

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10500 OF 2010

SAHEBRAO MOTIRAM AARSULE
VERSUS
THE STATE OF MAHARASHTRA AND ORS

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Advocate for Petitioner : Shri Mukhedkar Amit A.
AGP for Respondents 1 to 4 : Shri Suryawanshi K.M.
Advocate for Respondents 5 & 6 : Shri Nikam Anup R.
Advocate for Respondents 8 & 9 : Shri Kshirsagar S.M. h/f
Shri Pawde N.R.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 18, 2015
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PER COURT :-

1. After having heard the learned Advocates at length and after considering the submissions of Shri Nikam, even on the point of the merits of the mutation entry dated 8.11.1978, I am of the view that the ambit of this petition cannot be expanded in the light of the first order dated 20.2.2004, having been passed by the District Superintendent of Land Records, Nanded in SR No. 30 of 2003.

2. The issue is as regards a mutation entry recorded on 8.11.1978. One Smt. Nandabai moved SR No.30 of 2003. The District Superintendent of Land Records, Nanded considered the rival submissions of the parties and delivered his order dated 20.4.2004 concluding that, the delay of 24 years, 8 months and 28 days caused by Smt. Nandabai in questioning the said mutation entry cannot be condoned and because of the delay, the

application filed by Smt. Nandabai was not dealt with.

3. Smt. Nandabai filed an appeal before the Deputy Director of Land Records under Section 247 of the Maharashtra Land Revenue Code, 1966 ("MLR Code") bearing Appeal SR No.757 of 2004. By judgment dated 14.12.2005, the appellate authority concluded that the delay caused in preferring the appeal is without any justification and the decision of the District Superintendent of Land Records, Nanded dated 20.2.2004, refusing to condone the delay called for no interference.

4. Smt. Nandabai moved a Revision under Section 257 of the MLR Code, before the State. By order dated 29.1.2007, the State authorities rejected the Revision without hearing the parties on the ground that the delay of about 25 years was rightly not condoned.

5. Smt. Nandabai preferred Writ Petition No.2172 of 2007 before this Court. By order dated 22.11.2007, the petition was rejected by giving liberty to Smt. Nandabai to file a suit, so as to get a decision on the right, title and interest in the property land Gut No.160.

6. Smt. Nandabai preferred LPA No. 8 of 2008, before the learned Division Bench of this Court. By judgment dated 27.7.2009, the learned Division Bench rejected the contention of the State that Section 257 of the MLR Code does not give the litigating sides a right to be heard in the

matter. The decision of the State, dated 29.1.2007, which was obviously on the issue of condonation of delay, was considered by the appeal Bench and the matter was remitted back to the State for hearing the Revision on its merits.

7. Shri Nikam, learned Advocate appearing for Smt. Nandabai has vehemently supported the impugned judgment of the Honourable Minister, dated 16.8.2010, by which the mutation entry recorded on 17.3.1978 was interfered with. It is submitted that there is no limitation in the MLR Code so as to mandate a justification by the applicant as regards passage of time in questioning a mutation entry. His submissions are that the issue of delay of 24 years, 8 months and 28 days is merely a calculation made by the petitioner. The law does not create any embargo of limitation on any party seeking correction in the mutation entry.

8. This Court has already taken a view in the case of Shrikant R. Sankanwar Vs. Krishna Balu Naukundkar [2003 (3) Bom.C.R. 45], that the mutation entries are merely for fiscal purposes and are in relation to the revenue entries for taxation purposes. Such mutation entries do not decide the right, title or interest of the parties in any property.

9. Nevertheless, I am not required to go into the said aspect in view of the facts recorded herein above, and which turn upon the issue of condonation of delay. Neither had the District Superintendent of Land

Records, Nanded nor the appellate authority ever considered the merits of the matter on the request by Smt. Nandabai seeking a correction in the mutation entry.

10. The very first order, in this litigation between the parties, is the refusal to condone the delay by the District Superintendent of Land Records, Nanded. The journey undertaken by the litigating sides, right upto the appeal Bench, were never on the basis of the merits of the mutation entry. All along the orders passed by the different authorities and the Courts were on the issue of condonation of delay.

11. I find from the impugned order passed by the Honourable Minister, dated 16.8.2010, that he has completely ignored the issue before him as regards delay. There are no conclusions, as to whether the delay of 24 years can be said to be properly explained, deserving condonation. Even the contention of Shri Nikam that there is no aspect of delay involved when any person seeks rectification in a mutation entry, has not been dealt with. The Honourable Minister has taken the whole issue to the merits of the said mutation entry and has delivered a judgment, impugned herein, by which he has set aside the mutation entry on the ground that it is illegal, without passing any order on the delay aspect.

12. Despite the vehement submissions of Shri Nikam, I am unable to accept his contentions that the Honourable Minister was not required to

consider the delay aspect and had rightly turned upon the merits in connection with the mutation entry dated 8.11.1978.

13. In the light of the above, this petition is allowed. The impugned judgment and order of the Honourable Minister, dated 16.8.2010 is quashed and set aside. Revision proceeding No. Nabhma-4206/Pra.Kra.126/L-1 is remitted back to the Honourable Minister to consider only the issues - whether the claim of Smt. Nandabai is affected by delay of 24 years 8 months and 28 days and whether aspect of delay is not at all attracted when any person seeks correction in a mutation entry.

14. The litigating parties shall appear before the Honourable Minister on 16.3.2015 at 3.00 pm and shall, thereafter, abide by the dates of hearing as may be posted by the said authority. Separate notice of hearing to the litigating parties is, therefore, not required.

15. All contentions of the litigating parties, in relation to the aspect of delay, shall be considered by the Honourable Minister on their own merits and in accordance with law.

16. Both the learned Advocates S/Shri Mukhedkar and Nikam, pray that this Court may indicate to the Honourable Minister the time frame within which he may decide the said proceedings. Acceding to the said request, the Honourable Minister is expected to decide the said proceeding, as

expeditiously as possible and preferably on/or before 1.8.2015.

17. Parties are at liberty, even to file written notes of submissions before the Honourable Minister.

(RAVINDRA V. GHUGE, J.)

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