Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8443 OF 2025

Mahesh V. Ajugia and ors. ...Petitioners

Versus

State of Maharashtra and ors. ...Respondents

Mr. Dhiren Sinhaa, a/w Animesh Singh, i/b Animesh Singh & Ghanshyam Hule, for the Petitioners.
Mr. Bapusaheb Dahiphale, AGP for the State – Respondent No.1.
Mr. Navroz Seervai, Senior Advocate (through VC), a/w Rujuta Patil and Divishada Desai, i/b Negandhi Shah & Himayatullah, for Respondent No.3.

CORAM: N. J. JAMADAR, J.
DATED : 1st JULY, 2025

ORDER:-

1. The challenge in this petition is to an order dated 2nd April, 2025, passed by the learned Joint Charity Commissioner, Mumbai, whereby an application preferred by the petitioners for condonation of delay in seeking extension of time for completion of the transaction of sale of the trust property, for which the Charity Commissioner had granted sanction under Section 36 of the Maharashtra Public Trust Act, 1950 ("the Trust Act") came to be rejected.

2. The respondent No.3 Trust is the owner of the plot of land admeasuring 6050 sq. yards bearing Survey No.428, Hissa No.3, CTS No.1080 situated at Malad, Taluka Borivali, Mumbai ("the trust property"). In the year 1981, respondent No.3 Trust entered into an agreement to sell the trust property to Mr. Lavji Nanji Ajugia, the predecessor-in-title of the petitioners, for a consideration of Rs.48,400/-. An application, being No.J/4/309-81/6555, was filed before the learned Charity Commissioner seeking sanction for alienation. By an order dated 9th March, 1982, the learned Charity Commissioner granted sanction to sell the trust property. Permission under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 ("the ULC Act") was also obtained.

3. After the demise of Lavji Ajugiya, disputes arose among successors in interest of late Lavji. In the wake of escalation of the disputes, proceedings came to be instituted *inter se* legal heirs of late Lavji. Thus, the transaction of sale could not be completed. In the year 2003, respondent No.3 Trust filed an application for extension of time to complete the transaction. By an order dated 1st July, 2024, the learned Charity Commissioner extended the time to execute the Sale Deed till 30th December, 2004. Yet, the transaction could not be completed. In the year 2005, the Trust again applied for extension of time. By an order dated 4th June, 2005, the time came to be extended till 31st December, 2005. Lastly, by an order dated 16th July, 2007, the Trustees were permitted to complete the transaction till 31st

December, 2007.

4. The extended time also elapsed. The petitioners asserted that, on account of the escalation in the dispute among the legal heirs of late Lavji, the petitioners could not take steps to get the sale transaction completed. In the year 2024, the petitioners decided to bury their differences and seek execution of the Sale Deed. Hence a notice was given to respondent No.3 Trust to seek extension of time to execute the Sale Deed and complete the transaction. As the respondent No.3 refused to accede to the request of the petitioners, they were constrained to file application for extension of time to complete the transaction alongwith an application for condonation of delay of about 17 years in seeking the extension.

5. By the impugned order, the learned Joint Charity Commissioner was persuaded to reject the application observing, *inter alia,* that the petitioners failed to make out a sufficient cause for condonation of delay. The reason ascribed by the petitioners for not seeking extension of time for the completion of the transaction was neither reasonable nor *bona fide.* There was inordinate and unexplained delay on the part of the petitioners, who were negligent, and slept over their rights.

6. Mr. Sinhaa, the learned Counsel for the petitioners, would urge that the learned Charity Commissioner approached the issue from an incorrect perspective. The element of change in circumstances and the escalation in prices etc. would have been germane while determining the prayer for extension of time to complete the transaction. While considering the application for condonation of delay, the leaned Charity Commissioner ought to have confined the inquiry to determine whether the petitioners made out a sufficient cause. In the light of the disputes *inter se* legal heirs of the original purchaser, the reason ascribed by the petitioners for not seeking the extension could not have been termed as unsustainable. In any event, since the respondent No.3 had accepted the entire consideration and acknowledged the said fact in the resolution passed to seek the last extension in the year 2007, respondent No.3 would not suffer any prejudice if the delay is condoned.

7. Mr. Seervai, the learned Senior Advocate for respondent No.3, resisted the submissions on behalf of the petitioners. First and foremost, Mr. Seervai would urge the petitioners have no locus to seek extension of time as respondent No.3 Trust was required to approach the Charity Commissioner, if it desired to have extension of time since the application was made by respondent No.3 Trust. Secondly, the learned Charity Commissioner correctly appreciated the element of huge, inordinate and unexplained delay. Mr. Seervai laid emphasis on the fact that the initial permission was granted in the year 1982 on the condition that the transaction should be completed within six months of the grant of no objection under ULC Act. With the passage of more than 43 years, the position has materially altered. In such circumstances, the petitioners cannot be permitted to cling to the initial sanction granted by the learned Charity Commissioner. At this juncture, the aspect of interest of the Trust and its beneficiaries also assumes significance.

