

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 491 OF 2025

Rukmini Tukaram Bhomkar & Ors.

....*Petitioners*

: *Versus* :

The State of Maharashtra, through
Revenue Department and Ors.

....*Respondents*

Mr. R.D. Soni a/w. *Mr. Ranjeet H. Patil, Ms. Kalpana V. Chate, Mr. Sumitkumar Nimbalkar and Mr. Govind Mundhe i/by. Mr. Prasad Nagargoje, for the Petitioners.*

Mr. B.B. Dahiphale, *AGP for Respondent Nos.1 to 5-State.*

Mr. Kaustubh Thipsay with *Ms. Pragati Thakur for Respondent Nos.6 and 7.*

Mr. Simil Purohit, Senior Advocate a/w. *Mr. Vishal Pattabiraman and Mr. Mittal Munoth for Respondent No.8.*

CORAM : SANDEEP V. MARNE, J.

Date : 14 January 2025.

P.C. :

1) The petition challenges the order dated 9 October 2024 passed by the Principal Secretary and Special Executive Officer, Revenue and Forest Department, Government of Maharashtra dismissing the Revision Application filed by the Petitioners and confirming the order dated 4 January 2023 passed by the Sub-Divisional Officer. By order dated 4 January 2023, the Sub-Divisional Officer had allowed the application for condonation of delay and had fixed the Appeal preferred by the contesting Respondents for hearing on merits.

Petitioners are thus aggrieved by the order passed by the Sub-Divisional Officer on 4 January 2023 as confirmed by the State Government by order dated 9 October 2024 condoning the delay of 29 years in setting up a challenge to Mutation Entry No.788 effected on 25 March 1993 in proceedings initiated before the SDO in the year 2022.

2) I have heard Mr. Soni, the learned counsel appearing for the Petitioners, Mr. Purohit, the learned Senior Advocate appearing for Respondent No.8, Mr. Thipsay, for Respondent Nos. 6 and 7 and Mr. Dahiphale, the learned AGP appearing for State.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that mutation entry no.788 was effected by the Tehsildar and certified by the Circle Officer on 25 March 1993, by which, the name of predecessors-in-title of the contesting Respondents were deleted and the name of Tukaram Balu Bhomkar was entered in respect of the land in question on the ground that there was oral partition between the members of the family. The Tehsildar relied upon alleged oral statements of Prakash Ganpat Bhomkar, Vishnu Ganpat Bhomkar, Ambu Ganpat Bhomkar, Bhagirathi Ganpat Bhomkar and Satyabhama Ganpat Bhomkar dated 4 January 1992 in support of the alleged oral partition. Additionally, the Talathi also made reference to the Tehsildar's directives dated 28 December 1992. However, perusal of Tehsildar's letter dated 28 December 1992 would indicate that the same was apparently issued in pursuance of a letter written by one of the contesting Respondents (Prakash Ganpat Bhomkar) for deletion of charge in respect of loan advanced by credit society from the revenue records. On the basis of said application made by Prakash Ganpat Bhomkar in December 1992, the Tehsildar had merely directed the Talathi to take appropriate action by following due procedure by his letter dated 28 December 1992.

Prima-facie therefore, Tehsildar's letter dated 28 December 1992 possibly does not have any connection with the alleged theory of oral partition between Bhomkar family members.

4) Mr. Soni would however rely upon letter dated 1 December 1990 of Prakash Ganpat Bhomkar and Bhagirathi Ganpat Bhomkar requesting the Tehsildar to delete their names and to mutate the name of Tukaram Balu Bhomkar on the basis of oral partition. However, the said letter dated 1 December 1990 of Prakash Ganpat Bhomkar and Bhagirathi Ganpat Bhomkar was apparently acted upon by the Tehsildar who sent a letter dated 12 December 1990 to the Circle Officer for conducting an enquiry. Also, what is relied on by the Talathi is Tehsildar's letter dated 28 December 1992, which is not traceable to any request for deletion of names of contesting Respondents or for entering name of Tukaram Balu Bhomkar.

5) In my view therefore, a detailed enquiry on merits relating to effecting and certification of Mutation Entry no.788 is clearly warranted in the present case. Therefore, the delay of 29 years in filing Appeal before the Sub-Divisional Officer has rightly been condoned by the Sub-Divisional Officer, considering the unique facts and circumstances of the present case.

6) Also, the contesting Respondents pleaded the reason of non-issuance of any notices before certifying the Mutation Entry no.788, as well as acquisition of knowledge of certification of said Mutation Entry no.788 only at the stage of securing 7/12 extracts on 26 April 2022. Considering the unique facts and circumstances of the present case, where reliance by Talathi on Tehsildar's letter dated 28 December 1992 appears to be *prima-facie* erroneous, a detailed factual enquiry by

the Authorities would only ensure proper investigation into the manner of effecting the Mutation Entry no.788.

