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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1072 OF 2005
WITH
INTERIM APPLICATION (ST.) NO.3869 OF 2025
WITH
INTERIM APPLICATION NO.17334 OF 2022
IN
WRIT PETITION NO.1072 OF 2005

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Shamrao Ramu Kamble
Since Deceased Through LR. & Ors. ... Petitioners
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Vijay Patil, Senior Advocate with Mr. Dhairyasheel
V. Sutar for the Petitioners.

Ms. M. S. Bane, AGP for the respondent Nos.1 to 3-
State.

Mr. Drupad Patil with Mr. Shantanu Kalekar for
respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2025

P.C.:

1. By this Writ Petition filed under Article 227 of the Constitution of India, the petitioners have assailed the legality, validity, and propriety of the order dated 29th April 1960, whereby a certificate under Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the BTAL Act") came to be issued in favour of respondent No.4-Trust in

respect of lands bearing R.S. No.137 admeasuring 27.15R and R.S. No.166 admeasuring 7.27R situate at village Rukadi, Taluka Hatkangale, District Kolhapur.

2. It is the specific case of the petitioners that the aforesaid lands were lawfully tenanted by three tenants, namely, Ramu Santu Kamble, Madhukar Gangaram Rukadikar, and Annappa Daku Kamble. The petitioners, being their legal heirs and successors, claim to have inherited and succeeded to the tenancy rights in respect of the said lands. It is the further case of the petitioners that respondent No.4 instituted Regular Civil Suit No.879 of 1977 before the learned II Joint Civil Judge, Junior Division, Kolhapur, seeking possession of the suit lands from the petitioners. In the said suit, respondent No.4 asserted that the suit lands belonged to Hajratpeer Rajebaxar Devasthan, which is a public trust duly registered under the Bombay Public Trusts Act, 1950, and that the said Devasthan had obtained a certificate of exemption under Section 88B of the BTAL Act.

3. Respondent No.4 further contended in the said suit that the Mahomedan Education Society, being a registered society under the Bombay Public Trusts Act, 1950, was acting as Vahivatdar (Manager) of the said Devasthan. It was further averred that the petitioners were cultivating the suit lands as tenants and that the income generated therefrom was utilized for the annual religious function of the Devasthan as well as for educational and religious purposes. However, it was pleaded that the income derived in the form of rent and Khanda was not sufficient to meet the religious, public, and educational needs of the Devasthan, necessitating

personal cultivation of the lands by the Vahivatdar. Accordingly, respondent No.4 issued a notice dated 22nd September 1970 terminating the tenancy of the petitioners, effective from 31st March 1970, and thereafter instituted Regular Civil Suit No.879 of 1977 for possession.

4. The petitioners appeared in the said civil suit and filed a written statement, contesting the claim of respondent No.4 on multiple grounds. The petitioners specifically contended that the Vahivatdar had no locus to institute the suit, and that any dispute relating to tenancy rights fell exclusively within the jurisdiction of the competent tenancy authority under the BTAL Act, and not the Civil Court. The petitioners categorically denied that respondent No.4 had obtained a valid exemption certificate under Section 88B of the BTAL Act and asserted that they had no knowledge of any such certificate being issued. It was specifically contended that the petitioners were not served with any notice of the proceedings initiated under Section 88B, and therefore, the certificate issued was not binding upon them.

5. It is the petitioners' case that issues were framed by the Trial Court, and only thereafter, for the first time, respondent No.4 produced on record the purported certificate under Section 88B of the BTAL Act. The petitioners raised a contention before the Trial Court that the said certificate was void ab initio and could not bind the petitioners in absence of notice and participation in the proceedings leading to its grant. Nevertheless, the learned Trial Court, by judgment and decree dated 3rd April 2002, decreed Regular Civil Suit No.879 of 1977 in favour of respondent No.4,

holding the suit lands exempt from the protective provisions of the BTAL Act.

