



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No. 8276/2019

PETITIONER : Maharashtra State Road Transport Corporation, Through its Divisional Controller, Divisional Office, Station Road, Nagpur

Vs.

RESPONDENTS : 1 Shri Rajkumar T. Sawlani, Adult,
Block No. 11, Chanduram Darbar
Marg, Sindhi Colony, Jaripatka,
Nagpur – 14

2. ~~Shri Khiyaldas S/o Varyomal Raidani,
Adult (**DELETED**)
Occ. Business, R/o : Plot No. 436, In
front of Jaripatka Garden, Jaripatka,
Nagpur – 14~~

3. Shri Sunder S/o Udhoram Pamnani,
Adult, occ. Business, R/o House No.
8608/2A, Near Lucky Boot House,
Main Road, Jaripatka, Nagpur - 14

Mr. V.P. Panpalia,, Advocate for the Petitioner

Mr. H.R. Gadhia, Advocate Advocate for Respondent No.1

None present for the respondent No.3 though served

WITH
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Mr. V.P. Panpalia,, Advocate for the Petitioner
Mr. H.R. Gadhia, Advocate Advocate for Respondent

CORAM: ANIL L. PANSARE, J.

RESERVED ON : 18.06.2025

PRONOUNCED ON : 25.06.2025

JUDGMENT :

1. The issue involved in both the petitions is common and therefore is being decided through common judgment. However for the sake of convenience, the facts of Writ Petition No. 8277/2019 are considered.

2. The petitioner permitted the predecessor of the respondent namely Shri Tejumarl Sawlani to occupy premises admeasuring 2048 Sq.Ft. for running Canteen. The allotment was made through tender in November, 1993. Tejumarl Sawlani expired in November, 1999. The respondents, legal heirs applied for renewal of licence in their favour. The respondents, however, neither completed necessary formalities

nor cleared dues and, therefore, licence came to be terminated with effect from and on 25.02.2003. The respondents did not vacate the premises and, accordingly, in October, 2003, the petitioner, applied for eviction and for recovery of dues under the provisions of the Maharashtra Government Premises (Eviction) Act, 1956 (Hence, referred to as Act of 1956). The authority under the Act i.e. the Resident Deputy Collector dismissed the proceedings vide order dated 08.11.2011. The petitioner preferred appeal under Section 7 of the Act of 1956.

3. It will be appropriate to mention here that under Section 4 of the Act of 1956, the competent authority is empowered to pass an order of eviction against the occupiers of the Government premises for the reasons set out in the said Section. Section 5 provides for assessment of damages payable by a person, who has unauthorizedly occupied Government premises. Section 7 provides for appeal from order passed by the competent authority under Section 4 or 5 of the Act of 1956. It provides limitation of 30 days from the date of service of notice relating to order passed under Section 4(1) or under Section 5(1) or 5(2) of the Act of 1956. The proviso to sub-

section 2 of Section 7 of the Act of 1956 provides that the appellate authority may entertain the appeal after expiry of the said period of 30 days, if it is satisfied that the appellant was prevented by sufficient cause from filing appeal in time.

4. Since Sections 4 and 5 of the Act of 1956 deals with the order of eviction and payment of damages, this Court in one of the proceedings held that the appeal is maintainable only at the instance of the occupier and not landlord even if the order is of “dropping proceedings”. The matter was carried before the Hon’ble Supreme Court in the case of *State of Maharashtra Vs. Marwanjee F. Desai and others (2002) 2 SCC 318*. The Supreme Court examined relevant provisions of the Act of 1956 and while dealing with the scope of Section 7, held that all orders issued by the competent authority, including that which dismissed or dropped proceedings are appealable. While doing so, the Supreme Court noted that the competent authority under the Act of 1956, although an arm or wing of the Government, is not to be equated with the Government itself because the competent authority functions as a quasi-judicial body with independent decision making authority. The

Supreme Court accordingly held that the High Court committed an error by holding that the Government cannot appeal against its own decision.

