

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13889 OF 2018

Ravindra Vasudeo Salvi

... Petitioner

Vs.

1. Sunil Janu Wayade

2. Simgu Janu Wayade

... Respondents

ATUL
GANESH
KULKARNI

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Mr. R.D. Suryawanshi with Mr. Suraj N. Naik for the
Petitioner.

Mr. Jaydeep Raut with Mr. Rishabh Patel i/by Mr. Vinod
Naik for the Respondents.

Smt. Mamta S. Shrivastava, AGP for the State.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 7, 2026.

PRONOUNCED ON : SEPTEMBER 9, 2026

JUDGMENT:

1. By filing the present Petition, the Petitioner has challenged the judgment and order dated 20 December 2017 passed by the learned President of the Maharashtra Revenue Tribunal, Mumbai. By the said order, the learned President rejected the Petitioner's application seeking condonation of delay in filing Appeal No. TRB/APL/MUM/L-52/2015 under Section 6 of the Maharashtra

Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as “the Act of 1974”).

2. The brief facts which have led to filing of the present Petition are stated below. The present Petition and the proceedings before the Sub-Divisional Officer as well as before the Maharashtra Revenue Tribunal relate to land bearing Survey No. 157 (Part), New Survey No. 239, Hissa No. 3, and Survey No. 245, Hissa No. 1. The total area of the said lands is about 3 Acres, equivalent to 11,085.36 square metres or 13,260 square yards. The lands are situated at Village Malad, Taluka Borivali, District Mumbai Suburban. These lands are hereinafter referred to as “the suit lands”. According to the Petitioner, Respondent Nos. 1 and 2, on 7 June 2008, filed an application before the Sub-Divisional Officer, Mumbai Suburban District. By that application, they sought cancellation of Mutation Entry Nos. 1640 and 992 relating to Survey No. 245, Hissa No. 1 and Survey No. 239, Hissa No. 3, respectively, situated at Village Malad, Taluka Borivali, District Mumbai Suburban. They sought restoration of the said lands in their favour. On 4 July 2008, the Petitioner appeared in the said proceedings., on 25 August 2008, he filed a detailed reply opposing the application filed by Respondent Nos. 1 and 2 on various grounds stated in the reply., the Sub-Divisional Officer, Mumbai Suburban District, fixed the application for hearing on 22 May 2009. The Advocates for Respondent Nos. 1 and 2 and the Petitioner were present on that day. The Petitioner filed an application seeking an adjournment. The matter was adjourned to 8 June 2009. On 8 June 2009, the Advocates for Respondent Nos.

1 and 2 and the Advocate for the Petitioner, along with the Petitioner, were present before the Sub-Divisional Officer. The parties made their oral submissions. After hearing them, the Sub-Divisional Officer closed the matter for orders. According to the Petitioner, the office of the Sub-Divisional Officer informed him that the order would be communicated to him. After this, the Petitioner made enquiries from time to time with the office of the Sub-Divisional Officer, Mumbai Suburban District, about the status of the proceedings. On every such occasion, he was informed that the order would be sent to him by post when it was ready. The Petitioner states that, after making several enquiries and still not receiving any communication, he stopped visiting the office and waited for the order to be communicated to him. The Petitioner states that, despite this, he did not receive any notice, communication or information about the order passed by the Sub-Divisional Officer on the application dated 7 June 2008 filed by Respondent Nos. 1 and 2. In these circumstances, the Petitioner received a notice dated 18 November 2013 from Thakordas and Madgaonkar, Advocates and Solicitors. The notice was issued on behalf of Respondent Nos. 1 and 2 and two other persons. It related to R.T.S. Appeal No. 55 of 2013 filed before the Sub-Divisional Officer, Mumbai Suburban District. The notice was accompanied by an application seeking condonation of delay. According to the Petitioner, by filing the said R.T.S. Appeal, Respondent Nos. 1 and 2 and two other persons sought, amongst other reliefs, that their names be entered in place of Ashoka Farming Society, the present Petitioner and Manzoor Hasan Nakvi.

