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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.2994 OF 2025

B.M.E.'s Bhagyawan Cooperative
Housing Society Limited.,
N.G. Acharya Marg, Khardev Nagar,
Chembur, Mumbai 400 071

… Petitioner



**V/s.**

1. The District Superintendent of Land Records, Mumbai Suburban District, 10th Floor, Administrative Bldg., Bandra (E), Mumbai 400 051

2. The City Survey Officer, Chembur, Mumbai Suburban District, Mumbai.- 400 080

3. Chetana Arvind Patil

4. Nilesh Arvind Patil

5. Rakesh Arvind Patil

6. Alkesh Arvind Patil

7. Ramesh Maheshwar Patil

8. Satyajeet Ramesh Patil

9. Dipti Ramesh Patil

10. Ravindra Maheshwar Patil

11. Mandar Ravindra Patil

12. Shital Ravindra Patil

13. Sushil Maheshwar Patil

14. Nishant Sushil Patil

15. Shweta Sushil Patil

16. Sneha Sushil Patil

17. Latika Vasant Bhoir

18. Sunita Mahadeo Shidke

19. Vanita Ramesh Gavali.
For Respondent Nos.3 to 6 and 7 to 17 G.P. holder Shri Ramesh Maheshwar Patil, 302-B, Riddhi Complex, Plot No.119, 20, Sector-13, Khanda Colony, New Panvel, Navi Mumbai

20. Charishma Builders
Through Suresh Vasu Shetty
Kamal Kunj, 1st Floor, C.G. Road, Chembur, Mumbai- 400 071

21. Municipal Corporation of Greater Mumbai, Mahapalika Marg, Opp. C.S.T. Fort, Mumbai 400 001

22. The Hon'ble Dy. Director Land Record Officer, Fort, Mumbai

23. The Hon'ble Revenue Minister, Maharashtra State, Mantralaya, Mumbai

24. The State of Maharashtra … Respondents

Mr. Kishor Patil i/by Mr. Shantanu Raktade for the petitioner.

Mr. Prasad Dhakephalkar, Senior Advocate (through V.C.) with Mr. Nitesh Bhutekar, Ms. Priyanka Lanke, and Mr. Prathamesh Mahdlik for respondent Nos.3 to 20.

Mr. Santosh Mali with Mr. Santosh Parad for respondent No.21-MCGM.

Smt. M.S. Srivastava, AGP for respondent Nos.22 to 24-State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 9, 2025

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith.

2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner challenges the Judgment and Order dated 3rd October 2024 passed by respondent No.23 in Appeal No.2621/1877/P.K.227/J-3, whereby the said authority has confirmed the Judgment and Order dated 21st December 2020 passed by respondent No.1 in Appeal No.SR/854/2019. The said appeal arises from proceedings under Section 247 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the MLRC" for the sake of brevity).

3. The facts and circumstances giving rise to the filing of the present writ petition, as pleaded by the petitioner, are as under:

4. According to the petitioner, the petitioner-Society is situated

on Plot No.15 admeasuring approximately 53,405 sq. meters, which was acquired by the State Government on behalf of respondent No.21. It is the petitioner's case that an area admeasuring 6,521 sq. meters was allotted to the petitioner-Society on leasehold basis by the Municipal Corporation of Greater Mumbai (for short, "MCGM") vide lease deed executed on 29th August 1975. However, out of the said area of 6,521 sq. meters, an area admeasuring 5,167.31 sq. meters was actually handed over to the petitioner-Society by MCGM on 30th April 1982, pursuant to a possession receipt and a joint survey receipt executed on the said date. It is contended that the petitioner-Society has been in peaceful possession of the said land since 30th April 1982.

