
(2011) 09 BOM CK 0134
In the Bombay High Court
Case No : Writ Petition No. 2377 of 2011

Gorakh Jaybhay

APPELLANT

Vs

The Sub Divisional Officer and Others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32G, 32M, 32O
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 20
Constitution of India, 1950 — Article 113, 227
Limitation Act, 1963 — Section 5

Citation : (2012) 2 ALLMR 387 : (2012) 5 BomCR 753 : (2012) 2 MhLj 921

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : N.V. Gavare, for the Appellant; D.R. Kale, AGP for Respondent Nos. 1 and 2 and P.D. Ghorpade, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. By consent of the Learned Counsel appearing for the parties, the present matter is taken up for final hearing and disposal at the stage of admission itself.

2. This Writ Petition is filed challenging the judgment and order dated 01.11.2010, passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad, in Revision Petition No. 6/B/2010/AN.

3. The particulars and events which are disclosed by the Petitioner in this petition are as under.

The agricultural land bearing Gut No. 680(Old Survey No. 296) admeasuring 4H.23 R situated at village Telangshi, Tq. Jamkhed, District Ahmendagar, was initially owned and possessed by one Maruti Babu Jaybhaye. Maruti Babu Jaybhaye died on 13.7.1955 and the name of his legal heir, namely, Bhagwan @ Ganpati S/o Maruti Jaybhaye was recorded in the 7/12 extract vide mutation

entry No. 2300.

It is further contended that the said Bhagwan @ Ganpati is the father of Petitioner and he was in actual possession of the suit land and accordingly was cultivating the same. Nobody was inducted as tenant for the suit land. The false entry was recorded in other rights column of Maruti Dhondi Jaybhaye as the tenant.

It is further contended that, on 09.03.1995 the said entry was deleted vide Mutation Entry No. 2154 and the name of Bhagwan @ Ganpati was recorded as "Khudd" in possession column of 7/12 extract. It is further contended that in the year 1980 the Respondent No. 7 along with one Haridas Lahanu Jaybhaye initiated a false tenancy Case No. 320/ 1/80 before the learned Tahsildar, Karjat against the father of the Petitioner. In that case, they posed themselves as tenants. Father of Petitioner was illiterate, poor and rustic villager and hence present Respondent No. 7 along with Haridas Lahanu Jaybhaye took undue advantage, and the order came to be passed against the father of the Petitioner. Accordingly vide Mutation Entry No. 4188 the name of the predecessor of the Petitioner, namely, Bhagwan @ Ganpati was recorded in other rights column.. It is further contended that, one Haridas Lahanu Jaybhaye has executed a sale deed in favour of the Respondent No. 7 on 29.01.1986 and transferred 1/2 share in the said land. Accordingly, Mutation Entry No. 123 was recorded. The said land was allotted on tenure therefore, prior to executing sale deed, the necessary permission ought to have obtained from the Revenue Authority. Said alienation was illegal and void-ab-initio.

It is further contended that, the suit property was subdivided and the Mutation Entry No. 691 has been carried out on 21.07.1993. The said mutation entry is unlawful and hence the possession of Respondent No. 3 to 7, is illegal. The Petitioner states that, father of Petitioner died leaving behind sister, namely, Nilabai Gopinath Khade, wife namely Gayabai, son the present Petitioner and daughter namely Nandubai Ganesh Gopalghare. It is further contended that, initially, the Petitioner was not aware of the illegalities committed, but subsequently after though the record and documents the Petitioner demanded the possession of land from Respondent Nos. 3 to 7 but they refused to handover the possession.

It is further contended that, the Petitioner through his advocate send a legal notice to the Respondent Nos. 3 to 7 on 02.08.2007 and claimed for possession of land but the Respondents have not paid any heed. In the year 2007, the Petitioner filed Appeal No. 3 of 2007 before the SubDivisional Officer, Karjat and challenged the order passed by the learned Tahsildar in Tenancy Case No. 320/ 1/80. The Respondent Nos. 2, 5 and 6 appeared before the learned SubDivisional Officer on 11.03.2008 and filed their reply.

It is further contended that the learned SubDivisional Officer has been partly allowed the appeal on 19.08.2009 and directed the Tahsildar to further inquire

and verify the 7/12 extract and all mutation entries of suit land under the provisions of Tenancy law and further directed to decide the proceedings within a period of six months from the date of order.

