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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 9944 OF 2018

Pramod Vishnu Meher & Ors. ... Petitioners
Vs.
Smt. Shashikala B. Meher & Ors. ... Respondents

Mr. S. A. Sawant i/b A. P. Deshmukh, for the Petitioners.

Mr. P. M. Arjunwadkar, for Respondent Nos. 1 and 2.

Ms. Neeeta Karnik, for Respondent Nos. 6 to 10.

Mr. A. P Vanarse, AGP for Respondent Nos. 11 to 13.

CORAM : C. V. BHADANG, J.

DATE : JANUARY 15, 2020

PC :

1. Heard learned counsel appearing for the respective parties.

The challenge in this petition is to the order dated 5th July, 2018 passed by Respondent No. 11, Sub-Divisional Officer, Palghar, thereby condoning a delay in filing an appeal, challenging three mutation entries, viz. Mutation Entry No. 677 dated 11th February, 1994, Mutation Entry No. 915 dated 30th November, 2005 and Mutation Entry No. 1518 dated 8th May, 2015. Insofar, first entry is concerned, the delay is of over 23 years.

2. Learned counsel for the Petitioners placing reliance on the decision of the Supreme Court in the case of **Balwant Singh Vs. Jagdish**

Singh & Ors.¹ has strenuously urged that such a gross delay could not have been condoned, without the Respondents having demonstrated sufficient cause. Reliance in this regard is also placed on the decision of this Court in the case of **Manjulabai Bhondave & Ors. Vs. Ramchandra Bhondave & Ors.**² in order to submit that the delay could not have been condoned. Learned counsel has taken me through the application for condonation of delay in order to demonstrate that the allegations do not at all make out any sufficient cause for condoning the delay. It is submitted that by condoning the delay, valuable rights of the Petitioners, which have accrued to them on the basis of impugned mutation entries have been prejudicially affected.

3. Learned counsel for Respondent Nos. 1 and 2, placing reliance on the decision of this Court in the case of **Ramanlal K. Bakliwal & Anr. Vs. Niyaj Md. Khan Akhil Khan & Ors.**³ has submitted that impugned order passed by the Sub-Divisional Officer condoning the delay and admitting the appeal is referable to Section 251 of the Maharashtra Land Revenue Code, 1966, which is revisable before the State Government. He, therefore, submits that Petitioners, instead of taking recourse to an alternate efficacious remedy, cannot approach this Court under Article 227 of the Constitution of India. The learned counsel

1 2010 AIR (SC) 3043

2 Second Appeal No. 522 of 2014, dated 18th February, 2016

3 2004 (2) ALL MR 49

submits that Respondents have made out case for condonation of delay.

4. Learned counsel for Respondent Nos. 6 to 10 has supported the Petitioners in challenging the impugned order.

5. I have considered the circumstances and submissions made. It, indeed, appears that order of condonation of the delay and the subsequent admission of appeal under Section 251 of the Code is revisable before the State Government under S. 257 read with 259 of the Code, as has been held by this Court in ***Ramanlal Bakliwal*** (*supra*).

6. Learned counsel for Respondent Nos. 1 and 2 states that Respondent Nos. 1 and 2 shall not raise any objection about maintainability of the revision application, if filed by the Petitioners. The statement so made is accepted.

7. Considering the fact that, Petitioners have such a remedy, as held by this Court, it is appropriate for the Petitioners to approach revisional authority against the impugned order. In the circumstances, it may not be necessary to go to the reliance placed by the Petitioners, which essentially turns up on the merits of the impugned order on condonation of delay. In the result, following order is passed.

ORDER

(i) Liberty is granted to the Petitioners to approach the revisional

authority within a period of three weeks from today.

- (ii) If such a revision is filed by the Petitioners, it shall be decided by the revisional authority on its own merits and in accordance with law within a period of 12 weeks. While entertaining the revision, the revisional authority shall have due regard to Sections 5 and 14 of the Limitation Act, on account of pendency of this petition before this Court from 30th August, 2018 till today i.e. 15th January, 2020. Rival contentions of the parties on merits are left open.
- (iii) Ad-interim relief operating in this petition shall continue to operate during pendency of the revision application for a period of 12 weeks.
- (iv) Writ petition is accordingly disposed of in the aforesaid terms.

Sd/-
C. V. BHADANG, J.

Vinayak Halemath

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P.
Halemath**

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by Vinayak P.
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