

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7245 OF 2016

DATTA MAROTI PAWAR AND OTHERS
VERSUS
THE DEPUTY DIRECTOR OF LAND RECORDS AND OTHERS

...
Advocate for Petitioners : Shri Kale Mahesh P.
AGP for Respondents 1 to 3 : Shri Bhagat N.T.
Advocate for Respondents 4 to 8 : Shri Gangakhedkar S.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 03, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 8.3.2016, passed by respondent No.1, Deputy Director of Land Records, Aurangabad Division, by which, Revision SR/1050/2015, has been dismissed without hearing the litigating sides.

2. The District Superintendent of Land Records, Parbhani, respondent No.2 herein, has passed an order dated 29.9.2015, rejecting the application filed by the petitioners under Section 19 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act ("the said Act"). The delay caused is said to be of about 31 years. Issue of delay does not appear to have been considered by respondent No.2.

3. The issue is, as to whether an application filed under Section 19 of the said Act could be entertained beyond the limitation period of 30 days from the date of announcement of the scheme or beyond one year of the finalisation of the Scheme.

4. This Court has considered such an issue in the following four judgments:-

(i) Gunda Tuka Shinde deceased Vs. Pandharinath Ramrao Shinde - [1991 (2) Bom.C.R. 650],

(ii) *Gulabrao Bhauroao Kakade, since deceased, through LR's Vs. Nivrutti Kirishna Bhilare and others [2001(4) Mh.L.J.31 = 2001(2) All. M.R. 518],*

(iii) *Dattu Appa Patil, since deceased, through LR's and others Vs. State of Maharashtra and others [2007(1) Mh.L.J.393],*

(iv) *Ganpati Dadu Mali, since deceased, through LR's and others Vs. State of Maharashtra and others [2012 (1) Mh.L.J.341].*

5. There is no dispute that respondent No1 has passed the impugned order without issuing notices of hearing to any of the

litigating sides. The matter, therefore, has to be remanded for a hearing.

6. Shri Gangakhedkar, learned Advocate for the respondents rightly submits that respondent No.1, while passing the order dated 8.3.2016 had not dealt with the issue of delay, much less, whether a delay caused could be condoned or not.

7. In similar circumstances, this Court has issued directions in paragraph No.7 of the order dated 20.6.2017 in the matter of Eknath Tatyaram Waman Vs. Narayan Rakhmaji Shinde and others - Writ Petition No.7701 of 2016, decided on 20.6.2017.

8. Considering the above, this petition is partly allowed. The impugned order dated 8.3.2016, passed by respondent No.1 is quashed and set aside. The Appeal No. SR/1050 of 2015 is remitted to the office of respondent No.1 with the following directions:-

[A] The litigating sides shall appear either in person or through a legal representative before respondent No.1 on 24.7.2017 at 3.00 p.m. and thereafter shall abide by the dates of hearing on which the matter is posted.

[B] Respondent No.1 need not issue any notices.

[C] The litigating sides are permitted to file their written notes of submissions, if felt necessary.

[D] As the litigating sides have relied upon certain reported and unreported judgments of this Court, respondent No.1 shall consider the following judgments besides any other judgments if cited :-

[i] Gulabrao Bhaurao Kakade, since deceased, through LR's Vs. Nivrutti Kirishna Bhilare and others [2001(4) Mh.L.J.31 = 2001(2) All. M.R. 518],

[ii] Dattu Appa Patil, since deceased, through LR's and others Vs. State of Maharashtra and others [2007(1) Mh.L.J.393],

[iii] Ganpati Dadu Mali, since deceased, through LR's and others Vs. State of Maharashtra and others [2012(1) Mh.L.J.341] and

[iv] Gunda Tuka Shinde deceased Vs. Pandharinath Ramrao Shinde - [1991 (2) Bom.C.R. 650].

[E] The litigating sides shall extend their co-operation to respondent No.1 in deciding the proceedings as expeditiously as possible and preferably within 4 months from the date of appearance.

[F] Needless to state, respondent No.1 shall specifically decide with reasons, as to whether the delay of 31 years can be considered (power to condone) and if yes, whether sufficient reasons are assigned for condoning the same.

(RAVINDRA V. GHUGE, J.)

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