**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9418 OF 2017

Vinayak Vasantrao Ratnalikar @ Kulkarni,
Age : 60 years, Occupation: Agriculture,
R/o : Ratnali Tq. Dharmabad District
Nanded.

...PETITIONER

VERSUS

1. Laxmikant Sadashivrao Dixit,
(Died, through his L.Rs.

1-A. Nalini Laxmikant Dixit,
Age: 60 years, Occupation: Household,
R/o. Plot No.89, Yoeshwari, Vivek Nagar,
Nanded Tq. and Dist. Nanded.

1-B. Swati Laxmikant Dixit (Karkare),
Age: 38 years, Occupation: Household,
R/o. Plot No.89, Yoeshwari, Vivek Nagar,
Nanded Tq. and District Nanded.

1-C. Pankaj Laxmikant Dixit,
Age: 36 years, Occupation: Service,
R/o. Plot No.89, Yoeshwari, Vivek Nagar,
Nanded Tq. and District Nanded.

1-D. Parag Laxmikant Dixit,
Age: 34 years, Occupation: Service,
R/o. Plot No.89, Yoeshwari, Vivek Nagar,
Nanded Tq. and District Nanded.

2. Pandharinath Jagannath Chakkarwar,
   Age: Major, Occupation: Agriculture,
   R/o. Dharmabad Tq. Dharmabad,
   District Nanded.
3. Shankarrao Rajeshwarrao Deshpande,
   Age: Major, Occupation: Agriculture,
   R/o Dharmabad Tq. Dharmabad,
   District Nanded.
4. Pradeep Manoharrao Mahagaonkar,
   Age: Major, Occupation: Agriculture,
   R/o Dharmabad Tq. Dharmabad,
   District Nanded.
5. Manikrao Potanna Patil,
   Age: Major, Occupation: Agriculture,
   R/o Dharmabad Tq. Dharmabad,
   District Nanded.
6. Rajeshwar Shivrampant Mudholkar,
   Age: Major, Occupation: Service,
   R/o Post Yetala Tq. Dharmabad,
   District Nanded.
7. Avinash Madhukarrao Pathak,
   Age: Major, Occupation: Service,
   R/o. Balaji Nagar, Nanded,
   Tq. and Dist. Nanded.
8. The Sub-Divisional Officer,
   Dharmabad, Tq. Dharmabad,
   District Nanded.
9. The Additional Commissioner,
   Division Aurangbad, Aurangabad.

...RESPONDENTS

Mr. A. A. Mukhedkar, Advocate for the petitioner.
Mr. Y. G. Gujarathi, AGP for the respondents No.8 and 9.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 31st JULY, 2017

ORAL JUDGMENT :

1. Heard learned counsel for petitioner Mr. A. A. Mukhedkar and learned AGP quite some extensively.

2. It is case of the petitioner that, he is legal heir of deceased Vasantrao Shrinivas Ratnalikar @ Kulkarni in whose name mutation entry No.4324 is sanctioned by revenue authority on 28-06-2003. Respondents No.1-A to 1-D had challenged said mutation entry contending that notices were not issued to them before sanction of the same and their rights upon said property are put in peril. While such appeal had been filed, it appears that, it had been filed after three (3) years and two (2) months.

3. Petitioner appeared in said appeal before Sub-Divisional Officer. Petitioner disputed rights claimed over concerned property by respondents No.1-A to 1-D, further contending that, delay has not been satisfactorily explained and as such, delay condonation

application be dismissed.

4. Said application had been dismissed by Sub-Divisional Officer. As such, respondents No.1-A to 1-D had preferred further appeal before Additional Collector at Nanded bearing case No.2005/RB/DESK-4/Appeal-CR-70 which had been dismissed on 07-02-2008. Revision thereafter had been preferred by present respondents No.1-A to 1-D, which too had been dismissed under order dated 14-09-2012 by the Additional Commissioner at Aurangabad. Against said dismissal, respondents No.1-A to 1-D had filed writ petition No. 2175 of 2013 before this court and order came to be passed remanding the matter to Sub-Divisional Officer with direction to reconsider issue of delay condonation on its own merits.

5. It is the contention of learned counsel for petitioner that, after remand of the matter, on 21-09-2015 a cryptic order came to be passed condoning delay of three years and two months, without assigning any reason of whatsoever nature. Direction issued by this court in writ petition No.2175/2013 has been completely ignored by the Sub-Divisional Officer while passing the order as well as he had not examined whether there is any sufficient cause

shown in application for condonation of delay.

6. Petitioner in the circumstances had approached Additional Divisional Commissioner, Aurangabad against order of Sub-Divisional Officer of condoning of delay. Said revision application as well has been dismissed under order dated 15-04-2017, endorsing the order passed by Sub-Divisional Officer, observing that the matter relates to immovable property and, as such, the same needs to be required to be decided on merits.

7. Learned counsel Mr. A. A. Mukhedkar vehemently submits that, as legal position would emerge that reasonable period during which the proceedings are to be initiated is three years and not beyond that, referring to a decision of the Supreme Court in the case of *Santoshkumar Shivgonda Patil and Ors. Vs. Balasaheb Tukaram Shevale and Ors.*, reported in *AIR 2009 SC (Supp) 2471*. He further purports to state that pursuant to said decision a circular has been issued by State Government whereby revenue authorities have been restrained from entertaining proceedings beyond three years.

