



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3695 OF 2018

MEHBOOB MEERSAHAB DIED LRS DAOOD MEHBOOB AND
OTHERS

VERSUS

SK MUJAHID HABIB AND OTHERS

AND

WRIT PETITION NO. 7724 OF 2017

SHAIKH MUJAHID SHAIKH HABIB AND ANOTHER

VERSUS

SK MAHBOOB MIRASAHEB AND OTHERS

Advocate for the Petitioners : Mr. Syed G R
AGP for Respondents-State : Ms. A. S. Mantri
Advocate for Respondent No. 1 : Mr. A. A. Yadkikar

CORAM : MANJUSHA DESHPANDE, J.

Dated : February 4, 2025

PER COURT :-

1. Both the writ petitions have been filed by the respective parties, being aggrieved by the judgment and order passed by the Maharashtra Revenue Tribunal, Aurangabad vide judgment and order dated 09.01.2017. While deciding both the Writ Petitions, the writ petition No. 7724 of 2017 is referred to according to the title of

parties in that Writ Petition for the convenience.

2. In the present matter, the petitioner had filed application before the Additional Collector, Nanded for restoration of the possession of the suit land bearing Sy. No. 111 (New Gat No. 234) by dispossessing respondent No. 6. It is the contention of the petitioner that one Lalba Jakoji was the owner and possessor of Sy. No. 111 to the extent of 12A-32G at village Arjapur, Tq. Biloli. The original owner had filed an application to the Deputy Collector, Degloor, Dist. Nanded for grant of permission to sell the land in Sy. No. 111 to the extent of 12A-32G on 18.12.1956. The original owner Lalba Jakoji executed a sale-deed in favour of Shaikh Habib Abdul Nabi (father of petitioner) of land Sy. No. 111 to the extent of 12A-32G. Pursuant to the execution of sale-deed, name of Shaikh Habib came to be entered in the revenue record vide Mutation Entry No. 268. In 1979, name of father was removed from mutation entry and name of respondent No. 1 was entered.

3. On making inquiries, it could be gathered that there was a declaration under Section 38(e) of the Hyderabad Tenancy Act. The petitioners were minor at that time. It is the case of the petitioner that, subsequently, when they got the knowledge about the declaration in respect of their land under Section 38(e) of Hyderabad

Tenancy and Agricultural Lands Act, 1950. The petitioner approached the Additional Collector, Nanded on 12.11.2013 for cancellation of declaration under Section 38(e) of the Act in respect of the suit land to the extent of 8A-12G in the name of Mehaboob Mira Sahab and for restoration of possession of the petitioner by dispossessing all the respondents.

4. While deciding the appeal filed by the petitioner, the Additional Collector, Nanded, by his order dated 04.06.2015, has partly allowed the appeal and the sale-deed executed by Mehboob Sahab Mira Sahab and his legal heirs has been declared null and void to the extent of 8A-12G, since it was a sale without prior permission, and, that portion of land was directed to be taken in possession of the government and rest of the portion to the extent of 4A-20G was directed to be given in possession of the purchasers Shaikh Habib Abdul Nabi through his legal representatives Shri. Shaikh Mujahid Habib and Gulam Mustafa Habib. It was further directed that their names should be entered in the revenue record.

5. Being aggrieved by the order passed by the Additional Collector, Nanded, the present petitioner as well as respondent No. 1 had approached before the Member, Maharashtra Revenue Tribunal, Aurangabad (hereinafter "MRT"), by filing independent Revision

Applications.

6. It is the contention of the petitioner that in the proceedings before the MRT, the MRT has proceeded on various technical grounds including maintainability and delay in filing the application before the Additional Collector. It is the contention of the petitioner that though the Additional Collector has not passed any order on the issue of delay, the Member of MRT has proceeded only on the basis of delay which was caused while filing appeal before the Additional Collector and on that ground, has set aside the order of the Additional Collector.

7. The learned Advocate for the petitioner further contends that the Member of MRT straightway proceeded and rejected the revision solely on the basis of delay which was caused in filing the application before the Additional Collector. While passing the order, the Member, MRT, has observed that upon going through the record, it does not disclose that there was an application for condonation of delay filed along with the Appeal filed by the applicant and yet, the Additional Collector has entertained the application and passed the order.

