

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3290 OF 2018

Chandravadan Gokul Aher,
Age - 50 years, Occu.- Service,
R/o. 6, Yamuna Housing Society,
Sakri Road, Mahindale, Dhule

.. Petitioner

Versus

- 1] Udaykumar Gokul Gilankar/Aher
Age - 48 years, Occu-Agriculture,
R/o. 802, Green Hills, Sus Road,
Near DC Design Showroom, Baner,
Pune - 411 045
- 2] Sau. Mangal Prakash Pawar,
Age - 54 years, Occu - Household,
R/o. Powar Villa, First and Six,
Street Intersection, Sisrin Meadows,
Anandvalli, Nashik
- 3] Sau. Sucheta Mohan Sonawane,
Age - 46 years, Occu - Household,
R/o. Sonwane Bunglow,
Behind LIC Office, Camp Road,
Malegaon, Tq. Malegaon,
Dist. Nashik
- 4] The State of Maharashtra,
Through Sub Divisional Officer,
Dhule Sub Division,
Dhule

.. Respondents

...

Mr. S.N. Suryawanshi, Advocate for petitioner
Mr. S.V. Munde, Advocate h/f Mr. K.C. Sant, Advocate for
respondents no.1 and 3

Mr. S.N. Morampalle, AGP for respondent-State
None present for respondent no.2, though served

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 18-06-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for the appearing parties forthwith, by consent.
3. Petitioner, who is real brother of respondents no. 1, 2 and 3, purports to have been aggrieved by order condoning delay of about 4-1/2 months against order passed by Tahsildar dated 16-06-2017.
4. Learned counsel for petitioner submits that the impugned order depicts that it has been passed without application of mind and even without affording opportunity of hearing to petitioner or without issuing notice to the petitioner. He further submits that respondents no.1 to 3 have not placed anything on record to substantiate the statements, as appearing in paragraph no.2 of application for condonation of delay.
5. Learned counsel for respondents no. 1 and 3 submits that *although* ostensibly, petitioner may not have been issued notice or for that matter, opportunity of hearing, as expected by

petitioner is not afforded to him, yet, the factual position is indisputable. It appears, events having taken place pursuant to the averments in paragraph no.2 of application for condonation of delay, no counter material has been placed challenging the averments in paragraph no.2 of said application.

6. He further submits that a direct writ petition in the present case, should not be entertained and the petition should be thrown at the threshold having regard to that petitioner does have available alternate *fori* against the order condoning delay. He submits that no particular prejudice has been pointed out and is supposed to have been caused to petitioner by the impugned order. In the circumstances, he urges not to consider the request made under the writ petition.

7. *Although,* no notice appears to have been issued to the present petitioner in respect of delay condonation application and the same appears to have been decided, yet, veracity of the contents of paragraph no.2 of the application for condonation of delay has not been challenged by producing counter material. Apart from aforesaid, it appears that order on application for condonation of delay, is an order which can be challenged pursuant to the provisions of the Maharashtra Land Revenue Code, 1966.

8. One more thing to be noted is that, learned counsel for the parties concur on that hearing of the appeal is in the process and is almost concluded.

9. Having regard to the peculiar facts of the case that the parties are related closely and are real brothers and sisters and dispute is in respect of revenue entries with regard to partition of ancestral property, instead of sending back the matter to the alternate forum, as referred to above, it would be expedient that the petition is disposed of and inconvenience caused to the petitioner in the process, may be compensated by awarding costs.

10. Costs in the present case are computed at Rs.7500/- (Rs. Seven Thousand Five Hundred). Costs be paid to petitioner by respondents no.1 to 3 within a period of four weeks from the date of receipt of this order at the end of appellate authority. Payment of costs is a condition precedent for decision in the appeal.

11. Writ petition is accordingly disposed of.

12. Rule made absolute in aforesaid terms.

[SUNIL P. DESHMUKH]
JUDGE

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