

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

WRIT PETITION NO. 13777 OF 2018

Maslehuddin Wasefoddin
(Deceased through Lrs) & others ... Petitioners

Versus

The Additional Commissioner
Aurangabad & others ... Respondents

Mr. M.H. Shaikh, Advocate for the Petitioners.

Mr. S.B. Pulkundwar, AGP for Respondents no. 1 to 4.

Mr. U.D. Dalvi, Advocate for Respondent no. 6.

Coram : N.M. Jamdar, J.

Date : 12 December 2018

Oral Order :

1. By this petition, the petitioners have challenged the order passed by the Additional Commissioner, Aurangabad Division, Aurangabad, dated 28 August 2017, condoning the delay in filing the application under the Atiyat Enquiries Act seeking determination of succession of deceased - Gaus Mohiyoddin.

2. Petitioners have assailed the impugned order on the

ground that the delay of almost twenty five years and one month has been condoned without giving any reason. Reliance is placed on the decision of the Apex Court in the case of *M/s Real Estate Agencies Vs. Govt. of Goa and others*¹ stating that such an unreasoned order needs to be set aside.

3. It is not for correcting every error that the power of superintendence is to be exercised. Firstly, what is the context needs to be kept in mind. The starting point of limitation, which the petitioner has calculated, is from the date of death of original inamdar - Gaus Mohiyoddin. Till the date, the succession of the deceased has not been confirmed. The factum of succession needs to be determined and cannot be left undecided and, therefore, merely because succession is sought after a particular period of time, it cannot be urged that since there is delay, succession should never be decided at all.

4. Learned counsel for the petitioners sought to contend that the petitioners have also applied seeking succession of deceased Gaus Mohiyoddin and as the application is pending, another application should not have been filed. It is the case of the

1 AIR 2012 Supreme Court 3848

respondents that the petitioners are not seeking succession in respect of Gaus Mohiyoddin, but some other person. Be that as it may, the application which the respondents have filed, has not been allowed. According to the petitioners they are seeking succession in respect of Gaus Mohiyoddin, nothing stops the petitioners from asking the authorities to hear the application of the petitioners, and the application filed by the respondents together, so that the issue of succession can be decided conclusively after hearing the parties.

5 No interference is warranted in the impugned order. All the contentions of the parties are open to be considered by the authorities. Writ Petition is accordingly disposed of.

N.M. Jamdar, J.