5. Thus, what follows from the law laid down by the Hon'ble Supreme Court is that if upon the proposal put-forth by the Government for eviction under Section 4 and for assessment of damages under Section 5 of the Act, the notice to vacate premises with damages is not issued to the occupier by the competent authority, the Government / statutory body can file appeal under Section 7 of the Act of 1956.

6. The counsel for the petitioner by relying upon the aforesaid judgment argued that appeal at the instance of the petitioner is accordingly maintainable.

7. The above authority has been cited on a Court query, as to whether appeal is at all maintainable at the instance of the petitioner. The query was so made because provision under Section 7 of the Act gives an impression that appeal maintainable only at the instance of the occupier.

8. The counsel placed reliance on the said judgment to argue that appeal is maintainable at the instance of Court also.

However, when it came to limitation the counsel for the petitioner argued that since no period of limitation is prescribed in the said provision for the Government to prefer appeal. According to him, the period of limitation of 30 days is applicable to the occupants of the Government premises against whom the order / notice under Sections 4 or 5 of the Act, is passed / issued. This argument is advanced because the petitioner had filed appeal after about five years (1698 days). The petitioner along with the appeal filed application for condonation of delay. The application has been rejected by the appellate authority on account of delay and hence present petition.

9. Thus the question that falls for consideration is whether the Government / statutory body is exempted from limitation in filing appeal under Section 7 of the Act of 1956.

10. To my mind, the answer will be in the negative for the reasons to follow.

Firstly, if the benefit of the case of *State of Maharashtra Vs. Marwanjee F. Desai* (supra) is to be extended to the petitioner, what has been held by the Hon'ble Supreme

Court is that not only occupant but also the Government is entitled to file appeal under Section 7 of the Act of 1956. Thus it is held that the remedy available under Section 7 of the Act is not only available to the occupants of the Government premises but also to the Government / statutory body. Thus filing appeal will be governed by Section 7 of the Act of 1956, which provides for limitation of 30 days. If that be so, there appears no reason why should the establishment like the petitioner should get any benefit of exemption of limitation. If the appeal is to be filed under Section 7 of the Act of 1956, it will have to be filed in terms of what has been provided in Section 7 of the Act of 1956. The provision will apply in its entirety. It will be thus illogical to argue that the limitation period will be applicable only to occupants and not to the Government.

11. Another reason is that, if the period of limitation was not applicable there was no necessity for the petitioner to file application for condonation of delay. In fact, by filing such application the petitioner has in a way disclosed that it was aware of law laid down in the case of *State of Maharashtra Vs.*

Marwanjee F. Desai (supra) and knowing fully well that appeal will lie under Section 7 of the Act of 1956 had filed application for condonation of delay. As such, the counsel for the petitioner argued that the application was filed towards abundant precaution, however, such argument requires rejection in terms of the law laid down by the Hon'ble Supreme Court. Once it is held that the appeal will be maintainable under Section 7 of the Act of 1956, the party cannot argue that part of Section 7 of the Act of 1956, will not be applicable, particularly, when there is absolutely nothing in the case of *State of Maharashtra Vs. Marwanjee F. Desai (supra)*, to remotely suggest that the Government establishment is entitled to file appeal at its sweet will.

12. In any case, the appeal should have been filed within reasonable period. The argument is, however, that an amount of Rs.1,05,870/- is to be recovered from the respondents and the same being public money, the petitioner should get opportunity.

13. As against the counsel for the respondents, submits that where the proceedings is for eviction and/or recovery of

money, the same should be filed within limitation and where no limitation is prescribed then within reasonable period. It is so because once the proceeding under Sections 4 and 5 of the Act is dismissed and no appeal is filed within stipulated time, the persons like respondents will believe that the order passed by competent authority has attained finality and, therefore, shall act accordingly. In the circumstances, after a lapse of five years and without giving sufficient cause, the appeal / proceedings will not be maintainable. Thus it is argued that the civil right will accrue in favour of the respondents, if timely action is not taken by the petitioner.

14. I find substance in the arguments made by respondents. If the appeal is not filed within stipulated time or within reasonable time, as the case may be, the party like respondents will legitimately expect that the order passed by the competent authority has attained finality and will take further course of action. In such circumstances, unless delay is justified, the appeal cannot be entertained.