6. Aggrieved thereby, the petitioners preferred Regular Civil Appeal No.130 of 2005 before the learned District Judge, Kolhapur, which, at the time of filing of the present petition, was stated to be pending adjudication. In the meantime, the petitioners invoked the extraordinary jurisdiction of this Court under Article 227, challenging directly the validity of the certificate issued under Section 88B of the BTAL Act on 29th April 1960, inter alia, on the grounds that the said certificate was obtained without notice to the petitioners or their predecessors, and therefore was void and non est in the eyes of law.

7. Upon hearing the petitioners, this Court, by order dated 7th June 2005, issued Rule and was pleased to grant interim relief, staying further proceedings based on the impugned certificate, thus protecting the possession of the petitioners pending final disposal of the present writ petition.

8. Mr. Vijay Patil, learned Senior Advocate appearing on behalf of the petitioners, submitted that the impugned certificate issued under Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948, is a nullity in the eyes of law. He relied upon the judgment of a Co-ordinate Bench of this Court in *Hirabai Baburao Shidankar and Another v. Rayat Shikshan Sanstha, Satara and Others*, reported in 2009 (3) Mh.L.J. 117. Placing reliance thereon, he urged that the authorities under the BTAL Act issued the exemption certificate in favour of respondent No.4-Trust without

issuing notice to the tenants or affording them an opportunity of hearing, thereby violating the fundamental principles of natural justice. He submitted that issuance of the certificate behind the back of the tenants renders the same void ab initio and non est, and as such, the doctrine of laches cannot be invoked to defeat the petitioners' challenge to a patently illegal and void order.

9. Learned Senior Counsel submitted that the order passed by the Collector granting the exemption certificate is a non-speaking and unreasoned order, and therefore vitiated on that ground as well. He further submitted that the petitioners had no knowledge about the issuance of the exemption certificate and, therefore, could not challenge the same earlier. He contended that absence of knowledge disentitles the respondents from raising the plea of delay and laches. Relying upon the judgment of this Court in *Bhimrao Chandru Patil & Others v. Balkrishna Dattatraya Joshi & Others*, reported in 2002 (1) Mh.L.J. 125, learned Senior Counsel submitted that a Co-ordinate Bench has categorically held that before granting an exemption certificate under Section 88B of the BTAL Act in favour of a public trust, it is obligatory upon the authority to afford a reasonable opportunity of hearing to the tenants, as the grant of such certificate would seriously prejudice the valuable rights of cultivation vested in the tenants. He thus urged that the impugned certificate dated 29th April 1960, having been issued in violation of the principles of natural justice and without hearing the tenants, deserves to be quashed and set aside.

10. Per contra, Mr. Drupad Patil, learned Advocate appearing for respondent No.4-Trust, opposed the petition and submitted that

the petitioners have approached this Court with unclean hands and have suppressed material facts from this Court. He invited my attention to the order dated 8th October 1975 passed by this Court in *Special Civil Application No.305 of 1975*, wherein it was observed that the exemption certificate, having been produced at Exhibit '65' in the civil suit, was very much within the knowledge of the petitioners. He pointed out that this Court, in the said proceedings, had specifically held that there was no dispute as to the relationship of landlord and tenant, and that the issue of tenancy need not be referred to the tenancy authority. It was further observed that the validity of the exemption certificate could not be reagitated in the said proceedings on the grounds now sought to be urged. Learned Advocate submitted that the predecessor-in-title of the petitioners was a party to the earlier proceedings and, therefore, the non-disclosure of such material fact amounts to suppression of material facts disentitling the petitioners to any equitable relief under Article 227 of the Constitution of India. He contended that the present writ petition, challenging the certificate issued in the year 1960, is highly belated and suffers from gross and unexplained delay of about 45 years.

