Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5570 OF 2025

Dhagu Rama Gade
through POA Kisan
Alias Krushna Dhagu Gade (Jagtap)
& Ors. … Petitioners

V/s.

Sadashiv Krishna Gade (Deceased)
& Ors. … Respondents

Mr. Niranjan Bhavake a/w Drishti Madhani a/w Swamini Thakur a/w Anurag Ramekar i/b Bhavake and Associate for petitioners.

Mr. Rajul Tervankar i/b Mr. Viraj Hake for respondent Nos.1 to 3.

Mr. P. V. Nelson Rajan, AGP for State – respondent Nos.4 and 5.

CORAM : AMIT BORKAR, J.

DATED : APRIL 29, 2025

P.C.:

1. Challenge in this writ petition is to an order dated 13th March 2025 passed by the Maharashtra Revenue Tribunal, Mumbai, by which the Tribunal dismissed Tenancy Revision Application No.51/B/2001/P. Aggrieved by the said order, the petitioners have approached this Court.

2. The background of the matter is that the petitioners had earlier filed a tenancy appeal before the Sub-Divisional Officer

(SDO) seeking to challenge an order passed under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the said Act"). However, the SDO, by order dated 6th November 2000, refused to condone the delay of about 38 years in filing the appeal.

3. It is necessary to briefly set out the relevant facts. The order under Section 32G of the said Act was passed as far back as 17th October 1961. Against the said order, the appeal came to be filed by the petitioners only in the year 1999. In support of their application seeking condonation of delay, the petitioners pleaded the following reasons as constituting sufficient cause:

(i) That no personal notice of the proceedings under Section 32G was ever issued to them, and therefore, they were deprived of the opportunity to appear and contest the proceedings.

(ii) That the mutation entry No.1985, which was recorded in furtherance of the Section 32G order, was also effected without any notice to them, and consequently, they had no knowledge even about the mutation entry in the revenue record.

4. According to the petitioners, it was only when respondent No.1 obstructed their possession over the suit land in January 1999 that they became suspicious. Upon enquiry, they obtained the 7/12 extract of the land and on 23rd March 1999 came to know about the existence of mutation entry No.1985. Immediately thereafter, the petitioners filed an appeal on 2nd July 1999. The Sub-Divisional Officer, considering these facts, held that the reasons provided by the petitioners constitute a sufficient cause within the meaning of Section 5 of the Limitation Act, 1963, and rejected the application for condonation of delay.

5. The said decision was challenged by the petitioners before the Maharashtra Revenue Tribunal (MRT). The MRT, however, confirmed the order of the SDO. The Tribunal observed that the plea raised by the petitioners that they were unaware of the proceedings for almost 38 years is not believable. The MRT reasoned that an agriculturist would routinely require the 7/12 extract for various purposes, such as availing loans, obtaining agricultural subsidies, crop insurance, etc. Therefore, it is highly improbable that the petitioners would not have checked the 7/12 extract even once in 38 years. Finding no sufficient cause for condonation of such an inordinate delay, the MRT rejected the revision application.

6. Learned counsel for the petitioners, placing reliance on the judgments of the Hon'ble Supreme Court in (i) *S. P. Chengalvaraya Naidu (Dead) By LRs. vs. Jagannath (Dead) By LRs. & Ors.*, (1994) 1 SCC 1, and (ii) *A. V. Papayya Sastry & Ors. vs. Government of Andhra Pradesh & Ors.*, (2007) 4 SCC 221, submitted that the order dated 17th October 1961 under Section 32G was obtained by fraud. It was argued that notice was not served upon the actual landholders (the petitioners), but was wrongly served on a real brother of the petitioners who had no authority to represent them. Therefore, it was urged that, since the original proceedings suffer from fraud, the resultant order is vitiated and is liable to be set aside even in collateral proceedings.

7. It is well settled that fraud vitiates all judicial and quasi-judicial proceedings. The Supreme Court in *S. P. Chengalvaraya Naidu* (supra) has held that “a judgment or decree obtained by playing fraud on the court is a nullity and non-est in the eyes of law.” Similarly, in *A. V. Papayya Sastry* (supra), the Court reiterated that "fraud" strikes at the root of every transaction and renders all acts tainted by fraud void. Therefore, even if a long period has elapsed, if the order was obtained by fraud, the delay can be condoned, and the court can exercise its jurisdiction to set aside such an order.

8. On a careful perusal of the record, it is evident that the order which was challenged by the petitioners before the Sub-Divisional Officer was, in fact, passed as early as on 27th October 1961. Even if, for a moment, it is assumed that the petitioners or their predecessors-in-title were not personally aware of the passing of the said order under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948, the fact remains that the said order was given effect to by way of a mutation entry recorded in the revenue records. It is well known that mutation entries are made for the purpose of updating the revenue records to reflect the legal status of the holder of the land. Farmers, being routinely engaged with revenue authorities for agricultural operations, are ordinarily vigilant about such entries. In this background, the explanation furnished by the petitioners that they remained unaware of the passing of the order as well as the consequential mutation entry for an inordinately long period of 32 years has rightly been disbelieved by the Maharashtra Revenue Tribunal. In my considered view, the conduct of the petitioners in failing to verify the revenue records for such an extraordinary length of time disentitles them from seeking condonation of the gross delay of 38 years.

9. It is settled law that "sufficient cause" under Section 5 of the Limitation Act must be shown with diligence and not with negligence. Mere assertion of ignorance, without explaining the inaction and omission, cannot constitute sufficient cause.

10. Insofar as reliance placed by the petitioners on the judgments of the Hon'ble Supreme Court in *S. P. Chengal Varaya Naidu (Supra)* and *A. V. Papayya Sastry (Supra)* is concerned, there can be no quarrel with the proposition that any judgment, decree, or order obtained by fraud is a nullity and can be questioned even in collateral proceedings. Fraud vitiates everything. However, turning to the facts of the present case, it is to be noted that at the highest, the grievance of the petitioners appears to be that the order dated 27th October 1961 was passed without serving notice or affording an opportunity of hearing to them or their predecessors. Even assuming that such opportunity was denied, that circumstance by itself would not justify condonation of 38 years' delay unless it is further shown that the petitioners acted promptly upon knowledge of the said order or its consequences. The mutation entry, standing in the revenue records for over three decades, was a public record accessible to the petitioners, and constructive knowledge thereof must be attributed to them.

11. Thus, in absence of proper explanation for prolonged inaction, the invocation of the doctrine of fraud, at this stage, appears to be more of an afterthought rather than a genuine grievance.

12. It is also pertinent to note that the petitioners and respondents are closely related. The plea now sought to be raised — that notice of the 1961 proceedings was served on a brother and not upon the petitioners themselves — was not even raised in the original application for condonation of delay before the Sub-Divisional Officer. This aspect further casts serious doubt upon the bona fides of the explanation furnished.

13. In view of the aforesaid discussion, I find no perversity or illegality in the orders passed by the Sub-Divisional Officer and confirmed by the Maharashtra Revenue Tribunal warranting interference under Article 227 of the Constitution of India.

14. The writ petition stands dismissed. There shall be no order as to costs.

15. Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)