

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12760 OF 2018

Sayyed Wahed Maheboobsab & another Petitioners

Versus

The State of Maharashtra and others Respondents

Mr.S.V. Warad advocate for the petitioners
Mr.S.W. Munde, AGP for Respondent Nos.1 to 6
Mr. S.S. Deshmukh advocate for respondent No.7

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CORAM : **RAVINDRA V. GHUGE, JUDGE**

(Date : 6th MARCH, 2019)

PER COURT :-

1 This Court (Coram: N.M. Jamdar, J) had heard the learned Advocates on 27.11.2018 and had passed the following order:-

" Heard the learned counsel for the petitioners.

2. The petitioner has challenged the order dated 21 October 1995 and 25 July, 2018 passed by the Minister. Though, these two orders are unconnected, they are being clubbed together in one prayer clause.

3. As regard the challenge to the order dated 21 October, 1995 is concerned, it is informed that the petitioner has filed an appeal and sought condonation of

delay of 2977 days. It appears that without condonation of delay, the Deputy Director of Land records issued an order of carrying out the re-measurement. Aggrieved thereby, the respondent filed a revision before the Minister. The learned Minister holding that without condonation of delay, such directions ought not have been issued.

4. As regard the order dated 21 October, 1995 since the statutory appeal is filed, it is not necessary to interfere with the same. Even, that portion of the order of the learned Minister under the measurement directed by the Deputy Director of Land Records is set aside, need not be interfered. The learned counsel for the petitioners has made a limited grievance regarding the observations made in the impugned order by the learned Minister that the order dated 21 October, 1995 is confirmed. According to the petitioners, confirmation of this order would make the appeal pending infructuous.

5. Prima facie, since the statutory appeal is provided and is pending, the appropriate course of action would be to direct disposal of the application of condonation of delay and the appeal and all the arguments of the parties would be considered in the said appeal. However, before this course of action is considered, notice will

have to be given to the private respondents. Accordingly, issue notice to the respondent No.7, returnable on 4 January, 2019.

6. In the meanwhile, the learned Additional Government Pleader will take instructions as to within how much time the authorities can dispose of the application for condonation of delay/appeal which is pending since the year 2011.

7. If any changes in revenue records are made, in the meanwhile, they will be subject to outcome of this writ petition. "

2 I have considered the submissions of the learned Advocates for the respective sides and have perused the record available.

3 It is obvious that, when the application for condonation of delay, in filing the Appeal, preferred by the petitioners, was pending before the competent forum, the learned AGP is unjustified in stating in the affidavit in reply that, because the Honourable Minister has passed the impugned order, the said appeal is rendered infructuous. If that be the argument, then the impugned order of the Honourable Minister will have to be set

aside and the position will have to be restored to the stage at which the application for condonation of delay is pending; because a litigant cannot be deprived of a right/opportunity in pursuing a statutory remedy, which is permissible in law. .

4 Learned Advocate for the respondents submits that, *status-quo* as on date, may be ordered and all contentions of the parties be left open, before the concerned authority, which would be deciding the application for condonation of delay.

5 Learned AGP submits, on instructions, that the competent authority would decide the fate of the application for condonation of delay, filed by the petitioners, within six months. I find this time period to be a bit large.

6 In view of the above, this petition is disposed off, with a direction that, the impugned order of the Honourable Minister dated 25.7.2018 shall be kept in abeyance.

7 All the litigating parties would appear before the Deputy Director of Land Records, Aurangabad on 27.3.2019 at 11 a.m.. Formal notices need not be issued.

8 After the competent authority hears all the litigating sides,

by giving them a reasonable opportunity, he shall decide the application for condonation of delay, on its own merits. Needless to state, the impugned order of the Honourable Minister would lose its' efficacy after the concerned authority decides the proceedings. It is expected that, the concerned authority would decide the application for condonation of delay within eight weeks from the date of appearance.

9 All the parties shall maintain *status-quo* during the pendency of the said proceedings.

**(RAVINDRA V. GHUGE),
JUDGE**