It is further contended that the present Respondent Nos. 3 to 6 being aggrieved and dissatisfied by the judgment and order dated 19.08.2009, passed by the learned SubDivisional Officer, preferred Revision Application No. 6B2010AN along with application for condonation of delay before the learned Member, Maharashtra Revenue Tribunal Aurangabad, on 31.12.2009.

It is further stated that the learned Member, Maharashtra Revenue Tribunal, Aurangabad on 01.11.2010 has been pleased to allow the Revision Petition and set aside the order passed by the learned SubDivisional Officer Karjat in Tenancy Appeal No. 3 of 2007, observing that in the present case the appeal was filed after 27 years and no application for condonation of delay was filed. Hence, present Writ Petition is preferred.

4. This Court issued notice in Writ Petition. Pursuant to that, Respondent Nos. 3 to 6 have filed affidavit inreply, which is part of compilation of the Writ Petition from page Nos. 42 to 45.

5. Learned Counsel appearing for the Petitioner submitted that, the agricultural land bearing Gut No. 680(Old Survey No. 296) admeasuring 4H.23 R situated at village Telangshi, Tq. Jamkhed, District Ahmendagar, is the disputed property.

Learned Counsel further submitted that, the disputed property was initially owned and possessed by Maruti Babu Jaybhay and subsequently was inherited, after is demise by Bhagwan @ Ganpati Maruti Jaybhay, the father of the Petitioner. Nobody was ever inducted as tenant in the disputed property, however, false entry was recorded in other rights column of one Marutii Dhondi Jaybhay as tenant. The said entry was further deleted vide mutation entry No. 2154 and the land was in possession of Bhagwan @ Ganpati Jaybhay. The Respondents had no concern with the disputed property either as tenant or in any other capacity.

Learned Counsel further submitted that the father of the Petitioner, namely, Bhagwan @ Ganpati is simpleton and illiterate, poor rustic villager. The Respondents are men of means and influential person. The father of the Petitioner was brutally assaulted and threatened of dire consequences by the Respondents, and therefore, in order to save life, he succumbed to the pressure of the Respondents and virtually agreed to certain things of which the Respondents took the undue advantage. The father of the Petitioner was subsequently left the village and never returned thereafter.

Learned Counsel further submitted that, Respondent No. 7 along with one Haridas Lahanu Jaybhaye on 12.08.1980 initiated false Tenancy case No. 320/1/80, u/s 320 of Bombay Tenancy and Agricultural Lands Act (Hereinafter referred to as "said Act" for the sake of brevity) before the Tahsildar Karjat on

the basis of fake tenancy claim. The father of Petitioner has fallen prey to the pressure exerted by Respondent No. 7 and others. The Respondent No. 7 and Ors. have failed to tender intimation to the father of the Petitioner of desire to exercise the right of purchase conferred by Section 320 of the said Act, within period of one year from the commencement of alleged tenancy. However, the Respondent No. 7 has failed to prove that right of purchase was exercised within one year from the commencement of tenancy and also the fact that the intimation of desire to exercise right of purchase was given as per form "X" as envisaged under Rule 20 of Bombay Tenancy and Agricultural Lands Rule 1956.

Learned Counsel further submitted that, however, no such intimation was ever given by the Respondent No. 7 within period of one year in Form "X". Even the learned Tahsildar has not considered the said crucial aspect and thus the entire proceeding stands vitiated and provisions of Rule 320 of the said Act could not have been invoked to perfect the claim of Respondent No. 7. Even the learned Tahsildar has not considered the said aspects. Therefore, there is nothing on record to indicate that, Respondent No. 7 so called tenant had intimated his willingness to purchase suit land within one year from taking lease, therefore, the matter is required to be remitted to Tahsildar Karjat as per law laid down by Hon'ble Apex Court in the matter of Ramesh Ramnarayan Dangare v. Vithabai B. Wakchaure and Anr. reported in 2004 (5) All MR 1151 (SC).

Learned Counsel further submitted that, Respondent No. 7 has fraudulently posed himself as tenant by putting the father of the Petitioner under threat. The Petitioner at the relevant time was minor and father was forced to leave the village on account of terror of Respondent No. 7 and others. Therefore, the Petitioner had no knowledge regarding the decision rendered by Tahsildar and could not be subjected to challenged immediately.

