

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6879 OF 2024

Poonam Aundh Land Developers
Private Limited

... Petitioner

V/s.

The State of Maharashtra and ors.

... Respondents

Mr. S. S. Patwardhan with **Mr. S. Pawale** i/by **Mr. Purushottam G. Chavan**,
Advocates for the Petitioner.

Ms. A. A. Nadkarni, *AGP for the State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 11 February, 2025.

P.C. :

1. The present Petition challenges order dated 17th September, 2021 passed by Additional Collector, Pune rejecting the Appeal preferred by the Petitioner against order dated 12th July, 2018 passed by Tahasildar, Haveli (Pune).

2. I have heard Mr. Patwardhan, learned counsel appearing for Petitioner and Ms. Nadkarni, learned AGP appearing for State.

3. It appears that a report was submitted by Talathi, Mohamadwadi, Pune on 16th July, 2012 about unauthorized excavation in land bearing Survey/Gut No.60, Village-Undri, Taluka-Haveli, District-Pune by the Petitioner. On the basis of the said report dated 16th July, 2012, notice was issued to the Petitioner for conduct of inquiry and accordingly, hearing took

place. It appears that during the course of hearing, the Petitioner requested for conduct of fresh Panchanama and accordingly, Tahasildar directed conduct of fresh Panchanama vide order dated 21st August, 2012. It is Petitioner's contention that he has not been provided copy of such fresh Panchanama. Petitioner however received a notice dated 11th March, 2014 for conduct of further hearing on 21st March, 2014. It appears that the hearings were conducted till 8th December, 2014, where Petitioner was represented by his Advocate. After the last hearing conducted on 8th December, 2014, the final order appears to have been passed four years later on 12th July, 2018. It is Petitioner's case that he was never provided with copy of order dated 12th July, 2018 and therefore could not file Appeal under provisions of Section 247 of Maharashtra Land Revenue Code, 1966 within the prescribed period of 60 days. Perusal of averments made in the Application for condonation of delay would indicate that specific ground was raised about non-service of order dated 12th July, 2018 within a reasonable time after passing of the said order. Petitioner pleaded that the said order was received by him for the first time on 12th July, 2019. In my view therefore, sufficient reason was pleaded by the Petitioner for condonation of delay in filing the Appeal against order passed by Tahasildar. In fact, why Tahasildar took more than four years for passing of final order after conduct of last hearing on 8th December, 2014 is itself incomprehensible.

4. In my view, the Sub-divisional Officer (SDO) has erroneously rejected the Application for condonation of delay by order dated 22nd June, 2020. The Additional Collector ought to have corrected the error committed by the SDO. Instead of doing so, both SDO as well as the Additional

Collector have essentially concentrated on merits of the case rather than considering the reason pleaded for condonation of delay. No finding of fact is recorded either by the SDO or by the Additional Collector that the order dated 12th July, 2018 was served on the Petitioner within a reasonable time. In my view therefore, the orders passed by the SDO and the Additional Collector are indefensible and liable to be set aside. The Appeal preferred by the Petitioner deserves to be decided on merits.

5. The Petition accordingly succeeds partly. Order dated 22nd June, 2020 passed by the SDO as well as order dated 17th September, 2021 passed by the Additional Collector are set aside.

6. RTS Appeal No.475 of 2019 preferred by the Petitioner is restored on the file of the SDO who shall proceed to decide the same on its own merits. Petitioner shall deposit an amount of Rs.1,68,000/- with Tahasildar Haveli which is principal amount of royalty towards excess excavation of quantity of 420 brass. Deposit of such amount would be condition precedent for decision of Appeal on merits. Such deposit be made by the Petitioner within a period of four weeks from today.

7. With the above directions, the Petition is partly allowed and disposed of.

8. Deposit of such amount shall be without prejudice of the rights and contentions of the Petitioner and in the event, the Petitioner succeeding the Appeal, the amount shall be refunded to the Petitioner.

(SANDEEP V. MARNE, J.)