

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913. WRIT PETITION NO. 8690 of 2017

Hanumant S/o Vishwanath Sagre
age 65 years occupation nil
R/o Shivni (Bk) AUSA District Latur
through power of attorney holder
Komalbai W/o Hanumant Sagre,
age 60 years occupation household
R/o Shivni (Bk) AUSA Dist. Latur.

...Petitioner

VERSUS

1. Somnath S/o Bhausaheb Patil, age 45 years,
2. Pravin S/o Ramrao Ghadge, age 43 years (deleted),
3. Vaijanath S/o Bhagwat Sagare, age 42 years,
4. Bhagwat S/o Bhagwantrao Sagare, age 44 years,
5. Shivaji S/o Shankarrao Patil, age 40 years,
6. Laxman S/o Shankarrao Patil, age 41 years,
7. Gunwanth S/o Laxman Patil, age 46 years,
8. Amarnath S/o Laxman Patil, age 44 years,
9. Bhadrinath S/o Laxman Patil, age 48 years,
10. Janardhan S/o Shesherao Kulkarni, age 49 years,
11. Babasaheb S/o Shesherao Kulkarni, age 49 years,
12. Mhaling S/o Jeevan Thate, age 50 years,

All agriculturists by occupation and R/o Sailu (Bk)
Taluka and District Latur.

13. The Additional Collector, Latur District Latur
14. The Additional Commissioner, Aurangabad.

...Respondents

Mr. M.L. Dharashive, Advocate for petitioner
Mr. K.P. Rodge, Advocate, holding for Mr. P.G. Rodge, Advocate
for respondent No.3
Mr. G.O. Wattamwar, Asstt. Government Pleader for respondents
No.13 and 14 .

CORAM : SUNIL P. DESHMUKH, J.

DATE : 25th January, 2019

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally with consent.
2. Aggrieved by order passed by the Collector, Latur, dated 17th December, 2013 and confirmation of the same under order of the Additional Commissioner, Aurangabad, dated 7th September, 2016, where-under request for condonation of delay in filing appeal against order passed by the Sub-Divisional Officer, Latur, stands rejected, original appellant/petitioner is before this court.
3. After hearing learned counsel for the parties, it appears that there is delay of seven months and five days in approaching the appellate authority after decision of the Sub-Divisional Officer.
4. The matter relates to granting of way pursuant to section 143 of the Maharashtra Land Revenue Code under orders of Tahsildar. Petitioner being aggrieved by order of Tahsildar, had

approached the Sub-Divisional Officer. The Sub-Divisional Officer had dismissed his appeal, against which appeal had been sought to be preferred pursuant to provisions of Maharashtra Land Revenue Code. However, it had been delayed by seven months five days, as referred to above.

5. Petitioner submits that he was not aware of order of the Sub-Divisional Officer passed on 29th April, 2011 and while after realizing the same, subsequently, he had suffered health problems and could not approach advocate concerned with a view to file an appeal. Delay had not been deliberate and intentional and, as such, requested to condone the delay. The Collector had observed that except affidavit of petitioner, no other evidence in respect of cause of delay has been adduced and has rejected request for condonation of delay. Additional Commissioner having subscribed to the view of the Collector, has rejected the revision.

6. Perusal of order of the Collector shows that despite repeated opportunities, present respondents or their lawyer had not resisted the request for condonation of delay and order has been passed refusing to condone delay. In the circumstances, although learned counsel for respondents purports to stiffly resist the application, he is not in a position to dispute the fact about there being no resistance for condonation of delay before the collector. Further having regard to decisions of the Supreme Court in the case of *Collector, Land Acquisition, Anantnag Vs. M.S.T. Katiji*,

reported in *AIR 1987 Supreme Court 1553 and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur, Nafar Academy and others*, reported in (2013) 12 SCC 649, culling out broad principles in respect of condonation of delay, it appears to be expedient to condone delay in order to have an opportunity to the petitioner to contest his case. Inconvenience caused to the other-side can be compensated by payment of costs.

7. Thus, the writ petition is allowed. Application for condonation of delay filed by present petitioner before the collector stands allowed, subject to payment of costs of Rs. 1200/- (Rs. one thousand two hundred only).

8. Costs be deposited with the appellate authority-Collector, Latur, within a period of four weeks from the date of receipt of writ of this order.

9. Appeal before the collector is expedited.

10. Rule made absolute accordingly.

11. Writ petition is disposed of.

(**SUNIL P. DESHMUKH**)
JUDGE.