

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO. 4500 OF 2019

SANDEEP S/O PANDITRAO DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Tele D. V.
AGP for Respondent Nos. 1 to 3 : Mr. A. M. Phule
Advocate for Respondent No.4 : Mr. Kumar Gaurav M. More

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CORAM : V. K. JADHAV, J.
DATED : 09th JANUARY, 2020

PER COURT:-

1. Heard finally by consent at admission stage.
2. The petitioner is the original respondent in the application seeking condonation of delay filed by respondent no.4 herein before the Additional Collector, Osmanabad. The matter pertains to the construction of water course through the land belonging to the other person. In the year 2011, the petitioner had filed an application before the Tahsildar, Washi seeking permission for construction of water course through the lands belonging to several persons, including the respondent. Learned Tahsildar, Washi, by order dated 23.02.2011, has granted permission to the petitioner,

on certain conditions, to construct water course from the land Survey No.452 belonging to the respondent. In the month of March 2011, the petitioner has constructed the water course/pipeline by following the conditions as imposed by the learned Tahsildar. The respondent has however filed revision against the said order in the year 2018 wherein he filed a separate application seeking condonation of delay. Learned Additional Collector, by the impugned order dated 21.01.2019, allowed the said application and condoned the delay. Hence this Writ Petition.

3. Learned counsel for the petitioner submits that the petitioner has obtained permission for laying the pipeline through the land of the respondent in the year 2011 and the learned Tahsildar, by order dated 23.02.2011, has granted the said permission with certain conditions. After following the said conditions, the petitioner has laid down the pipeline through the land Survey No.452 belonging to the respondent. However, the respondent, after a gap of seven years, has filed revision before the Additional Collector against the said permission granted by the learned Tahsildar. Learned counsel submits that the respondent has not explained satisfactorily the inordinate delay caused in filing the

said revision. Learned counsel submits that it has been simply mentioned in the application that a dispute pertaining to said land was going on between the respondent/revision petitioner and his son Shashikant and as a result thereof, the revision could not be preferred within time. Learned counsel submits that no documents are placed pertaining to the said dispute. In the revision itself, the respondent has accepted that his son Shashikant is the owner in possession of the land Survey No. 452 and he himself is the caretaker. Learned counsel submits that without there being any express authority from the owner of the land Survey No. 452 to prefer a revision, though he may be the son of the respondent, the respondent herein has preferred revision with a separate application for condonation of an inordinate delay of seven years. Learned counsel submits that the Additional Collector has mechanically condoned the said delay. Learned counsel submits that in terms of the amended provisions of Section 257 of the Maharashtra Land Revenue Code, 1966, the revision should have been filed within a period of five years and the delay thereafter, if any, can be condoned only for a period of six months. Learned counsel submits that this revision has been preferred after a period of seven years and as such, the delay application ought to have

been rejected by the learned Additional Collector on this ground alone.

4. Learned counsel for respondent no.4 submits that the learned Tahsildar, in the year 2011, has granted permission without giving notice to all the interested persons which is in violation of Section 49 of the Maharashtra Land Revenue Code, 1966. There is delay occurred in filing the revision application as a dispute pertaining to the said land was going on between the respondent and his son Shashikant. Learned counsel submits that considering the said aspect, the Additional Collector has rightly condoned the delay. There is no substance in the Writ Petition and the Writ Petition is thus liable to be dismissed.

5. I have also heard learned AGP for the respondent State.

6. On careful perusal of the impugned order, it appears that even the learned Additional Collector has not bothered to find out as to the actual delay caused in filing the revision application. Even though there is inordinate delay of seven years in filing revision application, the learned Additional Collector has considered the

same as delay of three years only for the reason that the present respondent has mentioned the said period as the period of delay in his application. Apart from this, in the year 2011 the learned Tahsildar has granted permission to the petitioner herein for laying down pipeline through the land survey no. 452 belonging to the son of the respondent with certain conditions. There is no whisper in the application seeking condonation of delay or even in the revision application that the petitioner has not followed the said conditions. Apart from the same, it appears that the respondent has not satisfactorily explained the inordinate delay caused in filing the revision application. Furthermore, in terms of the amended provisions of Section 257 of the Maharashtra Land Revenue Code, 1966, delay can be condoned only for six months if the revision is filed after the period of limitation of five years is over. Apart from this, the respondent has approached the Additional Collector only in the capacity as caretaker and in fact, his son Shashikant is the owner in possession of the land Survey No. 452 (Gat Nos. 552 and 559). However, learned Additional Collector has not considered the same. In view of the same, I am inclined to set aside the impugned order passed by the Additional Collector. Hence the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 21.01.2019 passed by the Additional Collector, Osmanabad in the application bearing No.2018/RTS/59/2019 is hereby quashed and set aside.
- III. The application bearing No. 2018/RTS/59/2019 filed by respondent no.4 before the Additional Collector, Osmanabad is hereby rejected.
- IV. The Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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