They sought deletion of the names of Ashoka Farming Society and the Petitioner from the revenue records. They sought cancellation of Mutation Entry No. 1855 relating to the same land which was the subject matter of the earlier application dated 7 June 2008. The Petitioner states that he was made Respondent No. 2 in the said R.T.S. Appeal. After going through the appeal memo and the application for condonation of delay, the Petitioner noticed that there was no mention of the earlier application dated 7 June 2008 filed by Respondent Nos. 1 and 2 before the Sub-Divisional Officer. There was no mention of the proceedings which had taken place pursuant to that application.

3. According to the Petitioner, these facts showed that even Respondent Nos. 1 and 2 were not aware of the order, if any, passed on their earlier application dated 7 June 2008. The Petitioner contends that, if Respondent Nos. 1 and 2 had known about the order dated 29 December 2009, they would not have filed R.T.S. Appeal No. 55 of 2013 seeking substantially the same reliefs. According to the Petitioner, the reliefs sought in that appeal had been granted by the Sub-Divisional Officer by his order dated 29 December 2009 passed on the application dated 7 June 2008. After considering R.T.S. Appeal No. 55 of 2013 and the application seeking condonation of delay, the Petitioner filed his reply to the application for condonation of delay on 3 December 2013. In paragraph 3 of the said reply, the Petitioner specifically pointed out that Respondent Nos. 1 and 2 had filed an application dated 7 June 2008 seeking cancellation of Mutation Entry Nos. 1640 and 992 in respect of the suit lands. The Petitioner pointed out that

those proceedings were registered as Case No. 117 of 2008. On this basis, the Petitioner contended that the subsequent appeal challenging the same mutation entries was not maintainable. The Petitioner filed his reply to R.T.S. Appeal No. 55 of 2013. In paragraph 8 of that reply, he again raised the same objection regarding the earlier application dated 7 June 2008 and the proceedings arising from it., when the application for condonation of delay in R.T.S. Appeal No. 55 of 2013 was heard on 13 January 2015, the Petitioner and his Advocate brought to the notice of the Sub-Divisional Officer that the application dated 7 June 2008 had been filed and that proceedings in respect thereof had taken place. The Petitioner states that, on 13 January 2015, the Sub-Divisional Officer called for the record and proceedings relating to the application dated 7 June 2008. After examining the said record, the Sub-Divisional Officer informed the Petitioner, Respondent Nos. 1 and 2 and their respective Advocates that the earlier application had been disposed of by an order dated 29 December 2009. In view of this, on 13 January 2015, Respondent Nos. 1 and 2 and the other appellants withdrew R.T.S. Appeal No. 55 of 2013. The Petitioner states that he came to know about the order dated 29 December 2009 only on 13 January 2015. According to the Petitioner, Respondent Nos. 1 and 2 came to know about the said order for the first time on the same date. In these circumstances, the Petitioner applied for a certified copy of the order dated 29 December 2009 on 17 January 2015., the Petitioner challenged the said order passed by the Sub-Divisional Officer by filing an appeal under Section 6 of the Act of 1974 before the Maharashtra

Revenue Tribunal, Mumbai.

4. The Petitioner states that the appeal was filed along with an application seeking condonation of delay. In that application, the Petitioner explained the circumstances which, according to him, had caused the delay. He specifically stated that he had never been served with the order dated 29 December 2009 and had not otherwise been informed about it. He stated that he came to know about the said order only on 13 January 2015., the learned President of the Maharashtra Revenue Tribunal, Mumbai, heard the Petitioner's application seeking condonation of delay. By judgment and order dated 20 December 2017, the learned President of the Maharashtra Revenue Tribunal rejected the Petitioner's application for condonation of delay. According to the Petitioner, the judgment and order dated 20 December 2017 passed by the learned President of the Maharashtra Revenue Tribunal is incorrect and does not consider the facts and circumstances of the case. The Petitioner contends that the said judgment and order is liable to be quashed and set aside. It is this judgment and order which has been challenged by the Petitioner in the present Petition.

