

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

WRIT PETITION NO.12785 OF 2016

1. Sandeep s/o Tukaram Pawar,
Age major, Occu. Agri.
2. Dnyaneshwar s/o Tukaram Pawar,
Age major, Occu. Agri.
3. Chandrashekhar s/o Tukaram Pawar,
Age major, Occu. Agri.
4. Shakuntalabai w/o Tukaram Pawar,
Age major, Occu. Household & Agri.

All R/o Bhajan Galli, Parbhani,
Taluka and District Parbhani ... PETITIONERS

VERSUS

1. Sanjay Vithalrao Pawar,
Age major, Occu. Nil
 2. Jayashri w/o Sanjay Pawar,
Age major, Occu. Nil
- Both R/o at present Swapnagandha
Datta Bhagirathi Nagar,
Kolhapur, Tq. & Dist. Kolhapur
3. Mangalbai @ Rajshree w/o Vithal Pawar
Age major, Occu. Household
 4. Vithal s/o Sudamrao Pawar,
Age major, Occu. Agri.

Nos.3 & 4 R/o Vidyanagar, Parbhani,
Taluka and District Parbhani. ... RESPONDENTS

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Ms Kavita S. Bhale, Advocate for petitioners
Mrs. M.A. Kulkarni, Advocate holding for
Shri A.M. Kulkarni, Advocate for respondent Nos.1 to 4
.....

CORAM: S. B. SHUKRE, J.

DATED: 25th January, 2017.

ORAL JUDGMENT :

1. Mrs. M.A. Kulkarni, learned counsel appears for respondent Nos.1 to 4 by waiving notice. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. On perusal of the impugned order, I find that, though there is some substance in the arguments of learned counsel for the respondents that the delay condonation application has been mainly allowed by the authority below on the ground that the mutation entry was prima facie incorrectly recorded or in other words, by going into the merits of the matters, I am of the view that the purpose of extraordinary writ jurisdiction being to ensure that there is no miscarriage of justice and that no one is allowed to abuse the process of law, I further find that this is not a case which falls in the permissible categories as stated earlier, warranting interference in the impugned order. Some explanation for the delay occurred in this case has been given and it appears to have also been considered, may be by not properly assessing the facts underlying the justification given for the same and such consideration, it is further seen, has not

resulted in causing any miscarriage of justice.

3. According to learned counsel for the petitioners, the contention that the respondents acquired knowledge about the disputed mutation entry as late as the year 2011 or 2013, is patently false as there was a compromise between the petitioners and the respondents in the year 2001, wherein the dispute involved was in respect of the very mutation entry, which is the subject matter of the present suit. This is a disputed fact and same inference has been drawn in that regard by the authorities below. In exercise of the writ jurisdiction of this Court, it will not be appropriate for this Court to substitute its own view for the view taken by the authorities below just because other view is possible. It is not the law that in exercise of such a jurisdiction every error committed by the authority below must be corrected. Ultimately, this Court has to ensure that there is justice properly administered between the parties and as far as this dimension of the case is concerned, I find that no prejudice is going to be caused to the petitioners. The learned Sub-Divisional Officer has, in the impugned order itself, stated that the rival parties shall be given an opportunity of hearing. Therefore, whatever submissions on merits of the case that the petitioners are desirous of canvassing further, could be canvassed by them before the learned Sub-Divisional Officer.

4. In this view of the matter, I am not inclined to interfere in the impugned order. All points are kept open for appropriate consideration by the authorities below. The Writ Petition stands dismissed. No costs. Rule is discharged.

(S. B. SHUKRE)
JUDGE

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