

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7701 OF 2016
(Eknath Tatyaram Waman and others Vs. Narayan Rakhmaji Shinde
and others)

Mr.A.K.Gawali, Advocate for the petitioners.
Mrs.M.A.Kulkarni, Advocate for respondent Nos. 1, 2 and 3A.
Mr.S.K.Tambe, AGP for respondent Nos. 10 and 11.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 20/06/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 28/07/2015 passed by respondent No.10 by which the order of respondent No.11 Dis. Supdt. of Land Records dated 16/06/2014 refusing to condone the delay of 47 years has been set aside and respondent No.11 is directed to consider the grievances of respondent Nos. 1 to 9 on their own merits.

2. I have considered the submissions of the learned Advocates for the respective sides at length. Considering that the impugned order is to be set aside by consent so that respondent No.10 Deputy Director of Land Records could be directed to reconsider the issue, I am not required to advert to the entire submissions of the litigating sides.

3. Suffice it to say, the following factors need the attention of respondent No.10 :-

[a] The vendor of the respondents is said to have not been given any notice while implementing the consolidation scheme under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

[b] The respondents are the purchasers of the said land.

[c] Land admeasuring 10 acres and 10 gunthas in the erstwhile Survey No.61 suffered reduction and was brought down to 8 acres and 2 gunthas in 1966.

[d] Officially, land admeasuring little less to 2 acres has been taken away from the vendor of the respondents.

[e] A mutation entry was said to have been carried out in 1966.

[f] The revenue records were officially corrected on 31/01/1966 and further correction was carried out on 27/09/1988, though not affecting the area of lands of those persons who are in possession ever since the decision of consolidation was taken.

4. The respondents herein namely Narayan Rakhmaji Shinde and others moved an Appeal No.4/2013 before respondent No.11 praying for condonation of delay of about 47 days. By order dated 16/06/2014, respondent No.11 concluded that no such circumstances and reasons have been cited which would enable him

to condone the delay keeping in view that the respondents had challenged the mutation entry No.685 dated 10/02/1966.

5. The respondents preferred an appeal before respondent No.10. By the impugned order dated 28/07/2015, the order of respondent No.11 was set aside and he was directed to decide the grievance of the original appellants on their merits.

6. I find from the impugned order that respondent No.10, with a stroke of the pen has set aside the order of respondent No.11 without assigning any reasons. Not a single sentence is attributed by way of a reason to the conclusion that the order of respondent No.11 dated 16/06/2014 deserves to be set aside. It is trite law that, be it a judicial or quasi judicial authority, an impugned order cannot be set aside casually. As such, the order dated 28/07/2015 passed by respondent No.10 is rendered perverse, erroneous and legally unsustainable.

7. Considering the consent of the parties, this petition is partly allowed and the impugned order dated 28/07/2015 is quashed and set aside. Appeal No.SR 355/Ahmednagar/14 is restored to the file of respondent No.10 with the following directions :-

[a] The litigating sides shall appear either in person or through a legal representative before respondent No.10 on 07/07/2017 at 3.00 p.m. and thereafter shall abide by the dates of hearing on which the matter is posted.

[b] Respondent No.10 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.10 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]

[iv] Unreported order in WP No.12785/2016, Sandeep Tukaram Pawar and others Vs. Sanjay Vithalrao Pawar and others.

[e] The litigating sides shall extend their co-operation to respondent

No.10 in deciding the proceedings as expeditiously as possible and preferably within 4 months from the date of appearance.

[f] Needless to state, respondent No.10 shall specifically decide with reasons, as to whether the delay of 47 years is condonable (power to condone) and if yes, whether sufficient reasons are assigned for condoning the same.

8. All contentions of the litigating sides are kept open for respondent No.10 to consider them on their own merits and in the light of the record available.

(Ravindra V.Ghuge, J.)