

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO. 143 OF 2011
IN
WRIT PETITION NO. 3421 OF 2010
WITH
CIVIL APPLICATION NO. 4361 OF 2011

Khanderao S/o Narayanrao Undegaonkar,
 Age : 75 Years, Occ. Pensioner,
 R/o. Bus Stand Road, Parbhani.
 Dist. Parbhani.

.. APPELLANT

VERSUS

1. Renukadas S/o Balkrishnarao Deshpande,
 Age : 42 Years, Occ. Service,
 2. Yamunabai W/o Balkrishanrao Deshpande,
 Age : 80 Years, Occ. Household,
 3. Durga D/o Balkrishnarao Deshpande,
 Age : 37 Years, Occ. Household,
 4. Kshama D/o Balkrishnarao Deshpande,
 Age : 34 Years, Occ. Service
 All resident of Kranti Chowk,
 Parbhani
 5. Superintendent of Land Record,
 Parbhani, Dist. Parbhani
- .. RESPONDENTS

...
 Advocate for Appellant : Mr. Sachin Deshmukh
 Advocate for respondent Nos. 1 to 4 : Mr. B.S. Shinde
 A.G. P for Respondent No.5 : Mr. A.B. Chate
 ...

CORAM :T.V. NALWADE AND
 SUNIL K. KOTWAL ,JJ.
 DATE : 14-01- 2019.

JUDGMENT(PER T.V. NALWADE, J] :-

The proceeding is filed to challenge the order made by the learned single Judge of this Court in Writ Petition No. 3421 of 2010.

2. Heard the learned counsel for the appellant.

3. Nobody turned up for the respondents.

4. Orders made by the City Survey Officer in original proceeding and appellate proceeding were challenged in the Writ Petition by the present appellant. The order was of condonation of delay of 26 years caused in filing application for making correction in the record of city survey. The learned counsel for the appellant submitted that for condonation of delay not only sufficient cause is required to be shown but something is required to be made out on merits. He submitted that for making sufficient cause, there was no sufficient record with the present respondent/original applicant and the record like certificate or contention that the father of the applicant was suffering from Cancer and his mother was also suffering from ailment could not have explained the delay of 26 years. The learned counsel for the appellant placed reliance on the observation made by this Court in the case reported in the year 2014 **All Mh.L.J. Page No.331 (Suresh Vs. State of Maharashtra and Others).**

5. In the aforesaid case, the facts were different and the proceeding was filed for the modification and correction of the finalization of

consolidation scheme and in that context the prayer for condonation of delay was considered. In the present matter, after the survey of the properties by City Survey Office, Parbhani the record was prepared by City Survey Office. It can be said that prior to creation of record of city survey like property card and city survey map, there must have been other record regarding previous numbers given to the same properties. Further the record available shows that there is sale deed with the respondent in respect of the property bearing city survey No. 2218. The present appellant is owner of CTS No. 2217. It is contention of the respondent, owner of the city survey No.2218 that some mistake is committed and due to that more area is shown in adjacent city survey number than the area actually possessed and owned by the adjacent owner and less area is shown in the city survey record of CTS No.2218. Though it is true that at the time of general survey the notices are given and measurements are taken in the presence of the parties, the possibility of committing mistake cannot be ruled out with regard to the measurement noted during the survey. It is with regard to general survey and the mistake committed during the general survey can be corrected by the authority, if the mistake is proved to the satisfaction of the survey office. In any case, such survey and the area shown during such survey does not confer any title on the basis of only Sanad prepared after making the survey. In view of this circumstance, this Court holds that the Superintendent of land Record could have

entertained the matter by condoning such huge delay to ascertain as to whether any mistake is committed during the general survey. In view of this circumstances, this Court holds that learned single Judge of this Court has not committed any error in dismissing the writ petition and enabling the survey officer to consider the contention that there is some mistake.

6. The learned senior counsel for the appellant submitted that there was also question of tenability of the proceeding before the Superintendent of Land Record. The survey is made under the supervision of the land record officer and he is proper authority who can give directions regarding survey and so it cannot be said that he ought not to have entertained the proceeding. This Court sees no reason to interfere the order made by the learned single Judge of this Court.

7. In the result, appeal stands dismissed. In view of dismissal of appeal, Civil Application also stands disposed of.

[SUNIL K. KOTWAL]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/