlatdar's Court Act, 1906 (for short '**the Act**'). An order came to be passed in favour of Respondents on 08.08.2022. The said order indicates that the Petitioner as well as Respondents were duly represented in the said proceeding before the Tahsildar through their Advocates. This order also shows that the contentions of both sides were taken into consideration while partly allowing the application. In this backdrop, against order dated 08.08.2022 revision came to be filed under Section 23(2) of the Act before the Sub-Divisional Officer (for short '**SDO**') along with application for condonation of delay of 8 months and 24 days. The application shows that following is the only ground for condonation of delay, which reads thus:

१३. हे कि, अपिलार्थी हा बाहेरगावी कामानिमित्त गेलेला असल्यामुळे व सदर प्रकरणाची माहिती न मिळाल्यामुळे अपिलार्थी वेळेत रिक्वीजन दाखल करू शकले नाही सदर प्रकरणाच्या नकला काढल्यावर अपिलार्थीच्या सदर प्रकरणात निर्णय झाल्याची माहिती मिळाली. सदर उशीर हा जाणीवपूर्वक नाही.

3. This application is came to be opposed by Respondents pointing out that reason given for the

condonation of delay is incorrect. It is further stated that the Petitioner has opposed the revenue authorities from measurement of the subject property which indicates that the Petitioner had full knowledge about the order passed by the Tahsildar, as such, application for condonation of delay deserves to be rejected. It is argued that having regard to the nature of proceedings and legislative intent behind providing this remedy, delay of more than 8 months is enormous.

4. The SDO, Hingoli by passing impugned order dated 10.10.2023 observed that the Applicant/Petitioner herein has not given any cause for condonation of delay in order to substantiate the same.

5. Learned Counsel for the Petitioner submits that it is settled position of law that the delay should be condoned liberally. To support his submission that when an application is moved by agriculturist or a labour, the Authorities are required to be liberal while condoning the delay, he placed reliance on judgment of this Court in case of Waman Jema Jadhav s. Govind Kishan Pawar, Second Appeal No. 931/2018.

Similarly, reliance is placed on judgment of this Court

in case of Sonerao Sadashivrao Patil and Another vs. Godawaribai Laxmansingh Gahirewar and Others, 2000 (1) Bom.C.R. 111 in order to submit that the refusal of the condonation of delay would lead to injustice as the proceeding before the SDO would not be decided on merit. Finally, it is argued that SDO has no power to decide the application and as such, order impugned deserves to be interfered with. To support this submission, he placed reliance on the judgment of this Court in cases of Ramesh Damu Patil vs. Purushottam Umrao Chavan and Others, 2017 (7) Bom.C.R. 630 & Prashant Prabhakar Rao Mukkavar vs. Sub-Divisional Officer and Others, 2019 DGLS(Bom.) 617.

6. Learned Counsel for contesting Respondent and learned AGP supported the impugned order.

7. There cannot be any dispute with regard to the proposition sought to be canvassed by the learned Counsel for the Petitioner that ordinarily Courts are required to lean in favour of condonation of the delay unless mala fides are shown. This however does not mean to construe that without any explanation much less proper explanation any delay can be condoned. Though

this Court further concedes to the submission that the Court needs to be liberal while allowing the application for condonation of delay, however, the same is required to be considered in the context of the nature of proceeding before it. Now time has come to consider as to whether the condonation of delay can be done for asking which would lead to causing of injustice to other side.

8. Section 5 of the Act undeniably makes provision for grant of urgent relief to the agriculturist. The entire scheme of under the said Act indicates that the Authorities are not required to go into the technicalities and discretion is required to be used in the interest of the agriculturist. Thus, time would be essence for decision of such issue and ignorance thereof would lead to making the provision otiose. In this backdrop, the facts of the present case indicate that present Petitioner/Original Respondent appeared through Advocate before Tahsildar. His contention was duly considered by the Tahsildar in order dated 08.08.2022. Thus, it cannot be said that the Petitioner was unaware of the proceedings in

question and order passed therein. In the application for condonation of delay, it is claimed that only after obtainment of the certified copy, the Petitioner got knowledge of the order impugned, hence, delay is sought to be condoned. In this regard, absolutely no material is placed on record before the SDO to substantiate the said contention. It is accordingly observed in impugned order by SDO.

9. In instant case, delay is not of few days, the delay is of more than 8 months. This delay is required to be considered in the context of reply filed by Respondents before the SDO wherein it is stated that the Petitioner did not permit the Revenue Authorities to carryout the measurement of the subject property for the purpose of implementation of order passed by Tahsildar. There is no rejoinder/denial of this fact on behalf of Petitioner. Thus, the mala fide intention of the Petitioner is apparent from his conduct and further it is sufficient to show his knowledge of proceeding and order passed therein. In the light of these facts, the SDO has rightly considered the case of the Petitioner by observing that there is absolutely no

material on record to substantiate the delay caused in filing of the proceeding before it.

10. As far as the exception taken to the jurisdiction of SDO is concerned, the application is filed by the Petitioner before the SDO. He subjected himself to the jurisdiction of the said Authority. The judgment in case of Ramesh Patil (supra) deals with the issue wherein there was objection raised with regard to the jurisdiction of the SDO on the ground that unless there is delegation of the power by the Collector, SDO cannot exercise the same power. In this Petition, no specific ground is raised about the jurisdiction of the SDO for want of delegation of power by the Collector. This is not the pure question of law as to whether or not there is delegation is question of fact and as the same is not raised before SDO, it is not permitted to be raised up in this Petition during arguments for first time. It is not the case that SDO has no jurisdiction at all to entertain proceeding. In case there is delegation of powers by the Collector, the SDO would certainly have jurisdiction to entertain the application under Section 23 of the Act. Since there is

no specific challenge to the said issue, this Court is not inclined to accept the contention of the Counsel for the Petitioner.

11. In view of above discussion, for want of any perversity, no interference is required in the impugned order. Hence, Petition stands dismissed.

(R. M. JOSHI, J.)