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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5423 OF 2001

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VAIBHAV RAMESH
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Ismail Ali Shikalgar, Since Deceased by
His Heirs and legal Representatives &
Ors.

... Petitioners

V/s.

Sayabu Ali Shikalgar & Anr.

... Respondents

Mr. Rahul M. More h/f Rananaware for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 21, 2025

P.C.:

1. By this Writ Petition, instituted under Article 226 of the Constitution of India, the Petitioners have sought to challenge the judgment and orders passed by the Maharashtra Revenue Tribunal (hereinafter “MRT”) and the Sub-Divisional Officer (hereinafter “SDO”), whereby the Appeal instituted by Respondent Nos.1 and 2 was entertained after a lapse of more than 24 years, without any application for condonation of delay, and without demonstrating sufficient cause in terms of Section 5 of the Limitation Act, 1963.

2. The factual matrix leading to the institution of the present Writ Petition unfolds as under:

(a) The Petitioners’ grandfather, one *Ali Piragi Shikalgar*, was a tenant in respect of one-third portion of the disputed

property, bearing Survey No.36, situated at Kille-Machindragad, Taluka Walva, District Sangli, admeasuring 13 acres. Proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter “BTAL Act”) were duly initiated, culminating in an order dated 31 May 1961 passed by the Additional Mamlatdar and Agricultural Lands Tribunal (“A.L.T.”) No.1, Walva. By this order, the price of one-third share of Survey No.36 was fixed under Section 32G(4), and upon payment of the purchase price, the A.L.T. directed issuance of the certificate under Section 32M.

(b) It transpires that on 7 September 1971, the A.L.T. passed an order confirming the deposit of the purchase amount by one *Ismail Ali Shikalgar*. Consequently, on 31 August 1976, the A.L.T. proceeded to issue a certificate under Section 32M in his favour, thereby completing the statutory vesting process. The name of the said Ismail was then duly reflected in the revenue records, along with *Sayabu Ali Shikalgar* and *Mehboob Ali Shikalgar*, as recorded by Mutation Entry No.645.

(c) On 31 October 2000, Respondent Nos.1 and 2 instituted an Appeal, bearing No.34 of 2000, before the SDO, Walva, assailing the order dated 31 August 1976 that granted the certificate under Section 32M to Late Ismail. According to the Petitioners, this Appeal was manifestly time-barred, being filed after nearly 24 years, without any application seeking condonation of delay under Section 5 of the

Limitation Act, 1963.

(d) The Petitioners objected to the maintainability of the aforesaid Appeal on the ground of limitation, submitting that the colossal delay of 24 years remained unexplained. They further submitted that Late Ismail had duly deposited the requisite amount under Section 32G of the BTAL Act, meriting the issuance of the Section 32M certificate. As per Section 40 of the BTAL Act, it was urged that only such heirs who are interested in continuing the tenancy could succeed to the rights of the original tenant.

(e) Vide order dated 4 November 2000, the SDO allowed the Appeal, holding that the certificate under Section 32M was issued without making Respondent Nos.1 and 2 parties to the proceedings, and hence there was allegedly no delay.

(f) Aggrieved by the said order, the Petitioners preferred a Revision before the MRT. However, by order dated 28 June 2000, the MRT dismissed the Revision, observing that the names of all legal representatives ought to have been included in the certificate issued under Section 32M. Crucially, the MRT did not consider the Petitioners' objection on the aspect of limitation.

In this backdrop, the Petitioners have approached this Court by way of the present Writ Petition, assailing both the order passed by the SDO and its confirmation by the MRT.

3. It is borne out from the record that Respondent Nos.1 and 2 are duly represented by an Advocate. Notwithstanding the same,

on repeated calls before this Court on 9 May 2024, 7 February 2025, and 14 February 2025, there was no appearance on their behalf. Having regard to the chronology and the consistent absence of the Respondents' Advocate, it is but appropriate to decide the matter on its merits, in accordance with law, without further adjournment.

4. Having meticulously perused the record and duly considered the submissions advanced on behalf of the Petitioners, the following pertinent aspects emerge for consideration.

5. It is an admitted position that the certificate under Section 32M of the BTAL Act was issued as far back as on 31 August 1976, and the consequential Mutation Entry No.645 was effected in the revenue record, incorporating the name of Late Ismail and other heirs, including Sayabu and Mehboob. By contrast, the Appeal before the SDO came to be lodged only on 31 October 2000, a delay of around 24 years.

6. In law, limitation is not a mere technicality. The statutory mandate of Section 5 of the Limitation Act, 1963, requires a party who files an appeal or revision belatedly to file a proper application for condoning the delay, explaining "sufficient cause." Though the courts adopt a liberal approach in considering such applications, the applicant must still furnish a reasonable and bona fide explanation for the inordinate delay. A bald assertion or mere ignorance of one's rights can never suffice; a party must discharge the onus of explaining why the matter was not brought before the court within the statutory period.

7. The SDO recorded a finding that Respondent Nos.1 and 2 were not parties to the original tenancy proceedings and that, therefore, there was ostensibly “no delay.” This finding is *ex facie* perverse. The record reveals that after issuance of the Section 32M certificate, mutation entries were effected, reflecting the names of the relevant heirs, including the father of Respondent Nos.1 and 2. Hence, the assertion that Respondent Nos.1 and 2 were completely unaware of the proceedings is difficult to sustain. Ignorance of proceedings, if any, could have been pleaded as a ground for condonation, but that was never done. Even if the Respondent Nos.1 and 2 had a genuine grievance about their non-joinder, they were statutorily bound to seek condonation by explicating the cause for a 24-year delay. Their failure to do so is fatal to their case.

8. On Revision, the MRT upheld the SDO’s order by primarily focusing on the aspect that all legal heirs of the original tenant ought to be included in the 32M certificate. However, it entirely glossed over the question of limitation. Where a statutory appeal is preferred beyond the prescribed period, the appellate authority must necessarily render a finding on whether sufficient cause existed to condone the delay. By omitting to do so, the MRT committed a patent error of jurisdiction.

9. In the absence of any application for condonation of delay, the SDO acted in excess of jurisdiction by entertaining a manifestly time-barred Appeal. The subsequent affirmation of that erroneous order by the MRT constitutes a grave legal infirmity. Considering the totality of circumstances, and the binding precedents which

enjoin upon authorities and courts to insist on adherence to limitation provisions, the impugned orders cannot be legally sustained.

10. In the result, and for the reasons aforesaid, I am of the considered view that the impugned orders dated 4 November 2000 (passed by the SDO) and 28 June 2000 (passed by the MRT) are wholly unsustainable in law. The finding that “there is no delay” in filing the appeal by Respondent Nos.1 and 2 is clearly erroneous and contrary to the record. The statutory requirement of seeking condonation of delay is not a mere formality; absent any explanation for such a prolonged delay, the appellate authority could not have set aside the 32M certificate validly issued in favour of Late Ismail on 31 August 1976.

11. Hence, both the orders stand quashed and set aside. The certificate under Section 32M issued in favour of Late Ismail Ali Shikalgar shall remain in force unless displaced by a proper proceeding, if at all maintainable in law, instituted in accordance with the prescribed period of limitation and accompanied by a cogent explanation of delay.

12. Rule is, therefore, made absolute in terms of prayer clause (b). No order as to costs.

13. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)