

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 WRIT PETITION NO. 11169 OF 2015
WITH CA/12300/2016 IN WP/11169/2015

SHRIRAM RAMCHANDRA GADEKAR
VERSUS
THE DEPUTY DIRECTOR OF LAND RECORD AURANGABAD
AND OTHERS

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Advocate for Petitioner : Mr. Shelke Manoj U.
AGP for Respondent Nos. 1 to 4: Mr. S.N. Kendre
Advocate for Intervener : Mr. N.S. Kardale
Advocate for Respondent No.5 : Mr. Patil Milind M. (beedkar)

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CORAM : V. K. JADHAV, J.
DATED : 16th APRIL, 2018

PER COURT:-

1. Heard finally with consent at the admission stage.
2. I find no substance in this writ petition. The petitioner has preferred an appeal before the Deputy Director of Land Record at Aurangabad, which was delayed for certain period. The petitioner has also filed a separate application for condonation of delay. By order/communication dated 18.12.2006, the Deputy Director of Land Record, Aurangabad informed to the petitioner that the appeal came to be dismissed in default. The petitioner

has therefore filed an application for restoration of the said appeal along with the application seeking condonation of delay in preferring an application for restoration of the appeal.

3. However, by order dated 22.2.2010, the Deputy Director of Land Record, Aurangabad has rejected the said application seeking restoration of the appeal mainly on the ground that the delay in filing the application seeking restoration has not been explained. The petitioner has thereafter approached the same authority in the year 2015 by preferring another appeal and withdrawn the same. The Deputy Director of Land Record, Aurangabad by order dated 9.9.2015 permitted the present petitioner to withdraw the said appeal. The petitioner has thereafter approached to this Court by filing the present writ petition.

4. The learned counsel for the petitioner submits that after the judgment and order dated 3.2.2003 passed by the respondent no.2, immediately thereafter on 17.2.2003, the petitioner has filed an appeal before respondent no.1 to challenge the legality and sustainability of the order passed by

the respondent no.2. However meanwhile, the petitioner collapsed from the upper floor of the house and sustained the fracture injuries on both of his legs which resulted into 25% physical disability. The petitioner therefore could not attend the said proceedings. The respondent no.1 has drawn an inference that the petitioner is not interested in pursuing the said appeal and by order dated 18.12.2006 dismissed the appeal for want of prosecution. On 23.3.2007, the petitioner has filed the restoration application to restore the appeal which is delayed by 32 days and as such the petitioner has filed a separate application for condonation of delay. However, by order dated 22.2.2010, the Deputy Director of Land Record has also rejected the said application seeking condonation of delay. The learned counsel submits that even though, till the year 2007 the dates are given for hearing of the application seeking condonation of delay caused in filing the application for restoration of the appeal, thereafter the matter was taken in the year 2010 for hearing and by impugned order dated 22.2.2010, the Deputy Director of Land Record has rejected the application.

5. The learned counsel submits that the respondent no.4 by

its order dated 13.1.2015 sanctioned the Mutation Entry No. 90 and deleted the name of the petitioner from C.T.S. No. 581. Consequently, the petitioner has again approached the same authority by filing an appeal and withdrawn the same. The learned counsel submits that the petitioner had approached the said authority for want of legal knowledge for which the petitioner should not suffer. The matter pertains to immovable property and as such the petitioner's appeal is required to be considered on merits.

6. On careful perusal of the order dated 22.2.2010 passed by the Deputy Director of Land Record Aurangabad, it appears that the Deputy Director of Land Record has considered the continuous absence of the petitioner and his counsel, not only in attending the appeal which was dismissed, in default but even for the hearing of the application seeking condonation of delay caused in filing the application for restoration of the said dismissed appeal. It further appears that though the Deputy Director of Land Record has passed the said order dated 22.2.2010, the petitioner has approached to this Court in the year 2015 by filing the present writ petition. Thus the writ

petition suffers from delay and latches, for which no explanation is offered by the petitioner except that the petitioner had suffered injuries which resulted in physical disability to the extent of 25%. However, no details are given as to when the said incident had taken place and for near about 5 years, as to what prevented the petitioner to approach this Court as against the order passed by the Deputy Director of Land Record in the year 2010.

7. Thus considering the delay and latches in filing the writ petition, the writ petition is hereby dismissed. No costs.

8. In view of disposal of writ petition, civil application does not survive and is accordingly disposed of.

(V. K. JADHAV, J.)

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