7) True it is that while considering the issue of condonation of delay, merits of the proceedings cannot be taken into consideration. However, the issue of condonation of delay in the present case is with regard to the certification of the Mutation Entry. The Sub-Divisional Officer has recorded a finding about absence of records of service of notices on the contesting Respondents at the time of certification of Mutation Entry no.788. There is nothing on record to indicate that the contesting Respondents had knowledge about certification of Mutation Entry No. 788. No conduct of contesting Respondents is demonstrated before me by the Petitioner on the basis of which it can be inferred that they had secured knowledge about certification of Mutation Entry No. 788. In that view of the matter, it would be inappropriate to simply thwart the appeal preferred by contesting Respondents by highlighting the technical aspect of delay. Had it been the case that the Petitioners were in a position to demonstrate that contesting Respondents had knowledge about certification of mutation entry no.788, their conduct in not challenging the same within reasonable time of acquisition of such knowledge, would have been fatal. In absence of any material to show acquisition of knowledge by the contesting Respondents about certification of Mutation Entry No.788, as well as considering the unique facts and circumstances of the present case, where name of Tukaram Balu Bhomkar came to be included in the revenue records on the strength of alleged oral partition, in my view, a detailed factual enquiry in the present case is clearly warranted. The same could only be done after condoning the delay in filing the Appeal before the Sub-Divisional Officer. I therefore do not find any patent error on the part of the Sub-Divisional Officer and the Principal Secretary in permitting condonation of delay for entertaining the Appeal on merits.

8) Mr. Soni has relied upon judgment of the Apex Court in Pathapati Subba Reddy, through Legal Representatives & Ors. Versus. The Special Deputy Collector (LA)¹ in which the Apex Court has summarised the principles relating to condonation of delay in para-26 of the judgment which reads thus:

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;
- (vii) Merits of the case are not required to be considered in condoning the delay; and
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have

¹ *Special Leave Petition (Civil) No.31248/2018 dated 8 April 2024.*

been imposed, tantamounts to disregarding the statutory provision.

9) The judgment is particularly highlighted by Mr. Soni in support of his contention that neither the Sub-Divisional Officer nor the Principal Secretary and in any case, this Court can consider the merits of the case while deciding the issue of condonation of delay. However, as observed above, apart from merits of the case, the contesting Respondents appear to have provided sound justification for condoning the delay in setting up a challenge to Mutation Entry no.788. There is nothing on record to indicate that contesting Respondents had knowledge about certification of Mutation Entry No.788. Therefore, this is not a case where this Court has upheld the order condoning the delay by merely looking into the merits of the case.

10) Mr. Soni has relied upon judgment of this Court in *Santosh Namdeo Koli and Others Versus. Bhanudas Yesu Gadade through his Power of Attorney Lingappa Bhanudas Gadde and others*² in which this Court held in para-16(I) and 16(II) as under:

16. What remains now is to deal with various judgments relied upon by Mr. Joshi:

(I) *Esha Bhattacharjee* (supra) is relied upon by Mr. Joshi in support of his contention that there is a distinction between inordinate delay and delay of short duration. He has placed reliance on paras-21.8 to 21.11 of the judgment which reads thus:

“21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale

² 2023 SCC Online Bom 1500

of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

There can be no dispute to the proposition expounded by the Apex Court. However, in the present case, the District Superintendent of Land Records has held that issuance of direction by the Tehsildar in the year 1993 is a relevant aspect which may have impact on the prayer made by the Respondent for correction in the Consolidation Scheme. This is a peculiar fact which is taken into consideration by the District Superintendent of Land Records for condoning the delay. As held by the Apex Court, conduct of the parties is required to be taken into consideration while deciding the aspect of condonation of delay. Considering the Respondent's conduct of filing proceedings before Tehsildar in 1993 and procuring a favorable order, it cannot be said that Respondent had slept over the matter or acquiesced in wrong area assigned to his Gat number.

