

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

WRIT PETITION NO. 14078 OF 2017

**VIJESING JESA VASAVE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Shri D. S. Bagul
AGP for Respondent Nos. 1 to 4 : Shri B. A. Shinde
Advocate for Respondent No. 5 : Shri R. S. Wani

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 03rd JULY, 2018.**

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PER COURT :

1. The petitioner in this petition has putforth the following prayers at page No. 15, A) and B) :-

"A) Writ Petition may kindly be allowed.

B) By way of appropriate writ order or directions in the like nature.

(a) The Judgment and order dated 30/07/2013 passed by the Assistant Collector, Nandurbar in R.T.S. Appeal Bearing No. 43/2011.

(b) The judgment and order dated 20.11.2015 passed by the learned Additional Collector, Nandurbar in RTS appeal bearing Nos. 58 and 59/2013.

(c) The judgment and order dated 31.08.2017 passed by the Additional Commissioner, Nashik Division,

Nashik in RTS Revision bearing No. 52/2016 may kindly be quashed and set aside."

2. I have heard the learned advocates for the respective sides on 25/06/2018, 26/06/2018, 02/07/2018 and again today. The gravamen of the contentions of the petitioner is that a mutation entry bearing No. 116 carried out on 24/04/1998, has been subjected to challenge by the respondent herein, who has preferred a proceeding RTS Appeal No. 43/2011 before the Assistant Collector. Despite the delay, the mutation entry No. 116 has been cancelled and the mutation entry Nos. 15 and 94 have been sustained. The petitioner approached the Additional Collector in RTS Appeal Nos. 58 and 59/2013. By order dated 20/11/2015, the appeals preferred by the petitioner and respondent No. 6 were rejected. The petitioner further moved RTS Revision No. 52/2016 before the Additional Revisional Commissioner and by judgment dated 31/08/2017, the Revision Application has been rejected.

3. Grievance of the petitioner is that when a mutation entry of April-1998 was sought to be questioned in 2011, the

authority at the first instance should have considered, whether, there is any delay and until the delay was condoned, it could not have dealt with the merits of the matter. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of *Ragho Singh Vs. Mohan Singh, 2001 AIR (SCW) 2351* to contend that unless the issue of limitation is decided and without condoning the delay, the proceedings could not have been registered, much less decided on its merits. Reliance is also placed upon the judgment of this Court in the matter of *Madhao Vs. Jotiba, 2004(3) Mh.L.J., 1078*.

4. The learned advocate for the original applicant-respondent No. 5 herein contends that a fraud was played on her and the mutation entry No. 116 was surreptitiously taken in April-1998. Only when in 2011, she realized that she is deprived of her share in the property, that it dawned upon her that she has been defrauded and hence the proceedings were taken out immediately. Reliance is placed on Section 17 of the Limitation Act 1963 with regard to the effect of a fraud or mistake and on Article 110, which provides the limitation period of 12 years and the time for computing the limitation

period begins when the exclusion from a joint family property becomes known to the concerned party. On the basis of this provision, it is contended that there was neither any delay, nor the original applicant was required to make an application for condonation.

5. Shri Bagul strenuously submits that once the delay becomes visible, though may be condonable, an application for condonation of delay has to be filed. He then submits that as the delay caused in this matter has not been dealt with, the decision on the merits of the claim would not sustain.

6. I find that this is a peculiar case in hand. Three authorities have dealt with the merits of the issues raised by the original applicant. Issue of delay was never raised before the Assistant Collector. The said ground was taken up before the Additional Collector and the Additional Divisional Commissioner. Both have not found the said contention worth consideration and have dealt with only the merits of the claims of the parties.

7. In the light of the above, as three authorities have dealt with the merits of the case and have not dealt with the issue of limitation as there was no application for condonation of delay filed by the original applicant, I am of the view that this matter could be remanded to the Assistant Collector only to the extent of permitting the original applicant to prefer an application for condonation of delay.

8. The learned Advocate for the petitioner contends that after the original applicant Gimubai files an application for condonation of delay, the petitioner would restrict all objections to the extent of the delay. The learned Advocate for Gimubai submits that he would file an application for condonation of delay without prejudice to his contention that his case is clearly covered by Section 17 and Article 110 of the Limitation Act, 1963.

9. Considering the above, this petition is disposed off with the following directions considering the statements made :

(a) The original applicant Gimubai would file an

application for condonation of delay without prejudice to her rights before the Assistant Collector, within six weeks.

(b) Notice would be issued by respondent No. 4 to all non-applicants/respondents.

(c) Respondent No. 4 would decide the issue of condonation of delay considering the rival contentions of the parties and would also consider the contention of Gimbubai that there is no delay caused and her rights are not affected in view of the Section 17 and Article 110.

(d) In the event, he concludes that there is a delay and condones the same, the impugned orders on the merits of the rival claims dated 30/07/2013, 20/11/2015 and 10/03/2016, shall be restored.

(e) Until the decision by respondent No. 4 only on the issue of delay, the impugned orders on 30/07/2013, 20/11/2015 and 10/03/2016 on the merits of the matter, shall be kept in abeyance.

(f) Eventually if the petitioner suffers adverse orders on the issue of delay before all the lower authorities

who would restrict their decision only to the extent of the delay, he would be at liberty to take out a comprehensive proceedings as is permissible in law.

(g) In the event respondent No. 4 or any superior authority concludes that the delay does not deserve to be condoned then the orders on the merits of the rival claims would stand set aside keeping it open to Gimubai to resort to a remedy as his permissible in law.

(h) The parties shall maintain status-quo with regard to the revenue entries subject to the above.

(RAVINDRA V. GHUGE, J.)

shp/-