15. The petitioner has not assigned sufficient reasons for approaching the appellate authority after about five years.

The reasons assigned are that case was closed by the competent authority on 24.07.2009 and thereafter no further date was given for order. The appellant / petitioner, however, came to know about passing the order and thereafter immediately applied for the certified copy. The petitioner, however, has not disclosed about the date when it acquired knowledge of the order as also the date when it applied for certified copy.

16. The further reason as quoted is that the petitioner is a statutory body consisting of various departments and divisions and require approvals of various authorities. The file accordingly moved to the Divisional Controller, Nagpur, Divisional Controller, Mumbai, Deputy General Manager, Mumbai and so on. According to the petitioner, the appellant / petitioner being the statutory body, a typical procedure is to be followed and it took time in completing the procedure which resulted into delay in preferring the appeal.

17. The appellate authority found no substance in the said grounds, and rightly so. The petitioner has not given any detail of the action taken by it right from acquiring knowledge

of the order, till obtaining legal opinion from the Deputy General Manager at Mumbai. It is not known as to when was the application filed for obtaining certified copy of the order, when was order received, when was it sent to the Divisional Controller, Nagpur and then to Mumbai and then to the Deputy General Manager, Mumbai and when was opinion received and when was it sent to the counsel for drafting appeal and so on. The officials of the petitioner appears to have sat on file for years together, which tendency is not unknown to the Courts.

18. On the top of it, the argument is that limitation is not applicable and thus the petitioner has licence to file appeal at any time. The petitioner has relied upon the following authorities to argue that the Limitation Act is not applicable.

I. Nandram and others Vs. Union of India and others; 2000 SCC Online Delhi 523,

II. Choudappa and another Vs. Choudappa (since deceased) by L.Rs. And others; 2025(2) Mh.L.J. (SC) 9

19. In the first judgment, the Hon'ble Delhi High Court observed that The Public Premises (Eviction of Unauthorized

Occupants) Act, 1971, is a special Act and it has provided for a period of limitation wherever it is necessary and, therefore, the provisions of the Limitation Act as such cannot be made applicable to such a special Act.

20. The counsel for petitioner submits that the provisions under Section 7 of the Act of **1956**, *pari materia* provision in the Act referred to by the Delhi High Court. In my view, the Delhi High Court has observed that the Public Premises Act is a Special Act and has provided for a period of limitation wherever it is necessary and in that context it is held that the provisions of the Limitation Act is not applicable.

21. In the present case and as stated earlier, Section 7 of the Act of **1956**, provides for a period of limitation of 30 days and, therefore, the appeal, whether filed by the Government / statutory both or by occupier will have to be filed within 30 days. The judgment of the Delhi High Court cannot be taken aid of to argue that the limitation itself will be not applicable to prefer appeal, if filed by the Government / Statutory body.

22. In the second judgment, the Hon'ble Supreme Court

was dealing with the proceedings for determination of mesne profit and in that context held that since the law does not prescribe a specific limitation period for initiating such proceedings and since these enquiries lead to the final decree, they can be initiated at any time without being barred by limitation, provided that they are commenced within a reasonable period. Accordingly the Court held that when no limitation stands prescribed, it would be inappropriate for a Court to supplement the legislature's wisdom by its own and provide a limitation, however, the Court further held that such proceedings should be initiated in a fairly reasonable time.

23. In my view, the judgment will be of no assistance to the petitioner, firstly, because in the present case, the limitation is provided under Section 7 of the Act of 1956, and secondly, the concession even if is to be given, the appeal ought to be filed within reasonable time. In the present case, there is absolutely no justification given by the petitioner to approach after five years, particularly when it intent to put-forth a plea of involvement of public money. If the issue was so serious, one would expect prompt action from the Government

officials.