(II). *Mathurdas Mohta College of Science* (supra) is relied upon by Mr. Joshi in support of his contention that in absence of any foundation and failure to furnish a cause for condonation of delay, the inordinate delay could not have been condoned. Reliance is placed on following observations of the Division Bench of this Court in para-9 of the judgment:

“9. Even though this is a rule of procedure and liberally construed to impart substantive justice, it cannot be forgotten that it is a statutory provision and, therefore, it is necessary for the appellant to show sufficient cause for not preferring the appeal within the time limit prescribed. Absolute absence on the part of the appellant to explain the delay and or to furnish cause to the sanctification of the Tribunal takes away the jurisdiction of the Tribunal to entertain the appeal, it is pertinent to note in the present matter that the services of the respondent No. 1 were terminated with effect from 17th March, 1982 by order dated 16th March, 1982 and, therefore, appeal should have been filed on or before 15th April, 1982. However, the respondent No. 1 has filed appeal on 22nd November, 1982 and thus, there is inordinate delay in filing the appeal. The said delay was not explained even formally

assigning any sufficient case so that it can be considered by the Tribunal to satisfy itself to condone the delay and entertain the appeal, we also do not find in the judgment of the Tribunal any sufficient cause being considered by the Tribunal and the delay has been condoned by the Tribunal and, therefore, we feel that the Tribunal has committed an illegality in entertaining the appeal and exercising the jurisdiction under Section 9 of the MEPS Act. In view of the facts and circumstances stated above, we find that the order of the Tribunal is bad and illegal, and is required to be quashed and set aside."

In the present case, it cannot be said that there was total absence of explanation on Respondent's part to explain the delay. The facts of the present case are peculiar as noted above and considering the peculiar facts and circumstances of the present case, the District Superintendent of Land Records, has decided to condone the delay. The judgment in Mathuradas Mohta College of Science in my opinion, would have no application to the present case.

11) In *Santosh Namdeo Koli* (supra), this Court has considered the principles summarised by the Apex Court in its judgment in *Esha Bhattacharjee Versus. Managing Committee of Raghunathpur Nafar Academy*³. However, what is important to be noted is the principles summarised by the Apex Court in para-21.11(xi) of the judgment in which it has been held that the allegations of fraud, misrepresentation or interpolation cannot be obviated by taking shelter of technicalities of law of limitation. In the present case, contesting Respondents allege fraud in certification of Mutation Entry No. 788. They contend that Tukaram Balu Bhomkar is not even a family member and that he has merely taken disadvantage of similarity in the surname. They also allege that some other persons were presented before the Talathi for recording of alleged statements. They may or may not succeed in proving these allegations. However this Court has noted the discrepancy in Talathi referring to Tehsildar's unconnected letter dated 28 December 1992 for effecting the Mutation Entry. Whether this was a

³ (2013) 12 SCC 649

mere inadvertent error on the part of Talathi and whether there was another letter on the side of contesting Respondents for giving effect to the alleged oral partition is something with a detailed factual inquiry on merits would bear out. It is because of these unique circumstances that this Court is not concentrating on the length of delay (29 years) and feels that inquiry into merits about certification of the Mutation Entry is warranted.

12) This Court would also take into consideration the subsequent developments that have transpired during the pendency of proceedings before the Principal Secretary. It appears that immediately after passing of order dated 4 January 2023, the Sub-Divisional Officer proceeded to decide the Appeal on merits. In absence of any order for stay of proceedings before the Sub-Divisional Officer secured by the Petitioners, he proceeded to allow the appeal on merits by order dated 14 August 2023. The order of the Sub-Divisional Officer dated 14 August 2023 has been unsuccessfully tested by the Petitioners by filing Appeal before the Additional Collector, Raigad which came to be dismissed by order dated 9 September 2024. It appears that the order dated 9 September 2024 passed by the Additional Collector is also sought to be challenged in the present petition even though an alternate and efficacious remedy of filing Revision before the Additional Divisional Commissioner is available to the Petitioners to challenge that order. Thus, much water has flown after condonation of delay in filing of Appeal before the Sub-Divisional Officer. This is yet another factor why this Court would be loathe in now interfering in the orders passed by the Principal Secretary and Sub-Divisional Officer relating to the issue of condonation of delay.

13) After considering the overall conspectus of the case, I am of the view that no patent error can be traced in the order dated 9 October

2024 passed by the Principal Secretary and in the order dated 4 January 2023 passed by the Sub-Divisional Officer. Petitioners would be at liberty to file and prosecute Revision before the Additional Divisional Commissioner against the Additional Collector's Order dated 9 September 2024 and the time consumed in prosecuting the present petition shall be considered while condoning the delay in filing the Revision Application. In order to enable the Petitioners to effectively prosecute their revision before the Additional Divisional Commissioner, the order of status-quo granted by this Court on 23 October 2024 shall continue for a period of 4 weeks and the Petitioners would be at liberty to file an application for stay before the Additional Divisional Commissioner.

14) The Writ Petition is devoid of merits and it is accordingly dismissed.

NEETA
SHAILESH
SAWANT

[SANDEEP V. MARNE, J.]

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