8. Learned AGP Mr. Y. G. Gujarathi submits that, Maharashtra Land Revenue Code vests revenue authorities with powers to condone delay. There is no limitation on exercise of power as

submitted on behalf of the petitioner. He submits that in the present case by the own saying of petitioner, the delay is of only two months as he contends that the proceedings have been initiated after three years and two months.

9. Learned AGP further refers that the commissioner has taken into account that while recording the mutation, respondents No.1-A to 1-D have not been given any notice, in the circumstances the matter has been treated accordingly and delay has been condoned. He further submits that, generally in the matters of condonation delay it has been expected that a liberal approach is to be adopted. As such, it is not such a case wherein it can be said that exercise of power by revenue authorities has been without jurisdiction and stretched too far and reasonable approach has been adopted. He therefore, supports the order.

10. Having heard the learned counsel appearing for parties as aforesaid, it does not appear to be in much dispute that respondents No.1-A to 1-D had not been served with notices before taking mutation entry No.4324. It is the case of respondents No.1-A to 1-D as it appears from the decision rendered by commissioner that they were not aware of the

proceedings of mutation. In the circumstances, the commissioner appears to have considered, respondents No.1-A to 1-D deserve an opportunity.

11. In the given circumstances, the approach of the commissioner appears to be fairly reasonable and is as generally required in matters of condonation of delay. Even taking the best case for the petitioner that a reasonable period should be considered as three years, two months after lapse of said period in the absence of the knowledge about the proceedings of mutation does not appear to be too much and much less appears to be unreasonable. The delay appears to have been properly accounted for. Even going by the decision which has been relied on contending that the said decision prescribes three years' period of limitation, yet, the circumstances under which the decision has been rendered can be referred to as under ;

> *"4. Takawade Gat No. 1157 (Old Survey No. 201/1) admeasuring 6 H 65 R originally belonged to one N.R. Deshpande. The land was an inam land which was resumed on August 1, 1955. On the date of resumption, there were four tenants holding 1/4th share each. Tukaram Sakharam Shevale, predecessor in title of Respondent Nos. 1 to 5, one of such tenants, thus, held land admeasuring 1H 66R. The original landlord, N.R. Deshpande, was required to pay occupancy price before July 31, 1965 which he did only to the extent*

of 3/4th in respect of lands possessed by three tenants other than Tukaram Sakharam Shevale. The 3/4th portion was, thus, regranted and later on sold to the tenants occupying such portion. As regards 1/4th portion occupied by Tukaram Sakharam Shevale, it appears that no occupancy price was paid and this portion was resumed to the State. Tukaram is, however, said to have continued to remain in possession of 1/4th portion of the land till 1974-75."

"5. The Tahsildar, Shirol, on March 30, 1976, passed an order hereby 3/4th of portion of Land earlier in occupation of Tukaram was granted in favour of Shivgonda Satgonda Patil on the basis of his occupation as cultivator and 1/4th remained in favour of Tukaram Sakharam Shevale."

"6. Tukaram Sakharam Shevale, until his death in 1990, did not challenge the Tahsildar's Order dated March 30, 1976 in any proceeding. It was only after the death of Tukaram that his legal heirs, namely, Respondent Nos. 1 to 5 herein, made an application before the Sub-Divisional Officer, Ichalkaranji in 1993 seeking revision of the order of Tahsildar, Shirol passed on March 30, 1976. The Sub-Divisional Officer, Ichalkaranji invoked his revisional power under Section 257 of the Maharashtra Land Revenue Code and after hearing the parties and getting the report from the Tahsildar, Shirol vide his order dated August 16, 1994 allowed the revision application and set aside the order dated March 30, 1976 giving 3/16th share in R.S. No. 210/1 to Shivgonda Satgonda Patil. The Sub-Divisional Officer, Ichalkaranji declared that 1/4th share in R.S. No. 210/1 admeasuring 1H 66R shall be deemed to have been granted to Tukaram Shevale and pik-pahani entries made in favour of Shivgonda Satgonda Patil shall be treated as unauthorized and illegal."

"16. It seems to be fairly settled that ***if a statue does not prescribe the time limit for exercise of revisional power****, it does not mean that such power can be exercised at any time;* ***rather it should be exercised within a reasonable time****. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.* ***Ordinarily, the reasonable period within which power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time****. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of Tehsildar passed on March 30, 1976 is flawed and legally not correct. Pertinently, Tukaram Sakharam Shevale, during his lifetime never challenged the legality and correctness of the order of Tehsildar, Shirol although it was passed on March 30, 1976 and he was alive upto 1990. It is not even in the case of Respondent Nos.1 to 5 that Tukaram was not aware of the order dated March 30, 1976. There is no finding by the Sub-Divisional Officer either that order dated March 30, 1976 was obtained fraudulently. "*

12. Observations under the Supreme Court judgment have been in the context of the facts as contained in paragraphs No. 4, 5

and 6.

13. Further, learned counsel has not been able to produce the circular which he purports to refer to in support of his submissions. Thus, it does not appear to be a case wherein powers under Articles 226 and 227 of the Constitution of India should be exercised. Writ petition, as such, stands dismissed. No order as to costs.

(SUNIL P. DESHMUKH, J.)

vjg/-