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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1611 OF 2015

1. Bajrang Tarachand Pardeshi PETITIONERS
Age - 60 years,

2. Kachru Gulabchand Pardeshi
Age - 79 years,

3. Ramchandra Tarachand Pardeshi
Age - 55 years,

4. Kasabai w/o Kachru Pardeshi,
Age - 60 years,

Above all Occupation - Agriculture & Labour
R/o Shahagad, Taluka - Ambad
District - Jalna

VERSUS

1. The State of Maharashtra RESPONDENTS
Through its Secretary,
Revenue and Forest Department,
Industrial Assurance Building,
1st Floor, J. T. Road,
Church Gate, Mumbai-20

2. Hiralal Somaji Pardeshi,
(Died through his LRs)

A. Tarabai w/o Hiralal Pardeshi
Age - 54 years, Occ - Household

B. Suresh s/o Hiralal Pardeshi
Age - 38 years, Occ - Agriculture

C. Santosh s/o Hiralal Pardeshi
Age - 32 years, Occ - Agriculture

Above all R/o Shahagad,
Taluka - Ambad, District - Jalna

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Mr. S. S. Kulkarni Advocate for petitioners
Mr. S. P. Daund, AGP for respondent State
Mr. A. B. Kharosekar, Advocate for respondents No.2A to 2C

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th JULY, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petition has been moved against an order passed by Secretary and Officer on Special Duty (Appeals), Revenue and Forest Department, *Mantralaya*, Mumbai, on 22nd December, 2014 in proceedings purported to be an appeal pursuant to section 249 of the Maharashtra Land Revenue Code, 1966.

3. Learned advocate for the petitioners submits that aforesaid order is wholly misconceived, for, the proceedings under section 249 of the Maharashtra Land Revenue Code are not at all maintainable having regard to the circumstances that this would not be an appeal challenging an order passed in revision varying or reversing any order, inasmuch as the Secretary and Officer on Special Duty (Appeals) Revenue Department, *Mantralaya*, Mumbai could not have dealt with the same on merits, as the

scope of the proceedings has been restricted to delay condonation.

4. Learned advocate for the petitioners points out that mutation entry bearing No. 441 was subject matter of challenge in appeal before Sub Divisional Officer, pursuant to section 247 of Maharashtra Land Revenue Code and the same has been dismissed by said authority, refusing to condone the delay. As such, further appeal against refusal to condone delay was taken before Additional Collector and said appeal too was dismissed. He further submits that the order of additional collector was subjected to revision before Divisional Commissioner and the revision was also dismissed. He, therefore, submits that the impugned order is nullity and *non est.*

5. Learned advocate for respondents No. 2A to 2C Mr. Kharosekar, however, refers to that mutation entry bearing No. 441 had been taken behind back of the respondents and that no notice had ever been received at their end before the mutation had been carried out. He, therefore, submits that after the date of knowledge, proceedings had been initiated within the period of limitation and as such, there is no question of delay condonation.

6. Although it is being so contended by Mr. Kharosekar, it appears that the authorities have treated the proceedings to be delayed one and as such, refused to condone the delay considering that there are no proper reasons for belated approach. It further appears that the proceedings before Secretary and Officer on Special Duty (Appeals) Revenue Department, *Mantralaya*, Mumbai would not be available in view of section 249 of the Maharashtra Land Revenue Code. Section 249 of the Maharashtra Land Revenue Code reads thus -

> *"**249. Appeal against review or revision***
>
> *(1) An order passed in review varying or reversing any order shall be appelable in the like manner as an original decision or order,*
>
> *(2) An order passed in revision varying or reversing any order shall be appelable as if it were an order passed by the revisional authority in appeal."*

7. The order passed in revision cannot be said to be an order reversing or varying the orders impugned in the revision. I, therefore, consider that the impugned order is unsustainable in law. Proceedings pursuant to section 249 of the Maharashtra Land Revenue Code before Secretary and Officer on Special Duty (Appeals) Revenue Department, *Mantralaya*, Mumbai are not

tenable in the facts and circumstance of present case. It further appears that the matter has been decided on merits, when the scope of the matter appears to be governed by giving the same treatment of delay condonation. As such, decision on merits appears to be unsustainable.

8. In view of aforesaid, writ petition stands allowed. The impugned order dated 22nd December, 2014 passed by Secretary and Officer on Special Duty (Appeals), Revenue and Forest Department, *Mantralaya*, Mumbai, stands set aside. Rule is made absolute in terms of prayer clause "C".

9. It would, however, be open for the respondents to take up appropriate proceedings, if the respondents feel that they are aggrieved by the orders passed by the revenue authorities. In such a case, time consumed in the proceedings would be required to be taken into account.

[SUNIL P. DESHMUKH, J.]

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