5. Mr. Suryawanshi, learned Advocate for the petitioner submits that the Sub Divisional Officer was under legal obligation to communicate judgment in the quasi judicial proceedings. He submitted that neither the petitioner nor respondents received copy of judgment of the Sub-Divisional Officer till such fact was disclosed in the year 2015. He submitted that the fact of lack of knowledge of the respondents about delivery of judgment supports

petitioner's case of lack of knowledge of delivery of judgment and the conduct of the parties. He submitted that only after the record and proceedings of earlier proceedings were called by the Sub-Divisional Officer on 13 January 2015, it was revealed that such proceeding was disposed off by judgment and order dated 29 December 2009. He,, submits that the fact of lack of knowledge has not been disproved by the respondents.

6. In support of his submissions, Mr. Suryawanshi relied upon the Supreme Court judgments in *Sheo Raj Singh (Deceased) Through Lrs. & Ors. v Union of India & Anr.*, (2023) 13 S.C.R. 743, and *Inder Singh v. The State of Madhya Pradesh*, (2025) 3 S.C.R. 915.

7. Per contra, Mr. Raut, learned Advocate for the respondents submits that it is not in dispute that the petitioner was represented by an Advocate and the Sub-Divisional Officer in 2009 heard Advocate for the parties. Relying on reasons furnished by the Revisional Authority, he submitted that the Revisional Authority has rightly observed that the petitioner was under obligation to enquiry about the judgment, and he cannot keep mum for five years. He submitted that this a case of gross negligence of the respondents and,, the Revisional Authority has rightly refused to condone the delay.

8. In support of his submissions, Mr. Raut relied upon the judgments of this Court in *Esha Bhattacharjee v Managing Committee, Raghunathpur Nafar Academy and Ors.*, (2013) 12 SCC 649, *Brijesh Kumar & Ors. v. State of Haryana & Ors.*, (2014)

11 SCC 351, *Oriental Aroma Chemical Industries Ltd. v Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459, *Prathapati Subba Reddy v. Special Deputy Collector*, (2024) 12 SCC 336.

REASONS AND FINDINGS:

9. I have considered the submissions made by Mr. Suryawanshi, learned Advocate for the Petitioner, and Mr. Rautl, learned Advocate for the Respondents. The question, which arises for consideration is whether the Petitioner has shown sufficient cause for not filing the appeal under Section 6 of the Act of 1974 within the prescribed period.

10. Mr. Suryawanshi, learned Advocate for the Petitioner, submits that the Petitioner had taken part in the original proceedings and this position is not disputed. According to him, after the matter was heard on 8 June 2009 and was kept for orders, the Petitioner was informed that the order would be communicated to him. The Petitioner has stated that he made enquiries from time to time with the office of the Sub-Divisional Officer. He was informed that when the order was ready, it would be sent to him by post. It is his case that he had no knowledge of the order dated 29 December 2009. At the first instance, this submission of the Petitioner cannot be rejected. The Petitioner is not saying that he was not concerned with the earlier proceedings. On the contrary, the material before the Court shows that he appeared before the Sub-Divisional Officer, filed a detailed reply on 25 August 2008, was represented by an Advocate and

participated in the hearing. The matter was heard on 8 June 2009, and it was closed for orders. In view of these facts, it cannot be said that the Petitioner had left or abandoned the proceedings. The statement of the Petitioner that he made enquiries about the order has to be considered. The Respondents have not pointed out any material from which it can be shown that the order dated 29 December 2009 was in fact communicated to the Petitioner. There is no material to show that the said order was served upon the Petitioner or his Advocate, or that in any other manner the Petitioner came to know about the order before 13 January 2015. Passing of an order and knowledge of that order are different matters. Merely because an order was passed and is available on the record, it cannot mean that the Petitioner had knowledge of the same.

