



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12236 OF 2018

SHAIKH JAVED SHAIKH NASIR
VERSUS
BABASAHEB PANDURANG JADHAV AND OTHERS

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Mr. Bhushan V. Virdhe, Advocate for the Petitioner
Ms. A.S. Mantri, AGP for Respondents/State
Mr. V. V. Bhavthankar, Advocate for Respondent No.4
Mr. M. S. Karad, Advocate h/f Mr. S. S. Thombre, Advocate for
Respondent Nos. 1 To 3

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 20th MARCH, 2025

PER COURT :

1. Petitioner is challenging the order dated 18/05/2018, passed by the Additional Divisional Commissioner, Aurangabad, in case No. DB/Appeal/CELL/148/2016, thereby rejecting the application filed by petitioner for condonation of delay caused in filing revision application.

2. It is the contention of petitioner that respondent Nos.1 to 3, who are adjacent landholders of land Plot No.1-97 owned by petitioner, have filed application on 10/08/2016 before respondent No.4 Chief Officer, Ambejogai, for correction in the area of plot No.1-98 as 50' x 80' which was earlier 50' x 23'. This application was allowed on 21/04/2008 and accordingly entry was taken in column No.5 of the Property Tax Register maintained by the office of Municipal Council, Ambejogai. It is the contention of petitioner that

he was not aware about the entry taken in the Property Tax Register and he got knowledge about the same when respondent Nos.1 to 3 filed suit for recovery of possession of suit land in the year 2010. Petitioner appeared in the suit and filed his written statement opposing the relief claimed respondent Nos.1 to 3. He averred in the written statement that without intimating him entry has been taken in the register by the Municipal Council, thereby reducing area of his land and increasing area of land owned by respondent Nos.1 to 3.

3. Petitioner has claimed that he was not aware about the remedy available to him of challenging the entry taken by Municipal Council by way of filing revision under Section 318 of the Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965 (for short 'the said Act'). When he got the knowledge about this remedy, he filed appropriate proceedings along with the application seeking condonation of delay. However, the application for condonation of delay has been rejected by the Additional Divisional Commissioner, Aurangabad, vide order dated 18/05/2018, observing that there is a delay of almost 7 years, 03 months and 21 days in filing the revision application and this delay is not satisfactorily explained by petitioner. It is the contention of petitioner that in the application for condonation of delay he has categorically stated that no notice under Section 183 of the said Act, has been issued to him before taking entry. Therefore, he did

not get knowledge about the same. When he got the knowledge about entry taken in the Property Tax Register, he had no knowledge about the legal remedy available to him under Section 318 and therefore, his application for condonation of delay may be allowed.

4. Learned advocate for petitioner submits that he was not going to be benefited by the delay caused in filing revision. In support of his submission he has placed reliance on ***Ram Nath Sao @ Ram Nath Sahu Vs. Gobardhan Sao***, reported in **2002(2) ALL MR 588**, wherein it is held that the expression 'sufficient cause' within the meaning of Section 5 of the Limitation Act or Rule 9 Order 22 of Civil Procedure Code or other similar provision, should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. Further reliance is placed on the judgment dated 14/06/2023, passed by this Court at Nagpur Bench in Writ Petition No.6407/2018 (*Smt. Sundarabai Baliram Vathodekar Vs. Sahebrao Shankarrao Gadekar and Another*), wherein this Court has taken a view that Courts should adopt pragmatic and liberal approach while considering condonation of delay, especially in cases involving old age and lack of legal knowledge. Similar view has been taken in the judgment dated 16/10/2023, passed by this Court at Nagpur Bench in Writ Petition No.7518/2017 (*Harish Pandhari Raut and Another Vs. Vithoba Motiram Raut and Others*), wherein reliance is placed on

Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, reported in **(2013) 12 SCC 649**, wherein the Hon'ble Apex Court has held that a liberal and pragmatic approach ought to be adopted while considering application for condonation of delay, which would not cancel the rights available to the parties either prosecution of a *lis* or its defence. The inconvenience caused to the other side can be compensated by giving appropriate costs, in order to afford an opportunity to the petitioners to contest the matter on merits.

5. Learned advocate for respondent Nos.1 to 3, on the other hand, contended that Additional Divisional Commissioner, Aurangabad, has rightly rejected the application for condonation of delay filed by petitioner. Petitioner was having knowledge about entry taken in the Property Tax Register by which area of his land has been reduced. Petitioner appeared in the suit filed by respondent Nos.1 to 3 and filed his written statement in the year 2010 itself, wherein it is stated that correction carried out by the Municipal Council Ambajogai, in area of house No.1-98 from 50' x 23' to 50' x 80' is absolutely illegal. Hence, according to respondents, statement made by petitioner in the written statement reflects that he had knowledge about the change in area of his land in the Property Tax Register. Therefore, the prayer made by petitioner does not deserve consideration.

6. Learned advocate for respondent Nos.1 to 3 has relied on ***Esha Bhattacharjee*** (supra), wherein it is held that, '*Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice*'. He has also relied on ***Pathapati Subba Reddy (Died) by L.Rs. And Others Vs. The Special Deputy Collector (LA)***, reported in **[2024] 4 SCR 241**, wherein it is held that, when there is no sufficient cause shown in the application for condonation of delay, the Court should not condone the delay.

7. Heard learned advocates for the respective parties. While passing impugned order the Additional Divisional Commissioner has held that reasons given by the petitioner for condonation of delay are not satisfactory and sufficient. In the application filed by petitioner seeking condonation of delay, he has stated that he was not aware about the legal remedy available to him under the said Act. Therefore, he could not prefer the proceedings before the Divisional Commissioner. Immediately after getting the knowledge about availability of alternate remedy, he has filed revision. It is also admitted position that petitioner had filed written statement in the suit filed by respondent Nos.1 to 3, in which it has reflected that petitioner was aware about the change in column No.5 of Property Tax Register. However, it is the contention

of petitioner that he did not have the knowledge about availability of legal remedy of filing revision under Section 318 of the said Act. It is admitted position that the petitioner is not going to be benefited by the delay caused in filing revision.

8. In **Esha Bhattacharjee** (supra), the Hon'ble Supreme Court has held that,

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1 (i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis."

Observations made in this judgment so also in the decision of Writ Petition No.6407/2018 are squarely applicable to the facts of the present case. Hence, in my view, considering the explanation given by the petitioner, which would stand covered under the term 'sufficient cause', as held in the above judicial pronouncement, the delay caused in filing revision deserves to be condoned by compensating the respondents.

9. In the result, writ petition is allowed. Order dated 18/05/2018 passed by the Additional Divisional Commissioner,

Aurangabad, in case No. DB/Appeal/CELL/148/2016, is quashed and set aside and the delay caused in filing the revision is condoned. Petitioner shall pay the cost of Rs.10,000/- to the respondents before the Additional Divisional Commissioner, Aurangabad, within a period of two weeks from today. Writ petition is accordingly, disposed of.

(MANJUSHA DESHPANDE, J.)