11. Learned Advocate pointed out that the certificate under Section 88B was produced on record as early as in the year 1974 in the civil suit at Exhibit '65', and that mutation entry No.6821 was recorded in the year 1962 on the basis of the said certificate, which remained unchallenged for decades. He contended that the challenge raised now is based on a false plea of ignorance and

absence of knowledge, which cannot be accepted in law. He placed reliance upon the judgment of the Hon'ble Supreme Court in *M/s. Prestige Lights Ltd. v. State Bank of India*, reported in 2007 AIR SCW 5350, wherein it was held that a litigant approaching the Writ Court must disclose all material facts fully and fairly, and that suppression or misstatement of facts warrants dismissal of the petition without adjudication on merits. Further reliance was placed on the judgment of the Hon'ble Supreme Court in *HMT Ltd. v. Rukmini* [Special Leave Petition (C) Nos.30584-85 of 2019, decided on 24th September 2024], wherein it was observed that a writ petition must be filed within a reasonable period and that delay and laches would not be treated as mere technicalities when facts are in dispute and over time evidence may dissipate. He also relied on the judgment of this Court in *Madhavdas Gujar v. Mahadu Raut*, reported in 1994 (1) Bom C.R. 509, to contend that it is not open to a litigant to unilaterally assume that an order is void and proceed to ignore it. An order passed by a competent authority is presumed to be valid and binding unless set aside in appropriate proceedings within the period of limitation prescribed under the law. It was urged that a belated challenge to a long-standing order is liable to be rejected at the threshold. On the strength of these submissions, learned Advocate for respondent No.4 prayed for dismissal of the writ petition with costs.

12. Rival contentions now fall for consideration.

13. Upon careful perusal of the record, it emerges that the following facts are either undisputed or stand established:

(i) That a certificate under Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the BTAL Act") was issued in favour of respondent No.4-Trust on 29th April 1960 without affording any opportunity of hearing to the petitioners or their predecessors in title.

(ii) That Regular Civil Suit No.879 of 1977 (initially registered as Regular Civil Suit No.121 of 1971) was instituted by respondent No.4 in the year 1971, seeking possession of the suit lands based on the exemption certificate issued under Section 88B of the BTAL Act.

(iii) That the petitioners, upon entering appearance in the said suit, filed a written statement contesting the claim of respondent No.4 and, inter alia, pleaded lack of knowledge about the exemption certificate. The petitioners also raised a counter-claim alleging that the certificate obtained under Section 88B of the BTAL Act was void.

(iv) That in Special Civil Application No.305 of 1975 instituted by the petitioners themselves, this Court, by its judgment and order dated 8th October 1975, in paragraph 5 thereof, considered the specific contention raised by the petitioners regarding the validity of the very certificate which is now sought to be challenged in the present writ petition.

14. Based on the aforesaid undisputed and established facts, it becomes manifest that the petitioners, or at least their predecessor-in-title, had knowledge of the issuance of the certificate in question

much prior to the institution of the present petition. It is pertinent to note that in the judgment and order dated 8th October 1975 passed by this Court in Special Civil Application No.305 of 1975, the contention regarding invalidity of the exemption certificate under Section 88B of the BTAL Act was specifically raised and expressly considered by this Court. Despite such knowledge, and despite an earlier challenge having been made, the petitioners have, in paragraph 5 of the present petition, made a categorical statement on oath to the effect that suit summons of Regular Civil Suit No.879 of 1977 were received by “some of the petitioners” only in the year 1990, and that only at the time of giving evidence the said trust produced a copy of the exemption certificate, whereafter the petitioners allegedly got knowledge of the same. The petitioners further averred that they made attempts to obtain certified copies but did not receive any response from the concerned authority and hence could not challenge the certificate earlier.

15. In my considered opinion, the said statement made by the petitioners is ex facie false to their own knowledge. The judgment dated 8th October 1975 in Special Civil Application No.305 of 1975, a copy of which has been placed on record, leaves no manner of doubt that the petitioners had full knowledge of the issuance of the certificate. In fact, in paragraph 6 of the said judgment, this Court observed that the Trust had been registered in the year 1952 and that if a registration certificate was produced before the Civil Court, there would be no infirmity in the certificate issued under Section 88B of the BTAL Act. Further, this

Court specifically held that the validity of the exemption certificate could not be questioned in a civil court on the ground that proper procedure was not followed.

