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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4721 OF 2016

Shakuntala Parshuram Patil & Ors. ... Petitioners
Vs.
Sub-Divisional Officer Mumbai
Western Suburb & Ors. ... Respondents

Mr. A. R. Shaikh i/b ASD Associates, for the Petitioners.
Mr. Rajesh N. Kachare i/b Ameet Palkar, for Respondent Nos. 5 to 7.
Mr. P. P. Pujari, AGP for the Respondent – State.

CORAM : C. V. BHADANG, J.

DATE : JANUARY 10, 2020

PC :

1. The challenge in this petition is to the order dated 9.11.2015 passed by the Deputy Collector (Appeals), Mumbai Suburban District, thereby refusing to condone the delay of 202 days in filing an appeal. The Petitioners intended to file an appeal, challenging the order dated 4th February, 2014 passed by the Sub-Divisional Officer (for short “SDO”), thereby rejecting the challenge raised by the Petitioner to Mutation Entry No. 7131 which was recorded on 2nd January, 2003 and was eventually certified on 3rd September, 2004.

2. I have heard learned counsel for the parties. Perused record.

3. It is submitted by the learned counsel for the Petitioner that Respondent Nos. 6 and 7 have executed a registered conveyance in favour of Respondent No. 5 on the basis of irrevocable power of attorney. It is submitted that the Petitioners were not aware about the recording of Mutation Entry No. 7131, and therefore, initially there was a delay in challenging the said entry before the SDO. Even after the SDO passed order on 4th February, 2014, there was a delay of 202 days in challenging the said order before the Dy. Collector (Appeals). It is the submission of the learned counsel for the Petitioner that the said delay has been sufficiently and properly explained, and therefore, a case for condonation of delay is made out.

4. Learned counsel for Respondent Nos. 5, 6 and 7 submits that the impugned Mutation Entry No. 7131 is taken on the basis of a registered conveyance, way back on 2nd January, 2003. Learned counsel points out that before the said entry was certified, the Petitioners were noticed. They had appeared and lodged their objection and after considering the objection, the entry was certified on 3rd September, 2004. Learned counsel points out that there was no challenge to this entry till 2013, when, initially the Petitioners approached the SDO on 4th February, 2013. It is submitted that even after the SDO passed an order

on 4th February, 2014, there was a delay in challenging the said order before the Dy. Collector (Appeals) and the Dy. Collector (Appeals) has rightly refused to condone the delay

5. Learned counsel points out that Civil Suit No. 162 of 2014 filed by the Petitioners challenging the relinquishment deed, as well as the conveyance is pending on the original side of this Court, and therefore, this Court may not interfere with the impugned order.

6. I have considered the circumstances and the submissions made. As noticed earlier, there was a substantial delay in challenging the mutation entry of the year 2003 which was certified in the year 2004. Be that it may, the present issue is about condonation of delay of 202 days caused in approaching the Dy. Collector (Appeals) against the order passed by the Sub-Divisional Officer. Here again the Dy. Collector (Appeals) has found that the delay has not properly been explained. During the course of the arguments, no reason was stated as to how this part of the delay had occasioned. In that view of the matter, I do not find that any exception can be taken to the order refusing to condone the delay.

7. That apart, it is now well settled that mutation entries by

themselves can neither confer nor can take away rights as they are essentially for fiscal purposes. It is a common ground that the substantive dispute as to the relinquishment deed and conveyance deed are subject matter of suit before the original side of this Court. It is evident that ultimately the matter would govern by the decision of the said suit. In that view of the matter, writ petition is dismissed with no order as to costs.

Sd/-
C. V. BHADANG, J.

Vinayak Halemath

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by Vinayak P.
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