

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

WRIT PETITION NO. 6966 OF 2017
WITH
CIVIL APPLICATION NO. 2595 OF 2019

Kanchanbai w/o Baburao Sukalkar
Age : 45 years, Occu. Household
and Agri., R/o Zara, Tq. Kalamnuri,
Dist. Hingoli .. Petitioner

versus

1. Additional Commissioner,
Aurangabad
2. The Additional Collector,
Hingoli,
3. The Sub Divisional Officer,
Kalamnuri, Tq. Kalamnuri,
Dist. Hingoli
4. Hiranman s/o Purbaji Kakde,
Age : 85 years, Occu : Agri.,
R/o Zara, Tq. Kalamnuri,
Dist. Hingoli, died,
through legal representatives:
 - 4-a] Sarasota Hiranman Kakde,
Age : 60 years, Occu. Household,
R/o At Zara, Tq. Kalamnuri,
Dist. Hingoli,
 - 4-b] Lilabai Rangrao Tadar,
Age : 55 years, occu. Household,
R/o At Zara, Tq. Kalamnuri,
Dist. Hingoli,
 - 4-c] Parbatibai Vishwnath Solanke,
Age : 53 years, Occu: Household,
R/o At Borgaon, Post Niwanga,
Tq. Hadgaon, Dist. Nanded
 - 4-d] Mandabai Vinayak Pawar,
Age : 50 years, Occu. Household,
R/o Patharad, Tq. Hadgaon,
Dist. Nanded

- 4-e] Kanchanbai Baburao Sukalkar,
Age : 48 years, Occu: Household,
R/o At Zara, Tq. Kalamnuri,
Dist. Hingoli
- 4-f] Gopal Hiranman Kakde,
Age : 36 years, occu: Agril.,
R/o At Zara, Tq. Kalamnuri,
Dist. Hingoli
- 4-g] Vishwanath Hiranman Kakde,
Age : 36 years, Occu: Agril.,
R/o At Zara, Tq. Kalamnuri,
Dist. Hingoli
- 4-h] Pushpabai Ramesh Jadhav,
Age : 34 years, Occu: Agril.
R/o At Sandas, Tq. Kalamnuri,
Dist. Hingoli
- 4-i] Shantabai Balu Magar,
Age : 38 years, Occu : Agril.,
R/o At Kalamnuri, Tq. Kalamnuri,
Dist. Hingoli

.. Respondents

Mr Laxman H. Kawale, Advocate holding for Mr Kamlakar J. Suryawanshi, Advocate for petitioner
Mr G. O. Wattamwar, Assistant Government Pleader for respondents no. 1 to 3
Mr Avinash S. Khedkar, Advocate for respondent 4-a, 4-f, 4-h, 4-i and 4-g.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 13th February, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for parties finally by consent.
3. There is no particular dispute on material factual aspects as far as present writ petition is concerned about that the

mutation in favour of present petitioner had been posed with challenge before sub divisional officer and it is being claimed by petitioner, the same is belated. Delay has been condoned by the sub divisional officer.

4. The petitioner had preferred appeal before additional collector against aforesaid condonation of delay and the same had been dismissed, observing that the appeal against order of condonation of delay is not maintainable having regard to section 252 (a) of the Maharashtra Land Revenue Code, 1966 (MLR Code). In the circumstances, the matter was carried in further appeal / revision before the commissioner and the commissioner as well had endorsed the reasoning by additional collector.

5. Section 252 of the MLR Code reads as under :

" 252. No appeal shall lie from an order_
(a) admitting an appeal or an application for
review under section 251;
(b) rejecting an application for revision or review; or
(c) granting or rejecting an application for stay. "

6. Having regard to section 252 (a), it appears that appeal is not provided against admission of appeal or an application for review under section 251 of the MLR Code. It thus appears that appeal against decision of condonation of delay is not precluded.

7. Having regard to the provisions under the MLR Code as aforesaid, it appears that the orders rendered by the additional collector and the additional commissioner are unsustainable. The same are accordingly set aside. The appeal of the petitioner is restored with the additional collector to be proceeded with in accordance with law.

8. All points are kept open for parties.

9. Rule made absolute in aforesaid terms.

10. Writ petition is accordingly disposed of.

11. Civil application, in view of disposal of writ petition, does not survive and stands accordingly disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-