

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7066 OF 2012

Vatsalabai w/o Baburao Badgujar,
Age-65 years, Occu-Household and
Agriculturist,
R/o Village Pimpalkothe, Tq. Erandol,
Dist. Jalgaon

PETITIONER

VERSUS

1. State of Maharashtra,
Through Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32,
2. The Deputy Director of Land Records,
Nashik Division, Nashik,
3. The Superintendent of Land Records,
Jalgaon, Dist. Jalgaon,
4. Gopichand S/o Harchand Badgujar,
Age-66 years, Occu-Agriculturist,
R/o.Village Pimpalkothe, Tq.Erandol,
Dist.Jalgaon

RESPONDENTS

Mr.P.R.Patil, Advocate for the petitioner.
Mr.D.R.Korde, AGP for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 31/08/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has challenged the order dated 17/01/2012 delivered by the Deputy Director, Land Records, Nasik Region Nasik concluding that the impugned judgment before the said Authority dated 31/01/2002 delivered in Appeal/S.R.67/2000/2002 was communicated to the petitioner herein which is the normal practice followed and hence Misc.Appeal Appl.No.89/Jalgaon/2009 was belatedly filed suffering a delay of 7 years.

3. None of the respondents are in a position to state as to what was the basis on which the Deputy Director, Land Records arrived at this conclusion on page No.2 of the impugned order, though it is stated that the said Authority must have considered the record and proceedings from the Office of the Supdt. of Land Records, Jalgaon.

4. Learned AGP points out that an affidavit in reply has been filed by the DDLR, Nasik Region contending therein that the petitioner was communicated the impugned order dated 31/01/2002.

5. The learned AGP was, therefore, called upon to take instructions and in the event the order dated 31/01/2002 referred to hereinabove was served upon the petitioner, an affidavit alongwith the necessary documents was directed to be filed through respondent No.2.

6. The learned AGP has placed on record a copy of the letter dated 31/08/2015 addressed to the learned AGP by Mr.M.M.Fulpagare, Deputy Superintendent, Land Records, Erandol, Dist.Jalgaon / respondent No.4. The said communication is taken on record and marked as Exhibit "X" for identification.

7. On the basis of Exhibit "X", the learned AGP submits that despite digging into the records in relation to Appeal/SR/67/2000-2007, the record does not reveal that the order dated 31/01/2002 passed in the said Appeal was conveyed / communicated to the petitioner.

8. In the light of the above, this fact would have a decisive impact / effect on the Misc.Appeal (Appl.) No.89/Jalgaon/2009 filed by the petitioner, which has been rejected by the impugned order dated 17/01/2012.

9. I find that by the impugned order, the respondent No.2 has held on presumption that the order under Appeal dated 31/01/2002 was communicated to the petitioner by way of a normal practice and hence the Misc.Appeal (Appl.) No.89/Jalgaon/2009 suffers from delay of 7 years, which does not deserve to be condoned.

10. Considering the fact situation as above and in the light of the fair

statement made by respondent No.4 vide Exh.X, the impugned order dated 17/01/2012 is rendered unsustainable.

11. Consequentially, this petition is partly allowed. The impugned order dated 17/01/2012 is quashed and set aside and Misc.Appeal (Appl.) No.89/Jalgaon/2009 is remitted back to respondent No.2 for a decision on condonation of delay considering Exhibit "X". All contentions of the parties are, therefore, kept open.

12. The petitioner prays that the date for appearance may be granted so as to avoid wastage of time. As such, the litigating sides shall appear before respondent No.2 on 21/09/2015 and thereafter shall abide by the dates of hearing on which respondent No.2 would post the matter. Formal notices need not be issued. Respondent No.2 shall endeavour to decide the said proceedings expeditiously and preferably on or before 30/01/2016.

13. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)