IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6024 OF 2014

Anandrao Bhau Jadhav (deceased) through LRS ..Petitioners
Vs.
State of Maharashra & Ors. ..Respondents

Mr. Umesh Mankapure for the Petitioners
Mr. S.D.Rayrikar for the Respondent Nos.1 to 3
Mr. Pratap Patil for the Respondent Nos.4 & 5

CORAM : R. M. SAVANT, J.
DATE : 24th APRIL, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 20-3-2014 passed by the District Superintendent Land Records, Sangli, by which order, the delay in filing the Appeal against the Mutation Entry No.27387, was condoned.

2 The Respondent Nos.4 and 5 are the Appellants who have filed the Appeal in question which has been filed challenging the Mutation Entry No.27387 effected in the year 1984 in respect of land bearing survey Nos.124/1A and 124/2B. The instant Appeal is a proceeding flowing out of the proceedings which have been filed by the father of the Respondent Nos.4 and 5 in whose name the lands were standing. It is the case of the Respondent Nos.4 and 5 that their holding have been illegally reduced in the year 1977 whilst preparing revised Phalani Bara and Akar Phod Patrak and it is on the said basis

of the said revised Phalani Bara and Akar Phod Patrak that the entry was made in the 7/12 extract and on the strength of the said wrong entry that the Petitioners herein tried to surrender the lands of the Respondent Nos.4 and 5 for the purpose of resettlement of persons affected by the Warana Project. It is on acquiring knowledge of the revised Phalani Bara and Akar Phod Patrak and also the entry made in the 7/12 extract on the said basis which was behind the back of the father of the Respondent Nos.4 and 5 that the father of the Respondent Nos.4 and 5 had approached the Tahsildar, Walva, seeking rectification of the record in respect of the said lands being Survey Nos.124/1B and 124/2B. The said application was made in the year 1992 and it was prayed in the said application that the revenue entry be corrected as per the right of the Applicant. In the said proceedings, the Tahsildar Walva, passed an order on 19-10-1993 and by holding that since the entry has been made pursuant to the revised Phalani Bara and Akar Phod Patrak which was effected, the Applicant would have to approach the City Survey office for rectification. It seems that the matter lay dormant from the year 1992 and in the interregnum, the father of the Respondent Nos.4 and 5 died in the year 1994 as also the Advocate Mr. Desai who had been engaged by the father of the Respondent Nos.4 and 5 died in the year 1995. It is the case of the Respondent Nos.4 and 5 that their father was prosecuting the said proceedings and that the relevant papers were with the said Advocate Mr. Desai who had been engaged by their father. In view of the death of their father and the Advocate, the Respondent Nos.4 and 5 were not aware of the stage of the proceedings or the orders passed therein. Ultimately the Respondent Nos.4 and 5 got the papers from the office of the Advocate and in terms of the directions as contained in the order dated 19-10-1993 of the Tahsildar filed an application before the Deputy Director Land Records, Pune, for rectification. The Deputy Director Land Records, in the year 2008 issued notices to record the statement of the concerned parties. The Superintendent of Land Records submitted a report dated 3-6-2008 to the Deputy Director Land Records, in which report, he has informed that consolidation has taken place. The Deputy Director Land Record, thereafter adjudicated upon the application made by the Respondent Nos.4 and 5 and having regard to the report sent by the Superintendent of Land Record to the effect that consolidation has taken place, directed the Respondent Nos.4 and 5 to once again approach the revenue department. The said order was passed by the Deputy Director Land Records, on 1-1-2011.

3 It is pursuant to the said order dated 1-1-2011, that the instant Appeal has been filed by the Respondent Nos.4 and 5 before the Superintendent of Land Record. On the Appeal being served on the Petitioners, the Petitioners raised an objection regarding the maintainability of the Appeal on the ground of delay as according to the Petitioners an entry was made in the year 1977, was sought to be challenged long after it was effected. In view of the objection raised by the Petitioners, the Respondent Nos.4 and 5 i.e. the

Appellants before the Superintendent of Land Records filed an affidavit to support their case for condonation of delay. In the said affidavit, the Respondent Nos.4 and 5 have stated the antecedent facts which have been narrated hereinabove. The Superintendent of Land Records, considered the said application and by his order dated 30-11-2012, allowed the said application for condonation of delay. The said order dated 30-11-2012, was taken exception to by the Petitioners by filing Writ Petition No.2089 of 2013. By order dated 10-7-2013, a Learned Single Judge of this Court set aside the order dated 30-11-2012 on the ground that the said order was sans reasons and therefore could not be sustained and the matter was remanded back to the Deputy Director Land Records, for a denovo consideration of the application. It is on remand, that the instant order dated 20-3-2014, has been passed by the Superintendent of Land Records. A reading of the impugned order discloses that the Superintendent of Land Records has after narrating the antecedent facts as also the grounds on the basis of which condonation of delay has been sought has deemed it appropriate to allow the application for condonation of delay in filing the Appeal. As indicated above, it is the said order dated 20-3-2014 which is taken exception to by way of the above Petition.

4 The Learned Counsel appearing on behalf of the Petitioners Mr. Mankapure would question the condonation of delay by the Superintendent of Land Records on the ground that the instant order is also bereft of any reasons.