16. Upon perusal of the cause title of Special Civil Application No.305 of 1975, it is evident that petitioner therein was Shamrao Ramu Kamble, who is the very petitioner No.1 in the present writ petition. It is, thus, beyond pale of controversy that the very same person had, in earlier proceedings before this Court, raised identical challenges which were rejected, and observations were made clarifying that the validity of the certificate could not be assailed in civil proceedings.

17. In such circumstances, it was incumbent upon the petitioners to have initiated appropriate proceedings for challenging the exemption certificate at least immediately after the judgment dated 8th October 1975. However, the petitioners allowed the matter to rest and chose to institute the present writ petition only in the year 2005, that too by making a false statement on oath regarding their knowledge of the certificate. The petitioners have also falsely averred that they first became aware of the certificate at the time of giving evidence by the Trust in Regular Civil Suit No.879 of 1977, and have twisted facts by asserting that summons of the suit were received only in the year 1990.

18. In my considered view, the petitioners, having knowingly made false statements on oath with regard to material facts, are not entitled to invoke the extraordinary constitutional jurisdiction of this Court under Article 227 of the Constitution of India,

particularly when the impugned order dates back to 29th April 1960 and the petitioners admittedly had knowledge thereof before 1975.

19. Respondent No.4 is, therefore, justified in placing reliance upon the judgment of the Hon'ble Supreme Court in *M/s. Prestige Lights Ltd. v. State Bank of India*, (2007) AIR SCW 5350, wherein it was emphasized that it is the bounden duty of every litigant approaching the Writ Court to disclose all material facts fully and fairly without any reservation. It was held that suppression or misstatement of material facts warrants dismissal of the writ petition without adjudication on merits. The Supreme Court quoted with approval the principle laid down in *In Re: Kensington Income Tax Commissioners*, (1917) 1 KB 486, to the effect that when a party approaches the Court ex parte and misstates or suppresses material facts, the Court may refuse to grant any relief on the ground of abuse of the process of Court. Applying the aforesaid principle to the facts of the present case, it is evident that the petitioners have failed to disclose the earlier proceedings and the judgment dated 8th October 1975 passed in Special Civil Application No.305 of 1975, and have made a false and misleading statement regarding their knowledge of the exemption certificate. In such circumstances, no indulgence can be shown to the petitioners, and the present writ petition deserves to be dismissed on the ground of suppression of material facts and delay and laches alone, without entering into the merits of the challenge to the exemption certificate.

20. At this stage, it is necessary to refer to the recent pronouncement of the Hon'ble Supreme Court in *HMT Limited v. Rukmini* (supra). In paragraphs 13 and 15 thereof, the Supreme Court has observed as under:

“13. That apart, even as per the respondents/writ petitioners’ own reckoning and as per their writ averments, their cause of action arose in the year 1973, when the Union of India and the Defence department allegedly stopped paying rental compensation. However, it was only in the year 2006 that they chose to file a writ petition. A writ petition should be preferred within reasonable time, the reasonableness of which would depend on the facts and circumstances of the case and the relief prayed for. Notably, delay by the authorities, at times, may constitute a cause of action in itself. This would be especially true in a case of a live and continuing cause of action or in the event of failure to perform a mandatory statutory duty. It is, however, equally true that there can be cases where delay and laches would be fatal and can result in the dismissal of the writ petition. For example, when there is an implied acceptance or the issue/dispute becomes stale/dead or there is a change/alteration in position or if third-party rights have been created. The above instances are illustrative and are, by no means, exhaustive. A plea of delay and laches would not be merely technical when facts are in dispute as, over time, evidence may dissipate and materials, including Government files, may become increasingly difficult to trace. Further, individuals with knowledge of the case may move on or become unavailable. The situation is exacerbated for Government servants, as they face transfers and superannuation. Further, such deserving dismissals on delay and laches serve a larger purpose, as time would not be spent unnecessarily on stale and nebulous disputes, enabling Courts/Tribunals to deal with and decide active pressing

cases.”