**5.** The petitioner further contends that the City Survey Officer-VIII, Bombay Suburban District, vide letter dated 20th October 1987, intimated the Additional District Deputy Collector, B.S.D., Andheri, regarding changes in the City Survey Nos. 25, 28, 29, and 37. Pursuant thereto, by order dated 25th November 1987, the Additional District Deputy Collector, Andheri, directed the City Survey Officer-VIII to substitute the said CTS numbers with CTS Nos.101 (part), 103, 108 (part), 109, 110, 111, 112 (part), 113 (part), 284 (part), and 285 (part). Upon final measurement of the said Plot No.15, the City Survey Officer found the area to be 6,540.75 sq. meters instead of 5,167.31 sq. meters, and accordingly directed the petitioner-Society to pay Non-Agricultural Assessment in respect of the area admeasuring 6,540.75 sq. meters with effect from 1st December 1983.

6. It is further the case of the petitioner that the building of the petitioner-Society was constructed in the year 1990. It is the petitioner's grievance that respondent Nos.3 to 19 entered into an agreement with respondent No.20 only in the year 2005. Pursuant to a letter addressed by the petitioner-Society, respondent No.2 conducted a survey of Plot No.5 vide M.R. No.76/2004 dated 17th and 18th March 2005 and accordingly prepared a measurement map. A survey notice was displayed at the Ghatla Municipal School, Chembur, which is a prominent location in the vicinity. Thereafter, respondent No.2, upon conclusion of the said survey and taking into consideration the communication dated 25th November 1987 and the Land Acquisition Award Nos.462/1962 and 1287/1962, passed an order dated 31st May 2005.

7. Being aggrieved by the said order dated 31st May 2005, respondent Nos.2 to 19 preferred Appeal No.408 of 2018 before respondent No.1, after a delay of 11 years and 4 months. Respondent No.1, by order dated 28th February 2018, allowed the said appeal. The petitioner-Society, being dissatisfied thereby, challenged the said order before the District Land Records Officer by filing Appeal S.R. No.780 of 2018. The said appeal came to be allowed and the matter was remanded back to respondent No.1 for deciding the application for condonation of delay. Pursuant thereto, respondent No.1 allowed the application for condonation of delay by order dated 31st December 2020.

8. The petitioner thereafter filed an application before respondent No.1 seeking reopening of the hearing of the appeal and recall of the order, inter alia contending that the appeal itself

was not maintainable. However, respondent No.1 proceeded to allow the appeal by Judgment and Order dated 22nd July 2021. Aggrieved thereby, the petitioner preferred Appeal No.836 of 2021 before respondent No.23. By the impugned Judgment and Order dated 3rd October 2024, respondent No.23 has dismissed the appeal and confirmed the order of respondent No.1, which is under challenge in the present proceedings.

**9.** Shri Kishor Patil, learned Advocate appearing on behalf of the petitioner, submitted that the only ground furnished by the contesting respondents for seeking condonation of delay of 11 years and 4 months was lack of knowledge regarding the order dated 31st May 2005. He would urge that except for this plea of want of knowledge, no other explanation or cause was put forth by the respondents for such an inordinate delay. The learned counsel submitted that the impugned order allowing the condonation of delay does not record any satisfaction regarding the sufficiency of the cause shown by the contesting respondents. It was further contended that mere ignorance of an order for such a prolonged period cannot, by any stretch of imagination, constitute a "sufficient cause" within the meaning of law, so as to condone a delay of over 11 years. It was thus submitted that the impugned order suffers from non-application of mind, is arbitrary and perverse, and hence, liable to be set aside.

**10.** Per contra, Shri Dhakephalkar, learned Senior Advocate appearing on behalf of the contesting respondents, vehemently opposed the petition. He invited my attention to the impugned orders to contend that the order dated 31st May 2005 came to be

passed by the concerned authority without granting any opportunity of hearing to the contesting respondents, who are the affected parties. It was submitted that the contesting respondents became aware of the said order only in the year 2015 and that immediately thereafter, they initiated appropriate proceedings by filing an appeal in the year 2016. The learned Senior Advocate further invited my attention to the merits of the dispute to contend that the area in possession of the petitioner-Society is in excess of what was legally allotted to it, and that such excess area forms part of the property owned by the contesting respondents. He further submitted that the present writ petition is directed only against the orders allowing the application for condonation of delay; however, in the interregnum, the appeal itself has been decided on merits in favour of the contesting respondents. Therefore, it was urged that in such circumstances, the present writ petition, being rendered infructuous, deserves to be dismissed.