8. Mr. Seervai urged that this Court has consistently declined to interfere with the orders of the Charity Commissioner, whereby applications for extension of time for completion of transaction, have been rejected. Reliance was placed on the orders passed by this Court in the cases of ***D. T. Mandviwala through Shanker Babu bangera Constituted Attorney vs. State of Maharashtra***[1]***, M/s. Rizvi Builders vs. The Joint Charity Commissioner and another***[2] and ***Feroz S. Malik and anr. vs. The Joint Charity Commissioner, M.S. and ors.***[3]

---

1 WP/1621/2007 dtd.20/07/2007.

2 WP/769/2007 dtd.17/04/2007.

3 WP/4409/2007 dtd.12/03/2008.

9. Mr. Sinhaa joined the issue by canvassing a submission that the aforesaid orders were passed when the Charity Commissioner had declined to extend the time to complete transaction. In the case at hand, since the application for condonation of delay itself has been rejected, there was no occasion for the Charity Commissioner to consider the prayer for extension of time and, resultanly, the aforesaid decision would not govern the facts of the case at hand.

10. I have given careful consideration to the submissions canvassed across the bar. At the outset, it is necessary to note that the transaction between respondent No.3 Trust and predecessor-in-title of the petitioner late Lavji was concluded in the year 1981. Sanction for sale of the trust property was granted by the learned Charity Commissioner on the condition that the Sale Deed be executed within the six months from the date of issue of no objection certificate under ULC Act.

11. It is imperative to note that it is not the case of the petitioners that the delay in execution of the Sale Deed is attributable to respondent No.3 Trust on any count. No act of commission or omission is attributed to respondent No.3 Trust, which can be said to have contributed to the delay. On the contrary, the material on record indicates that respondent No.3

had, purportedly at the instance of the petitioners, sought extension of time to complete the transaction, thrice. By the last order dated 16th July, 2007, time was extended till 31st December, 2007.

12. A period of 17 years elapsed since the last extension. The only reason ascribed in the application for condonation of delay in seeking the extension of time is the dispute *inter se* legal heirs of late Lavji. It is true the Court is required to adopt a liberal approach in the matter of condonation of delay. The Courts and Tribunals lean in favour of condonation of delay so as to determine the *lis* on merits rather than the technicalities. Thus, the term 'sufficient cause' is liberally construed. However, a liberal approach in the matter of condonation of delay does not imply that the delay ought to be condoned for the mere asking. Lest, the exercise of judicial discretion would partake the character of arbitrary determination. Thus, the prayer for condonation of delay warrants exercise of a judicious discretion.

13. In the case at hand, by no stretch of imagination, could it be said that the petitioners did not have adequate opportunity. As noted above, respondent No.3 Trust is not at fault at all. By the passage of time, it is trite, equities intervene. In the metropolis like Mumbai, where land commands a premium, the petitioners slept over their rights at their own peril. The fact that there were disputes *inter se* legal heirs of late Lavji cannot be a ground to keep a claim alive for almost half a century.

14. From the perspective of the benefit of respondent No.3 Trust and the beneficiaries thereof, it cannot be said that respondent No.3 Trust must be bound down to a transaction effected in the year 1982. In the circumstances of the case, the view of the learned Charity Commissioner that the petitioners were negligent in prosecuting their claim appears sustainable. It cannot be said that the petitioners have ascribed a cause, much less sufficient one, for condonation of huge delay of 17 years.

15. It is true, it could be urged that there was no statutory period prescribed for seeking extension of time for completion of the transaction post sanction by the Charity Commissioner. Yet, it is well recognized that when there is no statutory prescription as to the period of limitation in which an application can be filed, such application must be filed within a reasonable period. Such a reasonable period has been construed to be three years. A useful reference in this context can be made to a decision of the Supreme Court in the case of ***Santoshkumar Shivgonda***

Patil and ors. vs. Balasaheb Tukaram Shevale and ors.[4] wherein the following observations were made:

> "11. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.
>
> 12. Ordinarily, the reasonable period within which the power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of the Tahsildar passed on 30-3-1976 is flawed and legally not correct."

16. The conspectus of aforesaid consideration is that the petition does not deserve to be entertained.

17. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]

---

4 2009(9) SCC 352.