24. At this stage, the counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court in the case of *University of Delhi Vs. Union of India, 2020(13) SCC 745*, to highlight importance of diligent legal conduct and strict application of limitation principles, specially in cases involving public institution and significant public interest concerned. In the said case, challenge was to the decision by the Delhi Development Authority permitting the private builder to construct a high rise housing project within the University campus. The University filed Writ Petition, challenging the change of user and approval granted for the construction. The petition was dismissed on merits as well as on the grounds of delay and laches. Subsequently, the University filed an appeal (LPA), after about 916 days, seeking to contest the dismissal. The appeal was dismissed primarily due to inordinate delay and lack of sufficient cause for such delay. The University argued that the delay was due to administrative deliberations, vacancies in key administrative positions and consultations, etc. The Court found these explanations unconvincing

emphasizing that the delay was excessive, which demonstrated a casual approach. The Court emphasized that while a liberal approach should be taken towards condoning delay to serve ends of justice, this is not automatic and the explanation for delay must be satisfactory. The Court further held that long delay, particularly when unsubstantiated, are indicative of laches leading dismissal of appeal, regardless of the public interest involved.

25. The judgment would squarely apply to the present case because in the present case also the delay is excessive and demonstrate casual approach. The reason assigned is administrative exigencies, that too without giving any details of movement of filing. Such reason has been consistently rejected by the Courts, including the Hon'ble Supreme Court, even where public interest is involved.

26. The counsel for the petitioner has then argued that the appellate authority had closed the matter for orders on 24.07.2009 and order was passed on 08.11.2011 i.e. almost after two years. The counsel referred to the judgment of the Hon'ble Supreme Court in the case of *R.C. Sharma Vs. Union of*

India and others (1976) 3 SCC 574, to contend that undue delay in delivering judgment can invalidate the proceedings. I have gone through the judgment. The relevant findings in para 12 reads as under :

“12. Learned Counsel for the appellant said all that could possibly be said on behalf of his client. He pointed out that the High Court had given its judgment eight months after it had heard arguments. He urged that the result was that the High Court did not deal with a number of submissions made because they had, apparently, been forgotten. The Civil Procedure Code does not provide a time limit for the period between the hearing of arguments and the delivery of a judgment. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is the litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done.”

27. As could be seen, the delay resulted in not dealing with number of submissions made by the appellant therein, may be because failure to recollect the submissions. The Hon'ble Supreme Court noted that though the Civil Procedure Code, does not provide for time limit to deliver the judgment, unreasonable delay between the hearing of arguments and delivery of judgment is undesirable. The Court highlighted the

importance of the confidence of the parties in the judicial process, which has adverse effect if the judgment is not delivered in time.

28. Thus in a way, the Supreme Court has highlighted importance of timely action, which is relatable to the conduct of the officials of the petitioner. The one who acts diligently can only highlight importance of timely action. The petitioner however, demonstrated extreme casual approach. However, it is not the case of the petitioner that in the instant case the appellate authority has not dealt with its submissions. The judgment will be, therefore, of no help to the petitioner.

29. During the course of argument, since the counsel for the petitioner had argued that the public money is involved and since it was found that the petitioner's officials were extremely casual in processing the file, I asked the counsel as to why the amount recoverable from respondent, which for delayed action cannot be legally recovered, should not be recovered from the officers responsible for the delay, the counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court in the case of *Shalini Shyam Shetty Vs.*

Rajendra Shankar Patil, 2010(8) SCC 329, to argue that cost can be imposed for frivolous or luxurious litigation and on the litigant but not on dereliction of duties or like causes by the officer, etc. He further argued that the petition has been filed under Article 227 of the Constitution of India and scope is limited to keep the Tribunal in bound of their authority.

30. The case before the Supreme Court involved a dispute between the landlord and tenant. The Supreme Court held that the High Court erred in entertaining the writ petition in a private landlord-tenant dispute because such matters should not be adjudicated through writ jurisdiction and in that context, the Court discussed the nature and scope of jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. It highlighted that Article 226 of the Constitution provides a writ jurisdiction that is generally invoked for public law remedies and is primarily intending to protect individual rights against the public authorities or statutory bodies. In contrast, Article 227 of the Constitution confers a supervisory jurisdiction on the High Court, which is discretionary and aimed at ensuring that subordinate Courts

and Tribunals operate within their lawful bounds.

31. The law is well settled on this point. The judgment, however, does not bar High Court from imposing costs wherever it is justified. The petitioner's conduct is such, that would attract not only costs but also the recovery of amount from the erring officers for the following reasons.