**11.** Rival contentions of the learned counsel for the respective parties now fall for my consideration.

**12.** Upon a careful perusal of the material placed on record, it is evident that the order impugned in appeal was passed on 31st May 2005. The appeal challenging the said order came to be instituted on 27th October 2016. Thus, there was an admitted delay of 11 years and 4 months in preferring the appeal. From the contents of the application seeking condonation of delay, it is seen that the contesting respondents asserted that they became aware of the impugned order only on or about 9th November 2015. It was their case that a certified copy of the said order was applied for on 9th

November 2015 and was delivered to them on 11th November 2015. It was further stated that the Talathi had deleted the stencil entry in the 7/12 extract on 11th January 2016. Thereafter, the appellants addressed a letter to the Appellate Authority in February 2016, whereupon they were advised to file a formal appeal. It was contended before the Appellate Authority that there was no delay, and in the alternative, if a delay was found, the same ought to be condoned in the interest of justice.

**13.** The reasoning assigned by the Appellate Authority for condoning the inordinate delay of more than 11 years appears to be perfunctory and devoid of any independent application of mind. The Appellate Authority merely reproduced the general principles for condonation of delay as enunciated by the Hon'ble Supreme Court in Civil Appeal No.10581 of 2013 decided on 25th November 2013, without examining the facts and circumstances of the present case in the light of the said principles. A blanket observation was made that, in view of the said judgment, the delay deserved to be condoned. However, no specific findings were recorded as to how the cause shown by the contesting respondents could be construed as "sufficient cause" for the delay of such magnitude.

**14.** The order of the Appellate Authority was confirmed by the State Government on the premise that the contesting respondents were not parties to the earlier proceedings and that, upon considering the documents on record, sufficient cause had been made out. It was further observed that the delay was not deliberate or intentional, and that condoning the delay would not

cause any injustice to the respondents, whereas refusal to condone would deprive the contesting respondents of their statutory right to file an appeal.

**15.** In my considered opinion, the approach adopted by both the Authorities under the MLRC is contrary to the well-settled principles of law governing condonation of delay. It is trite law that mere assertion of lack of knowledge or belated knowledge of an order, without explaining why due diligence was not exercised in the intervening period, cannot, by itself, be treated as a sufficient cause. Ignorance of an order for an unreasonably long period, without cogent and credible explanation, cannot be condoned lightly. The authorities have failed to appreciate that "sufficient cause" must be shown for the entire period of delay, and that a liberal approach cannot be adopted so as to defeat the rights that have accrued to the opposite party on account of long passage of time.

**16.** Both the Authorities have condoned the delay merely by placing reliance on general principles, without scrutinizing whether the explanation furnished was bona fide, satisfactory, and covered the entire period of 11 years and 4 months. Such a casual and mechanical exercise of discretion cannot be sustained in law. The orders impugned, therefore, suffer from manifest arbitrariness and non-application of mind and are liable to be set aside.

**17.** Insofar as the cause furnished by the contesting respondents in the application for condonation of delay is concerned, it is evident that the only explanation offered is a mere bald statement

that the contesting respondents were unaware of the impugned order. In law, a mere bald and unsubstantiated statement that the appellants were unaware of the impugned order, by itself, is not sufficient to constitute a "sufficient cause" warranting condonation of delay, particularly when the delay is of an inordinate magnitude spanning over 11 years. In proceedings seeking condonation of such prolonged delay, the appellants are required to substantiate their case by placing on record credible and cogent material demonstrating the following factors:

(i) The circumstances or context in which the impugned order came to be passed and the chain of events that led to its alleged discovery by the appellants;

(ii) The due diligence undertaken by the appellants during the intervening period to safeguard their legal rights or interests;

(iii) Efforts, if any, made by the appellants earlier to inquire into or ascertain their legal status, title, or rights affected by the impugned order;

(iv) Absence of constructive or deemed knowledge, particularly in a case where the impugned order was of such a nature that it would ordinarily be expected to be communicated, published, or acted upon in a manner which would alert a reasonable person; and

(v) Whether the impugned order resulted in any change of status, title, or right that would have been manifest, patent, or publicly known, and whether despite such changes, the appellants could plausibly have remained unaware.