It is further submitted that, the Petitioner is illiterate and after getting knowledge immediately preferred Appeal No. 3 of 2007 before SubDivisional Officer, Karjat challenging the order passed by the learned Tahsildar. Because of inadvertence on the part of advocate the separate application for delay condonation could not be preferred, but learned SubDivisional officer, Karjat vide order dated 19.08.2009 partly allowed the appeal and directed the Tahsildar to verify the record of disputed property since year 1950 and also to consider the same in light of the provisions of the Bombay Tenancy and Agricultural Lands Act. It has been observed by the learned SubDivisional Officer that, on the relevant date one Maruti Dhondi was shown as tenant and the said entry has been subsequently cancelled vide Mutation Entry No. 1632. It has been also observed that the record is not traceable which leads to suspicion and further alienation of the suit property is illegal.

Learned Counsel further submitted that it is also crystal clear that the Respondents i.e. so called tenants have been successful in proving and establishing, as to when and how they become tenant on the suit property. The learned SubDivisional Officer has precisely remanded the matter to verify the

factual aspects, as the basis claim of the Respondents regarding their so called tenancy was false, baseless and fraudulent. Therefore, the proceedings u/s 320 of the said Act were not maintainable an order passed thereon is illegal, nonest and nullity in eyes of law.

Learned Counsel appearing for the Petitioner further submitted that, the disputed property is ancestral property of the Petitioner and his father Bhagwan. Nobody ever was inducted as tenant. One Maruti Dhondi Jaybhay was illegally shown as tenant to disputed property, but subsequently vide Mutation Entry No. 2154 entry regarding the said tenant was deleted.

Learned Counsel further submitted that, the Respondent No. 7 Chakradhar and Ors. fraudulently on or about year 1980, filed proceeding u/s 32 of the said Act, in absence of any tenancy and without notifying any date as to when and how they acquired the status of tenant.

Learned Counsel further submitted that, no intimation expressing desire to purchase the disputed property was ever given by the Respondents to the father of the Petitioner within period of one year from the date of their so called tenancy, in Form "X" as per Rule 20 of the Bombay Tenancy and Agricultural Lands Act and Rules 1956 and as per Section 320 of the said Act, therefore, the proceedings filed by the Respondents u/s 320 of the said Act were itself not maintainable and misconceived. The learned Tahsildar has not appreciated the said fact.

Learned Counsel further submitted that, the matter can be remanded to Tahsildar to find out whether intimation was given or not by the tenant in prescribed form, within period of one year from the alleged tenancy. The most suspicious part is that, the record is shown to be have misplaced and untraceable, in order to favour the Respondents. The litigants should not suffer for the fault and inadvertence on the part of advocate.

Learned Counsel appearing for Petitioner invited my attention to the reported judgment of Supreme Court in the case of Ramesh Ramnarayan Dangare v. Vithabai B. Wakchaure and Anr. reported in 2004 (5) All MR 1151 (SC), in particular, para No. 5 of the said judgment and submitted that, in the present case nothing is brought on record showing that tenant had intimated his willingness to purchase suit land within one year from taking lease. Therefore, he submits that it is necessary to remit this matter back by giving opportunity to the Petitioner to file application for condonation of delay to find out whether intimation was given by tenant or not?.

Learned Counsel further invited my attention to the reported judgment of Supreme Court in the matter of Shri Pandurang Dnyanoba Lad Vs. Shri Dada Rama Methe and Others, and submitted that, Section 320 of the said Act applies only to tenancies created after the tillers' day. It provides that in respect of such tenancies, a tenant desirous of exercising the right of purchase must give an intimation to the landlord and the Tribunal within one year from the

commencement of his tenancy. However, in the present case, there is nothing on record showing that such intimation was given to the landlord by the tenant. Therefore, the Learned Counsel appearing for Petitioner would submit that the petition deserves to be allowed.