“15. It is in this context that this Court, in Syed Maqbool Ali vs. State of Uttar Pradesh and another, observed that an aggrieved person should approach the High Court diligently. Delay in filing a writ petition can result in prejudice, as parties’ position and status may change. Courts do, in cases of such delay, insist that the party concerned should have a good and satisfactory explanation for it. It is only on being satisfied that other factors would not outweigh grant of relief, can the weighty objection of delay and laches be rejected. In other words, a Constitutional Court should be convinced that the case warrants exercise of jurisdiction under Article 226 of the Constitution. In State of Maharashtra vs. Digambar, a Three-Judge Bench of this Court had observed that the grant of relief by a Constitutional Court under Article 226 of the Constitution, without considering blameworthy conduct, such as delay and laches, would be unsustainable even if such relief was granted for the alleged deprivation of a legal right. Discretionary relief, in such circumstances, can only be obtained upon fully satisfying the Court that the delay was justified and explainable.”

21. Reliance placed by the petitioners on the judgment in *Madhavdas Gujar v. Mahadu Raut*, reported in 1994 (1) Bom C.R. 509, is also noteworthy. A Co-ordinate Bench of this Court, in paragraphs 8 and 9, observed thus:

“8. Adverting to the arguments canvassed with regard to the provisions of the Limitation Act, it was contended that the order in question being void, the provisions of the Limitation Act would not apply and that, therefore, the appeal filed after a lapse of 22 years was competent. This argument was repelled by holding that it is not for a litigant to unilaterally determine whether an order is void or

otherwise, for that would lead to disastrous consequences. An order passed by a competent forum is presumed to be valid and binding unless set aside or declared void by a legally empowered authority. Such an exercise must be undertaken within the timeframe prescribed by the Limitation Act; if not, the order assumes finality. A party challenging a time-barred order is shut out at the very threshold.”

“9. Further, it was held that even if a contention is raised that the order is void, such contention must be raised before a competent forum within the period prescribed by law. If not, the presumption under Section 114 of the Indian Evidence Act, 1872, would apply, namely, that acts done are presumed to have been done regularly. Passage of time creates rights and obligations, and stale challenges after decades cannot be entertained lightly. The facts of the case therein also indicated that valuable rights had accrued, and such afterthought challenges were rightly rejected.”

22. It is further necessary to consider the authoritative pronouncement of the Hon’ble Supreme Court in *State of Punjab v. Gurudev Singh*, reported in (1991) 4 SCC 1, where it was contended that an order of dismissal was void and inoperative. The Hon’ble Supreme Court observed that even assuming that an order is void, it operates at least de facto unless declared void by a competent Court. The Supreme Court further held that even if an act is void, the aggrieved party must seek a declaration within the period prescribed by law. It was categorically held that submission that being void, the order can be challenged at any time cannot be accepted.

23. In the facts of the present case, suppression by the petitioners of the judgment and order passed by this Court in

Special Civil Application No.305 of 1975, wherein the issue of invalidity of the certificate was raised and repelled, assumes critical significance. In my considered view, the petitioners, having suppressed such a material fact and having made a false statement on oath regarding lack of knowledge, are not entitled to invoke the extraordinary constitutional jurisdiction of this Court under Article 227 of the Constitution of India.

24. The reliance placed by the petitioners on the judgment of the Co-ordinate Bench in *Hirabai Baburao Shidankar* (supra) is clearly misplaced. It is pertinent to note that the observations made therein were in the peculiar facts of that case and do not lay down any universal principle overriding binding precedents of the Hon'ble Supreme Court. In view of the judgments referred to above and the blameworthy conduct of the petitioners, I am of the firm opinion that the petitioners are not entitled to any discretionary relief under Article 227 of the Constitution.

25. Therefore, the writ petition is liable to be dismissed. Accordingly, the writ petition stands dismissed. No order as to costs.

26. In view of the dismissal of the writ petition, all pending interlocutory applications stand disposed of as infructuous.

(AMIT BORKAR, J.)