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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5648 OF 2015

PRADEEP NARAYANDAS RIZWANI

VERSUS

PRAKASH BHUJANGRAO KADAM AND OTHERS

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Advocate for Petitioners : Shri Gangakhedkar Shailendra S.

AGP for Respondent Nos.4 to 6 : Shri U.H.Bhogle.

Advocate for Respondent Nos.1 and 2 : Shri Janakwade Shivsamb N.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th October, 2015

Per Court:

1 While issuing notice to the Respondents on 10.06.2015, I had passed the following order relying upon the observations of the Apex Court in the matter of *Santoshkumar Shivgonda Patil v/s Balasaheb Tukaram Shevale*, **AIR 2009 SC (suppl) 2471 (1)** :-

“1. Shri Gangakhedkar, learned Advocate for the petitioner submits that a mutation entry was carried out in favour of the petitioner in 1993 on the basis of a judgment and decree passed by the competent Civil Court. The said decree has not been called in question by the respondents before any authority. Despite the same, the respondents have moved an appeal before the District Superintendent of Land Records (DSLRL), praying for setting aside the mutation entry and condonation of delay of 20 years and 3 months in

- moving the said appeal.*
2. *Shri Gangakhedkar submits that by a cryptic order dated 29.9.2014, the District Superintendent of Land Records (DSLRL) has condoned the delay without assigning any reason, much less, discussing the grounds put forth by the respondents in support of the prayer for condonation of delay.*
 3. *A Revision Petition was filed by the petitioner, specifically raising the ground that the authority below (DSLRL) did not have any jurisdiction to condone the delay in relation to interference sought in a mutation entry beyond three years in the light of the observations of the Apex Court in the matter of Santoshkumar Shivgonda Patil Vs. Balasaheb Tukaram Shevale and others [AIR 2009 SC (Supp) 2471 (1)]. Despite the same, the Deputy Director of Land Records by the impugned judgment dated 10.3.2015 has partly allowed the Revision Petition and referred the matter to the DSLRL for re-hearing.*
 4. *Issue notice before admission to the respondents, returnable on 15.7.2015. Learned AGP waives service for respondents 4 to 6.*
 5. *Till the next date of hearing in this matter, the DSLRL – respondent No.5 shall not proceed with the appeal preferred by the first respondent.”*

2 Shri Gangakhedkar, learned Advocate for the Petitioner, has raised two vital issues. Firstly, that while condoning the delay of 20 years and 03 months in preferring an appeal challenging the Mutation Entry, the Petitioner was not heard by the District Superintendent of Land Records (DSLRL). There was no reasonable opportunity of hearing and there was no fair hearing. Secondly, that the DSLRL does not have the jurisdiction to entertain the appeal filed by Respondent Nos.1 and 2 in the light of the Mutation Entry having been carried out in favour of the Petitioner in

1993.

3 The Revision Petition filed by the Petitioner before the Deputy Director of Land Records was partly allowed by the impugned order dated 10.03.2015 and considering the submissions of the Petitioner, the matter was remitted back to the DSLR, by setting aside the order dated 29.09.2014 by which the delay was condoned.

4 The Petitioner submits that in the light of the judgment of the Apex Court in the matter of *Whirlpool Corporation v/s Registrar of Trade Marks, Mumbai and others*, **AIR 1999 SC 22(1)** and the judgment of the Division Bench of this Court in the matter of *Kanhaiyyalal Fattelalji Upadhyaya v/s Mahavir Tea Company*, **2007(2) Bom.C.R. 808**, this Court may entertain this petition and deal with the cause of action.

5 Shri Janakwade, learned Advocate for the contesting Respondents, submits that if the contention of the Petitioner is that he was not properly heard by the DSLR and the principles of natural justice were violated, the Deputy Director of Land Records has set aside the order of the DSLR dated 29.09.2014 and remitted the matter for a hearing afresh. The grievance of the Petitioner is, therefore, redressed. Respondent Nos.1

and 2 have not challenged the said judgment.

6 He further submits that if the contention of the Petitioner is that the DSLR does not have jurisdiction to entertain the appeal of Respondent Nos.1 and 2, the Petitioner is not precluded from raising the said issue before the DSLR, who can decide the said issue. He, therefore, opposes this petition and prays that this Court need not entertain this petition.

7 I have considered the submissions of the learned Advocates as have been recorded herein above.

8 Since the Petitioner was deprived of a fair opportunity of hearing, coupled with the issue of lack of jurisdiction having not been considered by the DSLR, in my view, the procedure laid down in law needs to be followed. All the contentions and objections that the Petitioner desires to raise, can surely be raised before the DSLR who may ultimately come to the conclusion, after hearing the parties, as to whether, he has jurisdiction or not. Since that issue is yet to be decided by the DSLR, I do not find it to be appropriate to exercise my jurisdiction in this writ petition.

9 In the light of the above, this Writ Petition is disposed of. Liberty is granted to the litigating sides to request the DSLR to frame preliminary issues as to whether, he has jurisdiction to entertain the appeal filed by Respondent Nos.1 and 2 as well as whether, he can deal with an application for condonation of delay, in the event he has jurisdiction to be exercised over the appeal preferred by Respondent Nos.1 and 2. In the light of such objections, the DSLR shall frame appropriate issues and deal with the same in accordance with law.

10 Since the issue of Mutation Entry of 1993 is questioned by Respondent Nos.1 and 2 in an appeal preferred after a purported delay of 20 years and 03 months, the litigating sides request that the DSLR be directed to consider the proceedings within a particular time frame.

11 In the light of the request, the litigating sides shall appear before the DSLR on 26.10.2015 at 11:00 am and thereafter, shall abide by the dates of hearing on which the DSLR may post the matter.

12 All the contentions of the litigating sides are kept open. The jurisdictional issue shall be dealt with by the DSLR peremptorily. In the event, the DSLR concludes that he has jurisdiction in the matter, he shall decide the application for condonation of delay. If the delay is condoned,

he shall decide the said appeal as expeditiously as possible and preferably on or before 30th April, 2016.

13 The Writ Petition is disposed of in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)