6. On the other hand, Learned Counsel appearing for Respondent Nos. 3 to 6 submits that, the prayer of the Petitioner for remanding back the matter will not survive any purpose, because purchase certificate u/s 32(M) of the said Act is already issued by the Tahsildar, Jamkhed in favour of Tenant on 27.07.1981 and the said Certificate is not challenged by the original landlord and present Petitioner before SubDivisional Officer nor before this Hon"ble Court in this Writ Petition. As per Section 32(M) of the said Act 1948, "Purchase Certificate" shall be conclusive evidence of purchase". Here the Petitioner is challenging proceeding u/s 32O of the said Act, the order passed by Tahsildar on 31.08.1980, but the tenant had already complied with the legal proceeding u/s 32O of the said Act, and deposited the compromise amount of Rs. 3,500/before the Tahsildar. Learned Counsel further submitted that, purchase certificate has been issued by Tahsildar in favour of the tenant, which is not challenged by the landlord and the Petitioner till today. Hereafter, it becomes conclusive and final against the landlord and the Petitioner. Though, the matter will get remanded and appeal is allowed, thereafter, also the tenant's right will not get affected, because "Purchase Certificate" became conclusive and final against the landlord and the Petitioner. This Certificate is intentionally suppressed by the Petitioner on this ground, the Petitioner is not entitled to any relief.

In support of his submission, the learned Counsel placed reliance on the judgment of this Court in the matter of Smt. Ramkuwar W/o Ramkisha Pallod (Deceased through L. Rs.) v. Shri Krushnanath Sajan Belhekar and Anr. reported in 2010 (5) ALL MR 529. In this case, the learned Single Judge has taken a view that "Purchase Certificate" is issued in favour of Tenant u/s section 32(M) of the said Act, therefore, right stood crystallized in favour of tenant. The Certificate is not challenged, it's become final against original landlord. Fact of issue of Certificate was suppressed in Writ Petition. Held, Petitioner is not entitled to any relief.

Learned Counsel further submitted that, the Petitioner stated in his petition that the original landlord is dead, but he has not given specific date of death and he has not produced any document on record to support his submission that, his father(Original landlord) is dead and his legal heirs on record. It is further submitted that, the original landlord is alive and presently residing at village Ujjaini, Tq. Indpaur, District Pune. This fact is also intentionally suppressed by the Petitioner, also in his rejoinder, in para No. 6 and page No. 61, the Petitioner is silent on this point. Therefore, the Petitioner has no locusstandi to file any appeal. Learned Counsel further submitted that, the Petitioner has suppressed the material fact and mislead the Court, hence, this Writ Petition is liable to be dismissed.

Learned Counsel further submitted that, tenancy had commenced from 1980/1981, so far further requirement of proceeding, Respondents filed application within one year u/s 320 of the said Act, in Tenancy Case No. 3201/80 on 12.08.1980, before Tahsildar, Jamkhed for claiming the right of tenancy before the Tahsildar. The Tahsildar recorded findings in the affirmative at page No. 53.

Learned Counsel further submitted that in this proceeding u/s 320 of the said Act before the Tahsildar, original landlord Bhagwant @ Ganpati Maruti Jaybhay appeared and given his written statement, in which he admitted Respondents rights as tenant on the land. The Tahsildar recorded his statement and finding, which is at Page No. 52, in the order passed by the Tahsildar on 31.08.1980, compromise of the purchase amount of Rs. 3,500/between the landlord and the tenant. This finding is also recorded by the Tahsildar at Page No. 54 and 55, in the said order passed by the Tahsildar on 31.08.1980.

Learned Counsel further submitted that, it is admitted by the original landlord and same is recorded by the competent authority, and therefore, estoppels is attract on that point. This Petitioner has no locusstandi to file appeal after 27 years. Original landlord had knowledge about the order passed by the Tahsildar on 31.08.1980, but he has not challenged the order till today and it becomes final against him. The Learned Counsel, in support of this submission placed reliance upon the reported judgment of Apex Court in the matter of State of Punjab and Others Vs. Gurdev Singh, . In this judgment, the Apex Court observed that, "if the statutory time limit is expired, the Court cannot give the declaration sought for."

Learned Counsel further submits that, the present Petitioner preferred an appeal in 2007 before SubDivisional Officer, Karjat as Appeal No. 3 of 2007 against the order passed by the Tahsildar on 31.08.1980, and that appeal was allowed in absence of application for condonation of delay and without condoning the delay. The learned SubDivisional Officer allowed the appeal without jurisdiction, tenant challenging that order before Maharashtra Revenue Tribunal, in Revision Petition No. 6/B/2010/AN. The Tribunal allowed the Appeal on 01.11.2010 and set aside the order passed by Sub Division Officer, Karjat in Tenancy Appeal No. 03 of 2007, which is illegal and without jurisdiction. The Learned Counsel further submitted that, Whether in absence of proper application of condonation of delay or without condoning the delay, the SubDivisional officer have jurisdiction to allow the Appeal filed by the Petitioner after 27 years?. In support of this submission he placed reliance on the reported judgment of Apex Court in the matter of Ragho Singh v. Mohan Singh and Ors. reported in AIR 2011 SCW 2351 (Para No. 6).