8. The petitioner in the Writ Petition No. 3695 of 2018, had

also filed the Revision Application No. 69/B/2016/N before the MRT being aggrieved by the order passed by the Additional Collector. It is his specific contention that he had raised objection regarding limitation before the MRT. While recording the objection of the respondent, it is observed that respondent has pointed out in the order that appeal is not maintainable since it was filed after more than 16 years. The contentions of the respondent have not been taken into consideration by the Additional Collector. It is observed by the MRT that since the point of limitation is a question of law which is required to be considered. Therefore, the order passed by the Additional Collector has been set aside.

9. The Member, MRT, has further considered the Section 93 of Hyderabad Tenancy and Agricultural Land Act, 1950, which provides for limitation while filing Appeal and Revision. Taking into consideration the period of limitation provided in the said Act, MRT has proceeded and passed an order holding that the order of Additional Collector is not maintainable in the eye of law since the appeal was not filed within prescribed period of limitation, accompanied by application for condonation of delay. The order passed by the Additional Collector, therefore, was held to be not maintainable and is required to be quashed and set aside.

10. Without going into the merits of the matter, the MRT has been pleased to dismiss the Revision No. 69/B/2016/Nanded as well as Revision No. 70/B/2016/Nanded by a common order and the order passed by the Additional Collector, Nanded in Tenancy Appeal No. Sanchika No. 2014/bhusu / kul/ appeal / CR /-57 has been quashed and set aside.

11. According to the learned Advocate for the petitioner, the Member, MRT is not at all justified in quashing the order passed by the Additional Collector which was passed on the merits of the matter. If at all it was the opinion of the MRT that the question of limitation is a question of law. At the most, the Member, MRT ought to have remanded back the matter to the Additional Collector in order to decide the issue of limitation and thereafter, pass the order in Appeal on its own merits. However, the MRT has committed error in setting aside the order passed by the Additional Collector which was based on merits.

12. Learned Advocate for the respondent opposed prayer made by the petitioner and submits that he has raised an objection regarding the delay caused in filing the proceedings before the Additional Collector. However, the Additional Collector has not passed

any order on the issue of delay.

13. I have heard respective Advocates in both the writ petitions. After going through the order passed by the Member, MRT, it is apparent that the MRT has not passed any order relating to the merits of the matter but has passed an order only on the ground of limitation and delay occurred in filing the Appeal. The order passed by the Additional Collector in Tenancy Appeal has been quashed and set aside on the ground that there was inordinate delay in filing Appeal therefore, without application of condonation of delay, Additional Collector has entertained the Appeal. On going through the order passed by the Additional Collector, it is also apparent that the order has been passed on the basis of merits of the matter and admittedly, the issue of delay is not considered by the Additional Collector while passing the order. Though the MRT is justified in raising the issue on limitation, however, without going into the merits of the matter, the order of the Additional Collector passed on merits of the case has been quashed and set aside.

14. In my opinion, the Member, MRT should have remanded the matter back to the Additional Collector for deciding the issue of limitation and condonation of delay and thereafter, pass appropriate order on merits. Without granting the opportunity to the appellant to

explain the delay, the rights which have been accrued in their favour cannot be taken away by observing that the issue of delay was not considered by the Collector while deciding the appeal filed by the petitioner. The observations made in the order by the MRT regarding the delay to challenge the Certificate issued under Section 38(e) of the Hyderabad Tenancy Act are made without granting opportunity to the petitioner who is aggrieved by the said order. The order passed by the MRT on that ground alone needs to be quashed and set aside.

15. Therefore, in my opinion, the order passed by the Member, MRT deserves to be quashed and set aside by directing the Additional Collector to decide the Appeal filed by the petitioner before him after taking into consideration the question of limitation and condonation of delay.

16. Hence, the order passed by the Member, MRT, in Revision Application No. 69/B/2016/N challenged by the respondents herein and Revision Application No. 70/B/2016/N challenged by the petitioners herein, are quashed and set aside and the matter is remanded back to the Additional Collector, Nanded to decide the Appeal File No. 2001/L.R./TNC/ Appeal/CR-57 initially on the issue of limitation and, thereafter, on its own merits by affording opportunity to the respective parties. It is further directed that the

Additional Collector, Nanded shall make endeavour to decide the Appeal within a period of six months from the date of this order.

17. With the above observations, both the writ petitions stands disposed of.

(MANJUSHA DESHPANDE, J.)

Omkar Joshi