

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6687 OF 2019

Avinash Dyaneshwar Dhamale & Anr. ... Petitioners
Vs.
State of Maharashtra & Ors. ... Respondents

Mr. Uday P. Warunjikar, for the Petitioners.

Mr. A. B. Kadam, AGP for Respondent No. 1.

Mr. A. P. Kulkarni a/w S. G. Karandikar, for Respondent Nos. 5 to 17.

CORAM : C. V. BHADANG, J.

DATE : FEBRUARY 5, 2020

PC :

1. This petition can be disposed of on a short count. The learned Tahsildar by an order dated 9th October, 2012 had directed the correction of the revenue record by entering names of the Petitioners in the record of rights of the subject property. According to the private respondents, this order was passed behind their back. The private respondents sought to challenge the said order before the Sub-Divisional Officer (for short the "SDO"), in which there was a delay of 1 year and 6 months. The learned SDO by an order dated 16th October, 2016 refused to condone the delay, which order was confirmed by the learned Additional Collector on 26th February, 2018. Feeling aggrieved, the private respondents approached the learned

Additional Commissioner. The learned Additional Commissioner by impugned order dated 6th May, 2019 not only condoned the delay but has also allowed the substantive appeal filed by the private respondents, thereby setting aside the original order dated 9th October, 2012 passed by the learned Tahsildar.

2. Mr. Warunjikar, the learned counsel for the Petitioners submitted that in an appeal challenging the order of refusal to condone the delay, it was not open for the Additional Commissioner to have entertained the appeal on merits. It is pointed out that the order dated 9.10.2012 passed by the Tahsildar was not subject matter of challenge before the Additional Commissioner.

3. The learned counsel appearing for the private respondents submitted that the order passed by the Mamalatdar dated 9.10.2012 is ex-facie not sustainable, as it is passed behind the back of the private respondents. The learned counsel has also referred to the consent decree passed by this Court in Second Appeal No. 82 of 1980. The learned counsel for the private respondents submitted that in the event this Court is inclined to set aside the order passed by the Additional Commissioner, the original application filed by the Petitioners may be remitted back to the learned Tahsildar, which is opposed by the learned counsel for the Petitioners.

Vinayak
P.
Halemath

Digitally signed
by Vinayak P.
Halemath
Date:
2020.02.07
16:21:49
+0530

4. On hearing the learned counsel for the parties, it does appear that the order dated 9th October, 2012 was not subject matter of the challenge before the learned Additional Commissioner. The only issue before the Additional Commissioner was whether the delay, in challenging the order passed by the Mamalatdar, could have been condoned. I have gone through the order passed by the learned Additional Commissioner, and in my considered view, the ends of justice would be met, if part of the order condoning the delay is maintained and the substantive appeal filed by the private respondents before the SDO, is directed to be heard on its own merits. In the result, following order is passed.

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order to the extent of condoning the delay is hereby maintained, and the part of the impugned order setting aside the order dated 9th October, 2012 passed by the Tahsildar is hereby set aside.
- (iii) The delay caused in filing the appeal before the SDO stands condoned.
- (iv) The learned SDO shall hear and decide the appeal, as expeditiously as possible, and in any case within six

months from the date receipt hereof, on its own merits and in accordance with law .

- (v) Parties are directed to appear before the SDO on 24th February, 2020.
- (vi) Rival contentions of the parties, on merits, are left open.
- (vii) In the circumstances, there shall be no order as to costs.
- (viii) The petition is disposed of in the aforesaid terms.

Sd/-
C. V. BHADANG, J.