

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4682 OF 2014

Rajaram Gopal Nikam (decd) through heirs ... Petitioners
Vs.
Nivrutti Vithoba Nikam and others ... Respondents

Mr. V. B. Tapkir for Petitioners.
Mr. A. D. Sale for Respondents No.1 and 2.
Mr. A. B. Kadam, AGP for Respondents No.3 to 6-State.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 7, 2018

P.C. :

Heard Mr. Tapkir, learned Counsel for the petitioners, Mr. Sale, learned Counsel for respondents No.1 and 2 and Mr. Kadam, learned AGP for respondents No.3 to 6-State at length.

2. This Petition takes exception to the order dated 29.10.2013 passed by the Hon'ble Minister for State (Revenue) in appeal filed by respondents No.1 and 2. By the impugned order, the Hon'ble Minister allowed the appeal preferred by the respondents No.1 and 2.

3. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. One of the contentions raised by Mr. Tapkir is that appeal was instituted on 17.11.2007 challenging the Scheme that was finalized on 15.03.1978. He submitted that respondents No.1 and 2 did not file application for condonation of delay and despite that by the impugned order, the Hon'ble Minister allowed the appeal. He submitted that as there was delay in filing the appeal and no application was filed for

condonation of delay, the order passed by the Hon'ble Minister is without jurisdiction and as such, is liable to be set aside.

5. At the request of Mr. Sale, the matter was adjourned so as to enable him to take instructions as to whether along with the appeal, respondents No.1 and 2 had filed application for condonation of delay. Upon taking instructions, he states that no application was filed for condonation of delay.

6. Mr. Kadam states that Mr. Vinod Vaze, Section Officer, Revenue and Forest Department is present in the Court along with record. After perusing the record, Mr. Kadam also confirms that no application for condonation of delay was filed by respondents No.1 and 2.

7. Mr. Sale further states that within 4 weeks from today, respondents No.1 and 2 will file application for condonation of delay and serve copy on the other side during this period. Mr. Tapkir submits that petitioners will file reply within 4 weeks from service of the application for condonation of delay.

8. In view thereof, the impugned order dated 29.10.2013 is set aside. Appeal filed by the respondents No.1 and 2 is restored to the file of the Hon'ble Minister (Revenue). Respondents No.1 and 2 shall file application for condonation of delay within 4 weeks from today and serve copy on the other side during this period. The petitioners shall file reply to the application for condonation of delay within 4 weeks from receipt of the application. The Hon'ble Minister will first decide the application for condonation of delay in filing the appeal. All contentions of the parties in that regard are expressly kept open. Subject to the outcome of the application for condonation of delay, the Hon'ble Minister will proceed to decide the appeal on its own merits and in accordance with law. Rule is made absolute accordingly.

(R. G. KETKAR, J.)