11. Mr. Raut, learned Advocate for the Respondents, submits that since the Petitioner was represented by an Advocate, he was expected to make proper enquiries about the result of the proceedings. According to him, the Petitioner could not participate in the proceedings and remain silent for nearly five years. Such conduct, according to the Respondents, amounts to negligence and the delay should not be condoned. There can be no dispute that a litigant is expected to remain careful about his case. But negligence cannot be presumed only because considerable time has passed. Whether the Petitioner was negligent in the facts of the present case has to be seen from his actual conduct and the material which is available on record. The principle which is relevant for considering such a situation has been explained by the

Supreme Court in *Sheo Raj Singh*. In paragraph 30, the Supreme Court has held:

“30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.”

12. From the above principle, it is clear that the length of delay alone cannot be the only reason for deciding an application for condonation of delay. The Court has to look at the explanation given by the party and has to see whether the explanation is acceptable in the facts of the case. The Supreme Court has made a distinction between an explanation and an excuse. In paragraph 31 of the same judgment, it has observed:

“31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an “explanation” and an “excuse”.”

13. Therefore, merely because the period of delay in the present case is long, the Petitioner's explanation cannot be rejected at once. The Court has to see whether the explanation given by him is genuine and whether the facts and circumstances surrounding

the case give support to that explanation. The Respondents have placed reliance upon the fact that the Petitioner was represented by an Advocate in the earlier proceedings. This fact is certainly relevant while considering the conduct of the Petitioner. But the fact that an Advocate represented the Petitioner shows participation in the proceedings. It does not show that the Petitioner was informed about the final order. No material has been shown to this Court to establish that the order dated 29 December 2009 was served upon the Petitioner or upon his Advocate., merely because the Petitioner was represented in the earlier proceedings, his actual knowledge of the final order cannot be presumed.

14. Respondent Nos. 1 and 2 filed R.T.S. Appeal No. 55 of 2013. The Petitioner has pointed out that in that appeal there was no reference to the earlier application dated 7 June 2008 or to the proceedings which had arisen from the said application. The Petitioner specifically brought this circumstance before the authority in his reply dated 3 December 2013. He repeated the same contention in paragraph 8 of his reply to the R.T.S. Appeal. This circumstance cannot be ignored while considering the explanation of the Petitioner. If Respondent Nos. 1 and 2 were aware of the order dated 29 December 2009, it would be expected that the earlier proceedings would have been referred to when they filed another appeal relating to the same lands and connected reliefs. I am not holding that this circumstance alone establishes that Respondent Nos. 1 and 2 had no knowledge of the order. Such a conclusion would be more than what the material permits.

However, this circumstance does give some support to the case of the Petitioner that the earlier order was not known to the parties at the relevant time. The position becomes more clear from what happened on 13 January 2015. During the hearing of R.T.S. Appeal No. 55 of 2013, the Sub-Divisional Officer called for the record and proceedings relating to the earlier application dated 7 June 2008. On examination of the record, it was found that the earlier proceedings had been disposed of by the order dated 29 December 2009. After this fact came before the authority, Respondent Nos. 1 and 2 and the other appellants withdrew R.T.S. Appeal No. 55 of 2013 on the same day.

15. The conduct of Respondent Nos. 1 and 2 on this date is a relevant circumstance. If they were aware of the order dated 29 December 2009 much before 13 January 2015, their filing and continuing with R.T.S. Appeal No. 55 of 2013 would require some explanation. The fact that the appeal was withdrawn after the earlier order was brought to notice is consistent with the case of the Petitioner that the existence of the earlier order came to light when the old record was called for. This circumstance does not prove the whole case of the Petitioner. However, it is certainly a circumstance which supports his case.