Learned Counsel further submitted that, once the proceedings u/s 320 of the said Act is over and the tenant had deposited the purchase amount and the Tahsildar issued "Purchase Certificate" u/s action 32(M) of the said Act, it is the conclusive evidence, the Tahsildar has no jurisdiction to initiate fresh proceedings

u/s action 320 of the said Act. In support of this submission, Learned Counsel placed reliance on the reported judgment of this Court in the case of Sidappa Rama Patil Vs. Sattur Laxman Kole deceased by his heirs Laxman Sattu Kole and Others, .

. The Learned Counsel appearing for Respondents submitted that, Haridas Lahanu Jaybhay is one of the protected tenant in tenancy Case No. 32(O)/1/80, but he was not made a party in Appeal before the SubDivisional Officer and this Writ Petition also Hence, this Writ Petition is not maintainable for non joinder of the necessary parties and same is liable to be dismissed.

7. I have given due consideration to the rival submissions of the parties. It appears that, on 02.08.2007, the Petitioner herein through his Advocate sent a legal notice to Respondent Nos. 3 to 7 and claimed the possession of the land, but the Respondents have not paid any heed. In the year 2007, the Petitioner filed Appeal No. 3 of 2007 before SubDivisional Officer, Karjat, challenging the order passed by the learned Tahsildar, Karjat in Tenancy Case No. 32O/ 1/80, therefore, it is clear that the Petitioner herein challenged the order passed by the Tahsildar, Karjat in tenancy Case No. 32O/ 1/80, after 27 years. It further appears that Respondent Nos. 3, 5 and 6 contested the Appeal before SubDivisional Officer, and SubDivisional Officer by his order dated 19.08.2009 allowed the Appeal and directed the Tahsildar to further inquire and verify the 7/12 extract and all Mutation Entries of suit land under the provisions of Tenancy Law and further directed to decide the proceedings within a period of six months from the date of order.

8. Being aggrieved by the judgment and order of SubDivisional officer, Respondent Nos. 3 to 6 herein, challenged the said judgment and order before the learned Member, Maharashtra Revenue Tribunal Aurangabad by filing Revision Application NO. 6B2010AN. The learned Member, Maharashtra Revenue Tribunal, Aurangabad on 01.11.2010 was pleased to allow the Revision Application and set aside the judgment and order of SubDivisional Officer, Karjat, in Tenancy Appeal No. 03 of 2007.

9. I have carefully perused the reasons recorded by the learned Member, Maharashtra Revenue Tribunal, Aurangabad, the Tribunal in its judgment in para No. 6 to 9 has assigned the reasons for allowing Revision Application. learned Member, Maharashtra Revenue Tribunal, Aurangabad has adverted to observations made by learned SubDivisional Officer, Karjat, where he has observed that the Appeal was not within period of limitation, however, further it is observed that, it is necessary to examine the merits of the Appeal. Therefore, learned Member, Maharashtra Revenue Tribunal, Aurangabad relying upon the judgment of this Case in the case of Ballumal A. Jaisingh Vs. J.J. Builders and Others, held that the Court has no jurisdiction to condone the delay, in absence of proper application u/s 5 of the Limitation Act, 1963.

In the present case, the appeal was filed after 27 years, before SubDivisional

Officer, Karjat, from the order under appeal came to be passed. The appeal was filed after the prescribed period of limitation. No application for condonation of delay was filed. Therefore, learned Member, Maharashtra Revenue Tribunal, Aurangabad held that, "the Authority below have no power or jurisdiction to entertain or decide the Appeal, in absence of application for condonation of delay. In absence of application for condonation of delay, appeal would not have been admitted and taken up for hearing. Therefore, learned Member, Maharashtra Revenue Tribunal, Aurangabad held that SubDivisional Officer has exceeded its jurisdiction in as much as it decided the Appeal in absence of any application for condonation of delay. Therefore, learned Member, Maharashtra Revenue Tribunal, Aurangabad quashed and set aside the judgment and order of SubDivisional Officer.