32. There is absolutely no justification given by the petitioner to approach the appellate authority after about five years. The argument of the petitioner is such that there is no limitation provided and, therefore, the petitioner can file appeal as and when it feels like. The judgments are cited to argue that the petitioner is not required to assign any reason for approaching the appellate forum after a lapse of five years, as if the petitioner has licence to file appeal at its sweet choice and on the top of it the ground of recovery of public money is canvassed. Thus the argument is that because a public money is to be recovered the petitioner should be permitted to file appeal as and when it feels like.

33. To my mind, it should be completely otherwise. If public money is involved, whether or not there is limitation

period prescribed, the public authorities should be diligent and prompt enough to resort to appropriate remedy at the earliest possible time and if for some reason they could not, they should then, at least assign good cause for not approaching the appellate forum within prescribed period or within reasonable time as the case may be. In the present case, the prescribed period is 30 days which is applicable to the petitioner as well. Despite such status the petitioner has argued that the Limitation Act is not applicable. It may be correct that the Limitation Act is not applicable but then the Act of 1956, being special statute the limitation of 30 days will be applicable and in any case appeal should have been filed within reasonable time.

34. The Hon'ble Supreme Court has deprecate such practice. In the case of *Pathapati SubbaReddy (Died) by LRs and Ors. Vs. The Special Deputy Collector (LA) [MANU/SC/0285/2024]*, the Supreme Court on the law of limitation, observed in paragraph 16 as under :

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to

apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. v. Katiji and Ors. MANU/SC/0460/ 1987 : 1987:INSC:54 : (1987) 2 SCC 107 : AIR 1987 SC 1353, this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act."

35. Thus, the Supreme Court has, in clear terms, held that existence of sufficient cause for not filing the appeal in time is a condition precedent for exercising discretionary power to condone the delay. The Court further clarified that the phrases 'liberal approach', 'justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and

re-opened by taking aid of Section 5 of the Limitation Act.

36. In the case of **State of U. P. & Ors. V/s Ashwani Kumar Mishra in Special Leave Petition (Civil) Diary No.(s). 19834/2020** the plea put-forth for condonation of delay before the Supreme Court was, getting departmental approval. The Supreme Court held that such kind of excuses are no more admissible in view of the judgment in the case of **Post Master General & Ors. V/s Living Media India Ltd. & Anr. (2012) 3 SCC 563**. The Supreme Court, while dismissing the Special Leave Petition, gave liberty to the State of U. P. to recover the loss from the Officers responsible for the delay in filing the Special Leave Petition, if they are so advised.

37. Similar such order has been passed by the Supreme Court in the case of **Deputy Conservator of Forests V/s Timblo Irmaos Ltd. & Ors. in Special Leave Petition (Civil) Diary No(s). 19059/2020**. Before passing such order to recover costs from the erring officer, the three Judges Bench of the Court has observed as under :

“We have dealt with the issue of Government authorities in approaching Courts belatedly as if the Statute of Limitation does not exist for them. While referring to some reasons given for

insufficiencies, we observed that the parties cannot keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government, (Collector, Land Acquisition, Anantnag & Anr. (supra). This situation no more prevail and this position had been elucidated by the judgment of this Court in office of the Chief Post Master General & Ors. V/s Living Media India Ltd. & Anr. (2012) 3 SCC 563.”

38. Thus the Supreme Court has, time and again, deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies.”

39. This is yet another case where officials of petitioner slept over the file may be because the amount involved would not affect their pocket. The conduct is highly deprecable. It is, therefore, necessary to send a strong message that such conduct will be viewed seriously and one of the ways is to recover the amount from erring officers and also to impose costs.

40. Accordingly, the petitions are dismissed with costs of Rs.25,000/-. The petitioner - Maharashtra State Road Transport Corporation (MSRTC) is at liberty to recover the costs as also the losses (amount recoverable in the present proceedings) from the officers responsible for the delay in

filing appeal before the appellate authority. Cost shall be deposited with High Court Bar Association Library, Nagpur, within four weeks from today.

(ANIL L. PANSARE, J.)

MP Deshpande