16. The Petitioner has stated that he came to know about the order dated 29 December 2009 on 13 January 2015., on 17 January 2015, he applied for a certified copy of the said order. He then filed the appeal before the Maharashtra Revenue Tribunal along with an application seeking condonation of delay. Thus, after the Petitioner claims that he acquired knowledge of the order, the

steps taken by him were within a short period. There is no material to show that after coming to know about the order he intentionally waited for a period before taking the statutory remedy. This conduct after 13 January 2015 is relevant for considering the bona fides of the Petitioner. If the Petitioner had known about the order and had intentionally delayed taking steps against it, his conduct after 13 January 2015 could have shown such intention. However, the material before the Court shows that he applied for the certified copy within four days and proceeded to challenge the order. This subsequent conduct gives support to his case that he took steps after he came to know about the order.

17. The Supreme Court in *Esha Bhattacharjee* has stated that the conduct and bona fides of the person seeking condonation have to be considered. In paragraph 21.4, the Supreme Court states:

“(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.”

18. In paragraph 21.5, the Supreme Court states:

“(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.”

19. On applying these principles to the present case, I do not find sufficient material to hold that the Petitioner deliberately caused the delay. Similarly, merely because he did not approach the authority during the period between 2009 and 2015, there is no sufficient material to record a finding of gross negligence against him. His case is that he expected the order to be communicated to him and that he had made enquiries with the

office. This explanation cannot be looked at separately. It has to be considered along with the other facts and the conduct of both sides. At the same time, the long period of delay cannot be ignored. The Supreme Court in *Esha Bhattacharjee* has observed that “The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.”

20. Therefore, it is necessary to examine whether the conduct of the Petitioner during the relevant period shows negligence. For this purpose, I have considered whether there is any material showing that the Petitioner had actual knowledge of the order before 13 January 2015. No such material has been pointed out before the Court. The Respondents rely upon the fact that the Petitioner was represented by an Advocate and that a long period had passed. These two circumstances do not establish that the Petitioner had knowledge of the order. There is no material showing service of the order upon the Petitioner or his Advocate. In such circumstances, if it is held that the Petitioner must have known about the order only because he had participated in the earlier proceedings, such conclusion would be based more on assumption than on material available on record.

21. I am conscious of the principle stated by the Supreme Court in *Esha Bhattacharjee* in paragraph 21.7:

“(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.”

22. Therefore, the application of the Petitioner cannot be allowed only on the ground that he wants his case to be heard on merits. The Petitioner must establish sufficient cause for the delay. On considering the material available, I find that his explanation regarding lack of knowledge of the order dated 29 December 2009 gets support from the surrounding circumstances. It cannot, in the facts of the present case, be said that the explanation is fanciful or that it is only an excuse.

23. The question of prejudice and the long period of delay requires consideration. In paragraph 21.8 of *Esha Bhattacharjee*, the Supreme Court has observed:

“(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted.”

24. The period calculated from 29 December 2009 is a long period. However, the case of the Petitioner is that he did not have knowledge of the order during this period and came to know about it only on 13 January 2015. There is no material before this Court showing that the order had been communicated to him earlier., this circumstance has to be given proper consideration while deciding whether the delay should be condoned.

25. The decision in *Pathapati Subba Reddy* explains the importance of the law of limitation. Paragraph 28.1 states:

“Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;”

26. This principle cannot be lost sight of. The law of limitation cannot be ignored because a party wants to contest the matter on merits. At the same time, paragraph 28.3 states that Section 3 is to be construed strictly whereas Section 5 is to be construed liberally, what is required is to examine whether the explanation given by the Petitioner is sufficient so that the discretion to condone the delay can be exercised.