10. I have independently scrutinized the facts and law involved in the case and I find that view taken by the learned Member, Maharashtra Revenue Tribunal, Aurangabad is reasonable and also inconsonance with the evidence brought on record. I do not find any infirmity in the view taken by the learned Member, Maharashtra Revenue Tribunal, Aurangabad.

It is admitted position that, the Petitioner herein challenged the order passed by the Tahsildar in the year 1980, after 27 years, before the SubDivisional Officer. The Appeal was filed by the Petitioner in the year 2007. During the course of argument, the Learned Counsel appearing for the Petitioner was called upon to explain inordinate delay in filing the Appeal. He submitted that the Petitioner was minor at the relevant time. The Petitioner was present in the Court and on enquiry from the Petitioner himself, counsel for the Petitioner informed this Court that the Petitioner is born in the year 1979. Even, if it is presumed that the Petitioner was minor till 1997, after attending age of 18 years, at the most Appeal should have been preferred in the year 1997/1998. However, admittedly, in the present case the Appeal is filed in the year 2007. It is admitted position that, no application for condonation of delay was filed along with Appeal before the SubDivisional Officer. This Court had occasion to consider some what similar point in the case of Sidappa Rama Patil v. Suttar Laman Kole (Deceased by L Rs.) and Ors. supra, this Court in para No. 6 and 7 held that:

6. After hearing counsel for the parties I have no hesitation in taking the view that it is unnecessary for this Court to burden the judgment with the merits of the rival claim with regard to the relationship between the parties. I find force in the argument canvassed on behalf of the Petitioners that as the appeal preferred by the landlord was barred by limitation, it was obligatory that it was accompanied by an application for condition of delay, or at least a prayer in the memo of appeal itself for condoning the delay in filing the appeal; and further that Appellate Authority ought to have condoned the delay before deciding the case on merits. It is well settled that if the appeal is barred by limitation, the appellate court would assume jurisdiction only if the delay in filing such an appeal was to be condoned in the first place. The delay can be condoned only if

such a prayer is formally made by the Appellant. The court on its own cannot find out some reason to grant the relief which is not prayed by the Appellant. In the present case, it is common ground that no formal application for condonation of delay in filing the appeal was filed nor a formal prayer for condoning the delay in filing the appeal was incorporated in the appeal memo. Moreover, there is nothing on record(at least brought to my notice by the counsel for the Respondent) that the Appellate Authority had condoned the delay before entertaining the appeal which was filed by the landlord after lapse of 10 years. The argument that the Appellant landlord had no notice about the earlier proceeding cannot be the basis to ignore the order which was operating against the landlord Appellants. That order can only put in the issue on filing appeal which is in accordance with law. Mere filing of appeal, which is barred by limitation, is not enough but it was necessary to be accompanied with an application for condonation of delay and the delay should be first excused only when the Appellate Court can assume jurisdiction to enter upon the merits of the case. This view is supported by the decisions relied on behalf of the Petitioners as referred to above. In this view of the matter it necessarily follows that the Appellate Authority had no jurisdiction to proceed to decide the matter on merits in favour of the landlord. This crucial aspect has been completely overlooked by the Tribunal while deciding the revision application, which is the manifest error resulting in serious miscarriage of justice. The Tribunal, on the other hand, found that even though the appeal was not filed within limitation, but since the landlord was not served with the notice, of the earlier order passed in the earlier proceeding, there was no question of delay as that decision was nullity. This is not the correct legal position. The order does not become nullity because of no service of notice but it would be at best a case of irregularity which can be questioned in appeal before the appropriate authority. On the above reasoning, the order of the appellate authority as well as the revisional authority will have to be reversed without going into the merits of the rival controversy, as there was no prayer for condonation of delay in filing the appeal nor such an order has been factually passed by the appellate authority.

7. In so far as the order passed by the Tahsildar dated December 31, 1972 in the subsequently initiated 32G proceedings is concerned, I have no hesitation in taking the view that initiation of fresh 32 G proceeding by the Tahsildar was without jurisdiction. Once the proceeding was finally decided by him and on which basis certificate u/s 32(M) of the Act has already been issued in favour of the tenant, on passing order in the earlier proceeding the Tahsildar had become functus officio and it was not open to him to once again initiate fresh proceeding u/s 32G of the Act. Viewed in this perspective, the order passed by the Tahsildar dated December 31, 1972 deserves to be set aside being without jurisdiction. This crucial aspect is once again glossed over by the Appellate Authority as well as the Revisional Authority, in spite of such a grievance being made by the Petitioners.

