

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 12011 OF 2017

Shaukat G. Lalani & Ors.

.. Petitioners

Vs.

State of Maharashtra & Ors.

.. Respondents

...

Mr. Pradeep Thorat a/w Mr. Anirban Sen i/b M/s. Hariani & Co for
Petitioner.

Mr. Vivek Patil i/b Mr. Vivek Patil & Associates for Respondent
Nos. 5 to 9.

Mr. S.H. Kankal, AGP for Respondent Nos. 1 to 4

***CORAM : M.S. SANKLECHA, J.
DATE : 14th NOVEMBER, 2017.***

P.C. :

1. This petition under Article 227 of the Constitution of India, challenges the order dated 5th August, 2017 passed by the Deputy Director Land Record (Pune Division) respondent No. 2 under the Maharashtra Land Revenue Code, 1960 (the Code). By the impugned order, the petitioners' application for stay of the order dated 20th January, 2017 passed by the Superintendent of Land Record-Respondent No.4, was rejected, pending the consideration of the appeal from it.

2. This proceeding arises out of the appeal by the respondent Nos.5 to 9 to the Superintendent Land Record, Pune under Section 247 of the Code seeking to set aside the mutation

entries made in the year 1965 on the basis of a scheme sanctioned under the Maharashtra Prevention of Fragmentation Consolidation and Holding Act, 1947 (Fragmentation Act). The Superintendent of Land Record, by his order dated 20th January, 2017 allowed the appeal of Respondent Nos. 5 to 9 on the basis of Section 31 read with Section 32(1) of the Fragmentation Act. This appeal was allowed, even though it was filed by respondent Nos. 5 to 9 after almost fifty years of the settling of the scheme under the Fragmentation Act and consequent mutation entries. Being aggrieved with the order dated 20th January, 2017, the petitioner filed a further appeal alongwith application for stay to the Deputy Director of Land Records. By the impugned order dated 5th August, 2017 petitioner filed a stay application pending disposal of the appeal before him.

3. The grievance of the petitioners is that, the order of 20th January, 2017 passed by the District Superintendent Land Record was completely without jurisdiction, as the appeal was entertained after a period of almost 50 years, when the appeal has to be brought in terms of Section 250 of the Code within 60 days of the decision. Besides, the scheme settled in 1965 under the Fragmentation Act, is being disturbed under Section 32 thereof after such a long time. This is not permitted even where no period of limitation is prescribed. As in such a case, the reasonable period test is to be applied. In support, reliance is placed upon the decision of this court in **Suresh Bapu Sankanna & Ors. -Vs- State**

of Maharashtra & Ors. (*WP Stamp No. 16719 of 2017*) decided on 9th October 2017 in the context of Section 32 of the Fragmentation Act where the Court held that in the absence of any period of limitation prescribed in a statute, to challenge an action, one has to read a reasonable period of limitation into it. This aspect, according to the petitioner, has not even been remotely considered in the impugned order dated 5th August, 2017.

5. On the other hand, Mr. Patil learned counsel appearing for the respondent Nos. 5 to 9 states that in any case, the authorities below have found that in the context of the facts, the delay is reasonable.

6. In response, Mr. Kankal learned AGP appearing for the State, on instructions, states that District Superintendent Land record who is present in the court, states that the appeal filed by the petitioner would be decided by the Deputy Director of Land Record within a period of one year from today.

7. In the above view, it would be appropriate that the hearing of the appeal pending before the Deputy Director of Land Records, Pune is disposed of as expeditiously as possible preferably within six months from today.

8. In the meantime, the status quo as granted by this Court on 25th October, 2017 as existing on 25th October, 2017, is to be continued till the disposal of the appeal.

9. Needless to mention in the peculiar facts of the case, the parties will not act further upon the orders passed in these proceedings, pending the decision as the appeal by the Deputy Director Land Record, Pune Division.

10. All contentions left open including the applicability of reasonable period in the facts of the present case, for consideration by the Deputy Director of Land Record in the appeal before it.

11. Petition disposed of in above terms. No order as to costs.

(M. S. SANKLECHA, J.)