**18.** The contesting respondents, however, have failed to furnish any such particulars, nor have they placed on record any material to demonstrate exercise of due diligence or absence of negligence.

**19.** When a person claims lack of knowledge of an order passed several years earlier, certain well-settled principles assume relevance. Firstly, mere assertion of lack of knowledge, without more, is insufficient. The person seeking condonation must place on record specific material to demonstrate (a) how and when knowledge was first acquired, (b) that no constructive or deemed knowledge existed earlier, and (c) that there was no negligence or inaction on their part in safeguarding their rights. Secondly, material evidence ought to be placed before the Court which may include affidavits or correspondence showing attempts at inquiry; contemporaneous documents explaining the reasons for delayed discovery; statements from similarly situated persons, if applicable; and any official record, communication, or response evidencing delayed receipt of information. Thirdly, if an order has been implemented or acted upon in a manner impacting the legal rights, title, or possession of the person concerned, it is presumed that the affected person would have constructive knowledge of the order, unless such presumption is rebutted by cogent and credible evidence.

**20.** In the present case, the contesting respondents have not placed any material on record to satisfy the aforesaid tests. No contemporaneous efforts to inquire into the status of the land or legal rights have been shown. No evidence has been produced to rebut the presumption of knowledge arising from the

implementation of the impugned order and consequent mutation or alteration in revenue records. Thus, the approach adopted by the Authorities in mechanically condoning the delay without application of the aforesaid principles cannot be sustained in law.

**21.** Applying the aforesaid principles to the facts of the present case, in my considered view, the contesting respondents have failed to place on record any contemporaneous material, correspondence, affidavits of third parties, or any documentary evidence which would indicate that they had made any inquiries or sought any clarification regarding their legal status or rights at any earlier point of time. There is a complete absence of any material demonstrating due diligence on their part. Furthermore, there is no plausible explanation offered as to how the contesting respondents remained unaware of the impugned order for such an extended period of more than 11 years, particularly when the order in question had direct legal consequences and was passed by a statutory authority, which would normally be implemented or acted upon in a manner that would alert a person of ordinary prudence.

**22.** The contesting respondents' explanation, therefore, does not constitute "sufficient cause" as contemplated by law. The approach of the Authorities under the MLRC, in condoning such inordinate delay without due application of mind to the relevant factors and principles, constitutes a clear error of jurisdiction and is unsustainable. The orders impugned, thus, warrant interference by this Court in the exercise of its writ jurisdiction.

**23.** Insofar as the contention raised on behalf of the contesting respondents that the decision of the appeal on merits would render the present writ petition not maintainable is concerned, the same is devoid of any merit. It is well-settled that under the scheme of the Maharashtra Land Revenue Code, 1966, an order condoning delay is distinct and independent from the order admitting the appeal or deciding it on merits. Section 247 of the MLRC, read with Section 257, confers an independent right upon an aggrieved person to challenge the order condoning delay by way of revision or other appropriate proceedings. The right to challenge the order condoning delay is substantive and not rendered illusory merely because the appeal has thereafter been decided on merits.

**24.** If the condonation of delay itself is found to be illegal or without jurisdiction, all subsequent proceedings based upon such condonation, including the decision on merits, would be rendered without jurisdiction and non est in the eyes of law. Therefore, the contention of the contesting respondents that the present writ petition is rendered infructuous by reason of the subsequent decision on merits is liable to be rejected.

**25.** For the reasons stated above, I am of the considered view that the petitioner has made out a clear case for grant of relief as prayed for. The impugned orders passed by respondent Nos.1 and 23, condoning the delay in filing the appeal, are vitiated by errors apparent on the face of the record and deserve to be set aside.

**26.** In the result, the Rule is made absolute in terms of prayer clause (a) of the petition. No order as to costs.

**27.** Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)