

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 7582 OF 2017****Smt.Johrabi Munir Saudagar & Ors.****..... Petitioners****VERSUS****State of Maharashtra & Ors.****..... Respondents**

Mr.Jitendra B.Mishra for the Petitioners.

Mr.S.H.Kankal, A.G.P. for the State – Respondent no.1.

Mr.Atul Damle, Senior Advocate, a/w. Mr.Ivor P. D'cruz, Mr.Rajesh Machado and Ms.Payal Kundu for the Respondent no.2.

CORAM : R.D. DHANUKA, J.**DATE : 14th JUNE, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 23rd February,2017 passed by the Additional Collector, Konkan Division allowing appeal (Appeal/Desk/RTS/437/16) and setting aside the order passed by the Deputy Collector condoning the delay in favour of the petitioners.

2. Mr.Mishra, learned counsel for the petitioners submits that the order allowing the application for condonation of delay in favour of the petitioners was in appeal filed under section 247 of the Maharashtra Land Revenue Code, 1966 filed by the respondent no.2.

3. Mr.Damle, learned senior counsel for the respondent no.2 invited my attention to section 257 of the Maharashtra Land Revenue Code,

1966 and would submit that the order passed by the learned Deputy Collector relating to the mutation entry challenged by the revision under section 257 was before the same officer i.e. the Additional Collector, Konkan Division. The nomenclature of the proceedings i.e. instead of appeal it could have been revision application and not under section 247 but under section 257 of the Maharashtra Land Revenue Code, 1966. He submits that the learned Commissioner has rendered findings of fact and has rightly entertained the said proceedings filed by the respondent no.2.

4. It is submitted by the learned senior counsel that the petitioners had already filed a civil suit before the Bombay City Civil Court (SC/1467/2008) inter alia praying for seeking permanent injunction against the respondent no.2 herein in respect of the suit property. By a judgment and decree dated 18th June, 2010, the said suit came to be dismissed. The appeal filed by the said judgment and decree filed by the petitioners herein is pending before this court.

5. Insofar as the submission of Mr.Mishra, learned counsel for the petitioners that the respondent no.2 ought to have filed a revision application and not an appeal under section 247 is concerned, it is not disputed by the learned counsel for the petitioners that even if the revision would have been filed, the same would have been filed before the same Additional Commissioner, Konkan Division. It is not in dispute that the order allowing condonation of delay passed by the Deputy Collector was impugned by the respondent no.2. The learned Additional Collector, Konkan Division has after hearing both the

parties had passed the impugned order.

6. Be that as it may, the learned Additional Commissioner in the impugned order has not determined the issue of title in respect of the suit property. If any civil suit is filed by the petitioners for adjudication of the title, the same can be considered on its own merits without being influenced by any observations made in the impugned order dated 23rd February, 2017.

7. I do not find any infirmity with the said order dated 23rd February, 2017 passed by the Additional Collector, Konkan Division. Writ petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]