IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5203 OF 2018

Elias Gabriel Rodrigues ..Petitioner

versus

Kaitan Alias Cajitan Gabriel Rodrigues & Ors. ..Respondents

- Mr. V. S. Kapse, Advocate for Petitioner.
- Ms. M. S. Srivastava, AGP for State / Respondent Nos.7 and 8.

CORAM : C. V. BHADANG, J.
DATE : 10th DECEMBER, 2019

P.C. :

. The challenge in this petition is to the order dated 7/11/2017 passed by the Revenue Commissioner Kokan Division, Mumbai in RTS Application No.695/2016. At the outset, it is necessary to note that although vide prayer clause 13(a), the petitioner has made a prayer for condonation of delay of 148 days in filing the present petition, learned counsel for the petitioner states that said prayer is made inadvertently and obviously is not competent.

2. Be that as it may, by the impugned order dated 7/11/2017, the learned Commissioner has refused to entertain an appeal under section 257 of the Maharashtra Land Revenue Rule 1966 (Act for short) challenging the

order passed by the Additional Collector Palghar on 31/5/2016 dismissing an appeal which in turn challenged the order dated 8/1/2016 passed by the SDO. The petitioner had approached the Sub-Divisional Officer challenging mutation entry No.11358 recorded on 18/8/1965 in respect of the suit field. By virtue of the said entry the name of KaitanGabru Manu Ludrik alias Rodrigues has been recorded in the revenue record pertaining to said property. The SDO has refused to entertain the challenge, on the ground that the challenge is belated, being more than 40 years after the impugned order is passed. The said order passed by the SDO has been confirmed by the Additional Collector as well as the Commissioner.

3. I have heard learned counsel for the petitioner and learned counsel for the respondent Nos.7 and 8. With the assistance of learned counsel for the parties, I have gone through the record.

4. It is contended on behalf of petitioner that Kaitan Manu Ludrik and Gabru Manu Ludrik @ Rodrigues were real brothers and were protected tenants in respect of the suit field which was owned by Babu Govind Naik. In pursuance of order passed by the tenancy authorities under section 32(G) of the Bombay Tenancy Agricultural Land Act (Act for short) both of them were declared as deemed purchasers. Learned counsel has pointed out to a certificate dated 20/11/1964 issued under section 32(M) of the Act which

according to the learned counsel is issued jointly in the name of Kaitan and Gabru Rodrigues, in as much as during the pendency of the proceedings under section 32(G) of the Act, the statement of Gabru Manu Ludrik came to be recorded by Tenancy Tehsildar Vasai. It is contended that as the parties were staying together and the land was cultivated jointly the fact that the mutation entry was taken only in the name of Kaitan was not noticed which has resulted into the delay.

5. I have considered the submissions made and I do not find that any cause for interference is made out. Authorities below have noticed that the petitioners have not challenged the order of the Tenancy Tehsildar under section 32(G) nor certificate under section 32(M) of the Act and it is only the mutation entry No.11358 dated 18/8/1965 which is sought to be challenged for the first time before the SDO in the year 2015. Thus, there is substantial delay in challenging the entry and it cannot be said the same is satisfactorily explained on the ground that the parties were staying together and the land was being cultivated jointly.

6. The learned counsel for the petitioner points out that it was not necessary for petitioner to challenge the certificate under section 32(M), in as much as the certificate indeed stands jointly in the name of Kaitan Ludrik and Gabru Ludrik. The contention is that only the mutation entry is not taken in consonance with certificate under section 32(M) of the

Act. He also points out that the petitioner has filed Civil Suit No.129/2015 which is pending before Civil Judge Junior Division at Vasai.

7. It is now well settled that mutation entry by themselves can neither confer nor take away rights. It would be further significant to note that the decision of the Civil Court in this regard, would be binding between the parties, as also on the revenue authorities.

8. Thus, in the event the petitioner succeeds in the civil suit, it is obvious that the mutation entry will have to confirm to the order of the Civil Court. In that view of the matter, I decline to entertain the petition, which is accordingly dismissed with no order as to costs. It is made clear that this Court has not expressed any opinion on the merits of the controversy.

(**C. V. BHADANG, J.)**