The Learned Counsel would contend that there is no explanation for the period 1977 to 1992 and thereafter from 1993 to 2007. The Learned Counsel would contend that the Appeal was required to be filed within a reasonable time and in support of the said contention sought to place reliance on the Judgment of the Apex Court in the matter of **Santoshkumar Shivgonda Patil & Ors. Vs. Balasaheb Tukaram Shevale & Ors.**[1] wherein the Apex Court has held that if no time limit is prescribed for exercise of the revisionary power , it does not mean that such power can be exercised at any time, rather it should be exercised within a reasonable time.

5 Per contra, the Learned Counsel appearing on behalf of the Respondent Nos.4 and 5 would support the impugned order. The Learned Counsel would contend that in the instant case the Superintendent of Land Records has referred to all the antecedent facts and thereafter has recorded the findings that the delay is required to be condoned. The Learned Counsel would contend that if the said facts are considered then they unmistakably point out that the father of the Respondent Nos.4 and 5 and the father of the Petitioners prosecuted the proceedings in respect of the rectification of the revenue record and it cannot be said that the there was any indolence or negligence on the part of the Respondent Nos.4 and 5. The Learned Counsel would contend that since that the Appellate Authority has deemed it appropriate to exercise discretion in favour of the Respondent Nos.4 and 5, this Court would not

1 **2010(2) Mh.L.J. 150**

interfere with the said discretion.

6 Having heard the Learned Counsel for the parties I have considered the rival contentions. As indicated above the Respondent Nos.4 and 5 are aggrieved by the Mutation Entry No.27387 which has been effected in the year 1984. It is the case of the Respondent Nos.4 and 5 that the revised Phalani Bara and Akar Phod Patrak as also the Mutation Entry has been prepared behind their back, that includes their father who at the relevant time was alive. It is only on getting knowledge of the fact that the Petitioners herein were in the process of handing over possession of the lands in question on the basis of the said revised Phalani Bara and Akar Phod Patrak, that the father of the Respondent Nos.4 and 5 became aware of the said entry being made in favour of the Petitioners. The father of the Respondent Nos.4 and 5 accordingly filed an application in the year 1992 which as indicated above was disposed of on the ground that the Respondent Nos.4 and 5 would have to approach the City Survey office. The Respondent Nos.4 and 5 accordingly approached the City Survey Office, i.e. the Deputy Director Land Records who again directed the Respondent Nos.4 and 5 to approach the revenue department on the ground that the consolidation scheme has been implemented. In so far as the period between 1993 to 2007 is concerned, the same is sought to be explained away by the Respondent Nos.4 and 5 by stating that the father of the Respondent Nos.4 and 5 died in the year 1994 and their Advocate also died in

the year 1995 who had the papers with him, and it is only after the papers could be obtained by the Respondent Nos.4 and 5 they became aware of the proceedings and the entry made in the revenue record. Hence it is not as if that the Respondent Nos.4 and 5 have absolutely no explanation for the period 1977 to 1992 and 1993 to 2007. The facts which have been narrated in the earlier part of this order also disclose that the father of the Respondent Nos.4 and 5 as well as the Respondent Nos.4 and 5 were prosecuting the proceedings and it is only the authorities who have been shunting them from one department to other. The Respondent Nos.4 and 5 were ultimately directed to file an Appeal before the Superintendent of Land Records who is the Appellate Authority in so far as the Mutation Entry No.27387 which has been effected. Though in the first round, the order passed by the Appellate Authority can be said to be without reasons, in the impugned order the Appellate Authority has referred to all the antecedent facts and thereafter has deemed it appropriate to condone the delay. In so far as the Appeal filed under the Maharashtra Land Revenue Code under Section 247 is concerned, the limitation prescribed is of 60 days. The Respondent Nos.4 and 5 had therefore filed an affidavit explaining the delay in filing the Appeal. Once a time is prescribed by the statute and if there is a overlap of time in filing the said proceeding, then obviously the litigant has to file an application for condonation of delay which in the instant case is an affidavit filed by the Respondent Nos.4 and 5 explaining the delay. The Judgment of the Apex Court in Santoshkumar Patil's case (supra), concerns the case of filing of a revision under Maharashtra Land Revenue Code and not an Appeal. Since no period for filing the revision is prescribed, the Apex Court held that the same would have to be done within a reasonable time. Since in the instant case, the Appeal has been filed and for which the period prescribed is 60 days, and since there is an overlap of time in filing the Appeal, the Respondent Nos.4 and 5 have filed the affidavit of explaining the delay, the said judgment would have no application.

7 In view of the fact that the Appellate Authority i.e. Superintendent of Land Records, has deemed it appropriate to condone the delay. In my view, this court exercising powers under Article 227 of the Constitution of India does not deem it appropriate to interfere with the said discretion. This Court also endorses the view of the Appellate Authority that it would be just and proper to decide the Appeal on merits rather than rejecting the application for condonation of delay. In the facts and circumstances of the case, the Respondent Nos.4 and 5 to pay costs of Rs.3000/- to the Petitioners within 4 weeks from date. The parties to appear before the Deputy Superintendent of Land Records Sangli on 5-5-2015. The Appellate Authority is directed to hear and decide the Appeal latest by 30-8-2015, by giving proper opportunity to the parties. Subject to the aforesaid, the Petition to stand dismissed.

[R.M.SAVANT, J]