27. Paragraph 28.5 of *Pathapati Subba Reddy* states:

“Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;”

28. Thus, showing sufficient cause is necessary. But even after sufficient cause is shown, the Court has to consider the conduct of the party, whether there was negligence and whether there was due diligence. In the present case, the Petitioner had participated in the original proceedings and had filed his reply. His case is that he made enquiries regarding the order. There is no material showing that the order was communicated to him. According to him, he came to know about the order when the earlier record was called on 13 January 2015. On 17 January 2015 he applied for a certified copy and pursued the statutory remedy. These circumstances do not show that after acquiring knowledge he deliberately remained inactive.

29. The submission of Mr. Raut that a litigant cannot remain inactive for years without giving a satisfactory explanation is correct as a general proposition. The authorities relied upon by the Respondents emphasise diligence and bona fide conduct. However, those authorities cannot be understood to mean that every delay of a long period must necessarily be rejected without examining the explanation in the facts of the particular case. The question whether sufficient cause is shown has to be decided on the facts and material of each case.

30. In *Sheo Raj Singh*, paragraph 32, the Supreme Court has stated:

“Thus said, there is no formula that caters to all situations and,, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts.”

31. Therefore, the present case has to be considered on its own facts. The period between 29 December 2009 and 13 January 2015 is certainly long. But the important question is whether the Petitioner has given a reasonably satisfactory explanation as to why the appeal was not filed during that period. On considering the material before me, I find that the explanation given by the Petitioner gets reasonable support from the surrounding circumstances. I cannot accept the submission that the mere fact that the Petitioner was represented by an Advocate creates a presumption that he had knowledge of the order dated 29 December 2009. If prior knowledge of the order is to be attributed to the Petitioner, there should be some material showing service,

communication or actual knowledge of the order. In the absence of such material, knowledge cannot be presumed only because the Petitioner had participated in the earlier proceedings. The conduct of Respondent Nos. 1 and 2 is one of the circumstances which cannot be ignored. As pointed out by the Petitioner, while filing R.T.S. Appeal No. 55 of 2013, they did not refer to the earlier proceedings., when the earlier record was called for on 13 January 2015, the order dated 29 December 2009 came to light and the said appeal was withdrawn. This circumstance does not decide whether the Petitioner's statutory appeal is correct or not. It is relevant only for considering the Petitioner's explanation regarding when the earlier order became known.

32. On considering the entire sequence of events together, I find that the explanation of the Petitioner cannot be treated merely as an excuse. The different circumstances give support to his case. There is no material showing that the order dated 29 December 2009 was communicated to him. His case is that he made enquiries regarding the order. The conduct of Respondent Nos. 1 and 2 does not show that they had prior knowledge of the order. The earlier order came to light when the record was called for on 13 January 2015. Therefore, the Petitioner acted within a short period. When all these circumstances are considered together, the explanation given by the Petitioner becomes acceptable.

33. In view of the above, the reasoning given by the learned President of the Maharashtra Revenue Tribunal requires interference. The impugned order appears to have proceeded on the ground that the Petitioner ought to have made enquiries and

could not have remained silent for about five years. That consideration is relevant and cannot be ignored. However, the specific case of the Petitioner that he had made enquiries and was informed that the order would be communicated to him was required to be considered. There is no material showing service of the order upon him. The conduct of Respondent Nos. 1 and 2 and the fact that the earlier order was disclosed only on 13 January 2015 were circumstances which required consideration. These circumstances have not been given the weight which they deserved. While considering an application for condonation of delay, the Court has to exercise its discretion carefully and on the basis of the material before it. The Supreme Court in *Sheo Raj Singh* has observed that an appellate power interferes “not when the order appealed is not right but only when it is wrong”. In the present matter, interference is required because the important circumstances which support the explanation of the Petitioner have not been considered., the refusal to condone the delay cannot be sustained. It is necessary, however, to make it clear that condoning the delay does not mean that the Petitioner's challenge to the order dated 29 December 2009 is being accepted. The merits of that challenge have not been examined by this Court in the present proceedings. Whether the order dated 29 December 2009 is legally correct or not, and whether the Petitioner is entitled to any relief under Section 6 of the Act of 1974, are matters which will have to be decided by the Maharashtra Revenue Tribunal after hearing all the concerned parties. At this stage, the limited question before the Court is whether sufficient cause has been shown for condoning

the delay.

