

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.110 OF 2016

Sidu Ravaji Zhambare
since deceased through LRs
Sarjerao Sidu Zhambare and ors. **Petitioners**

versus

The Deputy Director of Land Record,
Pune and ors. **: Respondents.**

**Mr. Pramod G Kathane for the Petitioners.
Shri S D Rayrikar, AGP, for the Respondent Nos.1 to 3.
Mr. Krishna M Kadam for the Respondent No.4 to 12.**

CORAM : R. M. SAVANT, J.
DATE : 15th March 2016

ORAL ORDER

1 Rule, having regard to the challenge raised in the above Petition,
made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 28/09/2015 passed by the Deputy Director of Land Records, Pune Division, Pune by which order the Appeal filed by the Petitioners herein came to be dismissed and the order dated 30/05/2013 passed by the District Superintendent of Land Records, Sangli came to be confirmed.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the proceedings concerned are relating to the consolidation scheme propounded under the Fragmentation and Consolidation

of Holdings Act. In so far as the village Dongarsoni, Tal. Tasgaon, Dist.Sangli is concerned, the said scheme is finalized in the year 1965 and Survey Nos. 152 and 153 which belong to the families of the Petitioners and the Respondent Nos.4 to 12 were divided into Gats. The Respondent Nos.4 to 12 who are the proponents of the proceedings before the Superintendent of Land Records claim through one Raju Baji Zhambare. The Respondent Nos.4A to 4C long after the said consolidation proceedings were finalized and after the said Raju Baji Zhambare expired, chose to file an Appeal before the Superintendent of Land Records purportedly on the ground that there was a discrepancy in the area mentioned in the Gats. In view of the fact that the said Appeal was filed almost after 45 years of the said scheme being finalized, the Appellants filed an Application for condonation of delay. The Petitioners herein filed their reply to the said Application opposing the same. The Superintendent of Land Records, Sangli has allowed the said Application only on the ground that there appears to be some discrepancy in the area mentioned in the Gats and therefore the delay was required to be condoned. In doing so, the Superintendent of Land Records has not considered whether the Appellants had made out sufficient cause for condonation of delay of 45 years in filing the Appeal.

4 The Petitioners herein who are the Respondents in the said Appeal aggrieved by the order passed by the Superintendent of Land Records challenged the same before the Deputy Director of Land Records, Pune

Division, Pune. The Deputy Director of Land Records on the ground that a liberal view has to be adopted in matters of condonation of delay and the matter should be dealt with on merits, confirmed the order passed by the Superintendent of Land Records. Hence the Deputy Director of Land Records also did not venture to consider whether the Appellants had made out a sufficient cause for condonation of delay of the said 45 years. As indicated above, it is the said order dated 28/09/2015 passed by the Deputy Director of Land Records, Pune Division, Pune which is taken exception to by way of the above Petition.

5 The learned counsel appearing on behalf of the Petitioners Shri Kathane would submit that both the Authorities below have erred in condoning the delay of 45 years by going into the merits of the matter rather than considering whether the Appellants had made out sufficient cause for condonation of the said huge delay. It was the submission of the learned counsel for the Petitioners that in matters where the period of limitation is not stipulated, this Court has held that three years would be reasonable period within which the proceedings are required to be filed. The learned counsel for the Petitioner sought to place reliance on the judgment of a Division Bench of this Court reported in 2001(2) ALL MR 518 in the matter of Smt.Gulabrao Bhaurao Kakade, since deceased v/s. Nivrutti Krishna Bhilare & ors. in support of his contention.

6 Per contra, the learned counsel appearing for the Respondent Nos.4 to 12 Shri Kadam sought to justify the orders of the Authorities below but not with any deal of conviction.

7 Having heard the learned counsel for the parties, in my view, the instant Petition would have to be allowed and the impugned orders would have to be set aside and the matter would have to be relegated back to the Superintendent of Land Records, Sangli for a de-novo consideration of the application for condonation of delay. It is trite as laid down by the judgment of the Division Bench of this Court in *Smt. Gulabrao Bhaurao Kakade's* case (supra) that when no period of limitation is prescribed, the proceedings have to be filed within a reasonable time and the reasonable time as the Division Bench of this Court has held would be three years after the cause of action has arisen.. In the instant case, as indicated above, the Consolidation Scheme has been finalized in the year 1965 and the proceedings were filed by the Superintendent of Land Records in the year 2010. Hence the Superintendent of Land Records was obliged to consider whether the Appellants had made out a case for condonation of delay. However, without doing so the Superintendent of Land Records by merely advertng to the merits of the matter had condoned the said huge delay of 45 years. The matter was further compounded by the Deputy Director of Land Records by confirming the order

passed by the Superintendent of Land Records without going into the aspect as to whether the delay was required to be condoned in the facts and circumstances of the case having regard to the case made out in the application.

8 In that view of the matter both the impugned orders are required to be quashed and set aside and are accordingly quashed and set aside and the matter is relegated back to the Superintendent of Land Records, Sangli for a de-novo consideration of the application for condonation of delay. On remand the parties to appear before the Superintendent of Land Records on 05/04/2016. The Superintendent of Land Records thereafter to consider the application for condonation of delay on the touchstone of the observations made in the instant order. The Superintendent of Land Records would be well advised to give reasons for either condoning the delay or not condoning the delay so that the higher forum has the benefit of the said reasons. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]