

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

905 WRIT PETITION NO. 975 OF 2015

LAXMAN MANIKRAO HASSEKAR (DIED) THROUGH HIS L.RS.
PRAKESH LAXMANRAO HASSEKAR AND OTHERS

VERSUS

DATTATRAYA @ DATTARAM MANIKARAO HASSEKAR AND OTHERS

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Advocate for Petitioners : Mr. Santosh C. Bhosle.

Advocate for Respondent No.1 : Mr. R. N. Dhorde, Senior Counsel, i/b
Mr.B.G. Deshmukh.

Advocate for Respondent No.2 : Mr. N. D. Kendre, h/f Mr. P. V. Ambade.

AGP for Respondent Nos.3 to 6 : Mr. N. T. Bhagat

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CORAM : **V. K. JADHAV, J.**

DATE : 16th November, 2017.

ORDER:

. Being aggrieved by the order passed by the District Superintendent of Land Record, Nanded dated 20th June, 2014 and confirmed by the Deputy Director of Land Record, Aurangabad by order dated 15th December, 2014, the Petitioners / original Respondents in those proceedings have approached to this Court by filing the present writ petition.

2 Brief facts giving rise to the present writ petition are as follows:

Respondent No.1 herein approached to Respondent No.5 /

District Superintendent of Land Record, Nanded by filing an appeal bearing Appeal No.351 of 2014 challenging the Mutation Entry Nos.494 and 133 sanctioned in favour of the Petitioners herein on 7th February, 1989 and 6th March, 1995 respectively alongwith an application for condonation of delay of 23 years 10 months and 11 days. The Petitioners have strongly resisted the said application by fling their say. However, Respondent No.5 / District Superintendent of Land Record, Nanded vide its impugned order dated 20th June, 2014 condoned the delay and Respondent No.6 / Deputy Director of Land Record, Aurangabad has also dismissed the appeal preferred by the Petitioners by confirming the order passed by Respondent No.5. Hence, this writ petition.

3 The learned counsel for Petitioners submits that Respondent No.1 is not the owner in possession of plot No.25 and the amount, which he had paid towards membership of the society itself was refunded to him through cheque by the society way back in the year 1978. The disputed plot thereafter, was allotted to the Petitioner Laxman on 30th May, 1982 by the society through the allotment certificate to that effect and in view of the same, Mutation Entry No.494 was sanctioned. After the death of said Laxman, the Petitioners being

the legal representatives, applied for the mutation and accordingly, Mutation Entry No.133 sanctioned in their favour as being the legal representatives of deceased Laxman. The learned counsel submits that apart from merits of the case, Respondent No.1 has not stated anything in his application to infer that he was prevented from sufficient cause to prefer an appeal after inordinate delay of 23 years 10 months and 11 days. The learned counsel submits that both the authorities below have considered the merits of the case, which is uncalled for while deciding the application seeking condonation of delay and further Respondent No.5 / District Superintendent of Land Record, Nanded has condoned the delay on the ground that this is the dispute between the family members.

4 The learned senior counsel appearing for Respondent No.1 submits that on perusal of record of the society and the relevant revenue record, it was revealed that Plot No.25 admeasuring 235.2 square meters of Vasantnagar Cooperative Housing Society was originally allotted to Respondent No.1 in the year 1978. The entry regarding such allotment found in the record of the society and also in the revenue record. The learned senior counsel submits that there is no record available as to on what basis the allotment in favour of

Respondent No.1 stood cancelled and the said plot was re-allotted to Respondent No.1. The learned senior counsel submits that apparently, there is an element of fraud. The learned senior counsel submits that both the authorities below have therefore, rightly condoned the delay and at present the main proceedings are pending before the District Superintendent of Land Record, Nanded and the dispute will be adjudicated on merits.

5 The learned senior counsel appearing for Respondent No.1 in order to substantiate his contentions placed his reliance in the case of **State of Karnataka Vs. Moideen Kunhi (dead) by LRs. and Ors**, reported in, **2009 AIR SCW 4491**.

6 On perusal of the impugned order passed by the District Superintendent of Land Record, Nanded, I find that the District Superintendent of Land Record has condoned the delay with one line sentence that the dispute appears to be of family dispute. It also appears that the Deputy Director of Land Record has considered the merits of the case and accordingly, confirmed the order passed by the District Superintendent of Land Record. It is well settled that for deciding the application seeking condonation of delay, merit of the case is not required to be considered. In view of the provisions of

Section 251 of the Maharashtra Land Revenue Code, 1966, it is for the Appellant / Applicant who approaches the authority seeking condonation of delay, to satisfy the authority that he has been prevented from sufficient cause in approaching the authority and as such, the delay deserves to be condoned. In the instant matter, both the authorities below have not at all given thought to the said provision of law and condoned such inordinate delay in a casual manner.

7 In the case of *State of Karnataka Vs. Moideen Kunhi (dead) by LRs. and Ors* (supra), relied upon by the learned senior counsel appearing for Respondent No.1, the Supreme Court has considered the delay condonation application preferred by the State with an observation that in an occasional case delay occurs which is inexplicable in normal circumstances and whether such such delay, should result in the negation of the State's claim and at the cost of the interest of the members of the public whose cause has not been carefully espoused. However, the facts of the present case are totally different. Both the authorities below have not at all given thought to the requirements of law wherein the Appellant / Applicant has to substantiate his application seeking condonation of delay to the satisfaction of the authority to the effect that he has been prevented

from sufficient cause to approach the said authority within the period of limitation.

8 In view of the above, this Court left with no other choice but to remand the matter. Consequently, the orders passed by the authorities below are liable to be quashed and set aside. Hence, the following order:

ORDER

- I. The writ petition is hereby partly allowed. No costs.
- II. Impugned orders dated 20th June, 2014 passed by the District Superintendent of Land Record, Nanded and dated 15th December, 2014 passed by the Deputy Director of Land Record, Aurangabad, are hereby quashed and set aside.
- III. The matter is remanded to the District Superintendent of Land Record, Nanded and the application seeking condonation of delay in Appeal No.351 of 2014, is hereby restored to its

original position.

- IV. Both the parties shall appear before Respondent No.5 / District Superintendent of Land Record, Nanded on 18th December, 2017 and Respondent No.5 shall decide the said application afresh on its own merits and in accordance with the law as per the provisions of Section 251 of the Maharashtra Land Revenue Code, 1966.
- V. All points kept open.
- VI. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]

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