34. I have considered the question of prejudice to the Respondents. The Respondents have not pointed out any specific prejudice which, in the facts of the present case, would require that the Petitioner be prevented from pursuing his statutory appeal at the threshold itself. If the delay is condoned, the Respondents will still have full opportunity to oppose the appeal. Their objections on facts, law and merits will remain open before the Maharashtra Revenue Tribunal. Therefore, no final right of the Respondents is being decided by condoning the delay.

35. The principle of substantial justice is required to be kept in view. In paragraph 21.3 of *Esha Bhattacharjee*, the Supreme Court states:

“(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.”

36. This principle does not mean that the statutory period of limitation can be ignored. It only means that where a party gives a reasonable explanation and the surrounding circumstances support that explanation, the statutory remedy should not be shut out only because there has been delay, without examining the cause shown for such delay.

37. Having considered the rival submissions, the material on record and the entire sequence of events, I record a finding that the Petitioner has shown sufficient cause for the delay in filing the appeal under Section 6 of the Act of 1974. I find that the material

on record does not establish gross negligence, deliberate delay or lack of bona fides on the part of the Petitioner. His conduct after 13 January 2015 is relevant. In particular, he applied for the certified copy on 17 January 2015 and proceeded with the statutory remedy. This conduct supports his case that he acted after acquiring knowledge of the order.

38. The submission of Mr. Raut that the silence of the Petitioner for nearly five years amounts to gross negligence cannot be accepted in the facts of the present case. The period is substantial. That fact has been taken into consideration. But the explanation given by the Petitioner for the said period is supported by the surrounding circumstances. For the limited purpose of deciding the application for condonation of delay, I accept the case of the Petitioner that he came to know about the order dated 29 December 2009 only on 13 January 2015.

39. For the reasons discussed above, the refusal to condone the delay cannot be sustained. The judgment and order dated 20 December 2017 passed by the learned President of the Maharashtra Revenue Tribunal, insofar as it rejects the application of the Petitioner for condonation of delay, is required to be quashed and set aside. The delay deserves to be condoned so that Appeal No. TRB/APL/MUM/L-52/2015 can be heard and decided by the Maharashtra Revenue Tribunal on its own merits and in accordance with law.

40. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- (i) The Petition is allowed;
- (ii) The judgment and order dated 20 December 2017 passed by the learned President, Maharashtra Revenue Tribunal, Mumbai, rejecting the Petitioner's application for condonation of delay in filing Appeal No. TRB/APL/MUM/L-52/2015 under Section 6 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, is quashed and set aside;
- (iii) The delay in filing Appeal No. TRB/APL/MUM/L-52/2015 is condoned;
- (iv) Appeal No. TRB/APL/MUM/L-52/2015 shall stand restored to the file of the Maharashtra Revenue Tribunal, Mumbai;
- (v) The parties shall appear before the Maharashtra Revenue Tribunal, Mumbai, on 21 September 2026, without requiring any fresh notice, subject to the directions of the Tribunal;
- (vi) It is clarified that this Court has not expressed any opinion on the merits of the Petitioner's challenge to the judgment and order dated 29 December 2009 passed by the Sub-Divisional Officer. All questions arising in the said Appeal are kept open for consideration by the Maharashtra Revenue Tribunal;
- (vii) The Maharashtra Revenue Tribunal, Mumbai, shall hear and decide the said Appeal on its own merits, and in

accordance with law, without being influenced by the observations made by this Court while deciding the present Petition and shall decide Appeal within 6 months from today;

(viii) The Petition is accordingly disposed of in the above terms.

(ix) There shall be no order as to costs.

(AMIT BORKAR, J.)