11. The Supreme Court in the case of Ragho Singh v. Mohan Singh and Ors. cited

supra has taken a view that if the Appeal is filed beyond time and if application for condonation of delay is not filed, the delay cannot be deemed to have been condoned and Appeal is liable to be dismissed.

12. In another case, *State of Punjab and others v. Gurudev Singh and Ashok Kumar* cited supra, the Supreme Court held that:

The party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for. Further the words "right to sue" under Article 113 ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is clear and unequivocal threat to infringe that right by the Defendant against whom the suit is instituted. When the employee is dismissed from service his right to continue in the service is infringed. If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not "quash" so as to produce a new state of affairs. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court.

13. In the present Writ Petition, the Petitioner has not disclosed that Certificate u/s 32(M) of the said Act has been issued in favour of Respondent Nos. 3 to 6. It is admitted position that there is no challenge to such certificate by the Petitioner. I find considerable force in the argument of Learned Counsel appearing for Respondent Nos. 3 to 6 that in some what similar situation, this Court in the case of *Smt. Ramkunwar W/o Ramkishan Pallod v. Shri Krushnanath Sajjan Belhekar and Ors.* cited supra held in para Nos. 9, 10, and 11, which read thus:

9. Even this Court in a case of *Shri Shrikant Gangaram Teli Vs. Shri Bhaskar Narayan Kuvalekar and others*, " has observed thus:

It is apparent from the aforesaid provision of Section 32M that the certificate issued under this section is conclusive evidence of purchase. The said certificate was not challenged by the Petitioner in appeal. The certificate u/s 32M was issued in favour of Respondent No. 1 in the year 1960 and that conclusively establishes that Respondent No. 1 was purchaser of the land which would mean that Respondent No. 1 was in possession of the land in question as tenant on 1st April, 1957. The certificate issued u/s 32M having attained finality in all respects, it was not open to the Tahsildar to declare the said certificate as nullity in the proceedings initiated by the Petitioner u/s 32G of the Bombay Tenancy Act. Even if it is assumed that Petitioner had no notice of the proceedings initiated by the

Respondent No. 1 u/s 32G and pursuant thereto the certificate u/s 32M was issued in favour of Respondent No. 1, upon acquiring the knowledge of such certificate having been issued in favour of Respondent No. 1, the Petitioner could have only challenged its legality in appeal and not by way proceedings u/s 32G of the Bombay Tenancy Act. The Tahsildar acted without jurisdiction in declaring the certificate issued in favour of Respondent No. 1, as nullity and grossly erred in declaring the Petitioner as deemed purchaser on the face of the certificate issued u/s 32M in favour of Respondent No. 1. The said order passed by the Tahsildar being patently erroneous has rightly been set aside by the Collector, Sindhudurg. The Maharashtra Revenue Tribunal also did not commit an error in affirming the correct order of the Collector, Sindhudurg.

10. In the present case, the certificate u/s 32M has already been issued in the year 1987, such certificate is the conclusive evidence of purchase price. It is also not disputed that the purchase price has been paid. The rights having been crystallized in favour of the tenants i.e. the Respondents the same could not have been challenged only by filing appeal as provided under the statute. The said certificate is conclusive against the landlords. In view of the, law laid down by the Apex Court and our High Court referred supra. I am of the view, that the said certificate has become final, in such circumstances, even if the arguments of Shri Kulkarni are accepted that the legal heirs should be allowed to further adduce the evidence in respect of personal cultivation and for that purpose remand the matters, still it will not serve any purpose, as the certificate u/s 32M as against these Petitioners have become final.

11. The conduct of the Petitioners also needs to be taken into consideration, while exercising the jurisdiction under Article 227 of the Constitution of India. The Petitioners have suppressed the material fact about issuance of certificate in favour of the Respondents/tenants u/s 32M, though the same has been issued in the year 1987 and the present writ petitions are filed in the year 1991. The Petitioners are guilty of suppression of material facts, on this count also the Petitioners would be disentitled to claim any relief.

14. In that view of the matter, in my considered opinion, the view taken by the learned Member, Maharashtra Revenue Tribunal is inconsonance with law laid down by the Supreme Court as well as this Court. So, I do not find any substance in the Writ Petition and same stands dismissed. Rule stands discharged.