

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7353 OF 2020

Nathasaheb Baburao Karale

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. N.V. Gaware, Advocate for petitioner

Mr. S.P. Tiwari, A.G.P. for respondent nos. 1 to 5

Mr. A.K. Gawali, Advocate for respondent nos.6A to 6E

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CORAM : R.G. AVACHAT, J.

DATED : 14th JANUARY, 2021

PER COURT :

Heard.

2. Impugned in this writ petition is order dated 04th September, 2019 passed by the learned Minister for State (Revenue) in Revision Application No. R.T.S. -3119/1802/Pra.Kra.67/J-6. By the impugned order, the revision application preferred by Respondent Nos. 6A to 6E came to be allowed with a direction to the Sub-Divisional Officer, Ahmednagar ("S.D.O.") to decide R.T.S. Appeal No. 47 of 2013 on its merits.

3. Few facts necessary to decide this writ petition are as follows :-

The Tahsildar, Ahmednagar by his order dated 01st July, 2006 directed the name of present petitioner to be recorded in cultivation column to the extent of 56 *Are* in the land Gut No. 75. Said order is stated to have been passed after considering factum of possession of the petitioner. Thereafter, Respondent Nos. 6A to 6E filed R.T.S. Appeal No. 47 of 2013 against the decision of Tahsildar, Ahmednagar dated 01st July, 2006 before the S.D.O. Since there is delay in preferring the application, an application for condonation of delay was filed therewith. The petitioner appeared in the said proceeding and contested the application for condonation of delay. The S.D.O., vide his order dated 31st December, 2014, dismissed the application for delay. The respondents, after about little over one year, preferred R.T.S. Appeal No. 182 of 2016 to the Additional Collector, Ahmednagar. The Additional Collector, in turn, vide order dated 17th November, 2016 dismissed the appeal. The contesting respondents thereafter preferred Revision Application No. 111 of 2017 before the Additional Commissioner, Nashik. On 14th September, 2017, the Additional Commissioner dismissed the revision application. The concerned respondents, therefore, preferred revision there against to the learned Minister for State (Revenue). The learned Minister was pleased to allow the revision application vide order dated 04th September, 2019 with directions to the S.D.O. as stated above.

4. Mr. Gaware, learned counsel for the petitioner would submit that all the authorities below, except learned Minister, have rightly passed orders refusing to condone the delay occurred in preferring appeal against the decision of the Tahsildar dated 01st July, 2006. There was delay of little over seven years. The same had not been explained. Moreover, there was delay of little over one year in preferring appeal to the Additional Collector against the order passed by the S.D.O. The concerned respondents had, in fact, slept over their rights. Learned counsel took me through the facts of the case.

Those facts need not be adverted to since the only question that arises before this Court as to whether the learned Minister was justified in condoning the delay.

5. Learned counsel for the petitioner placed reliance on judgment of Apex Court in *Basawaraj and Anr. Vs. Spl. Land Acquisition Officer 2013 DGLS (SC) 672*. According to learned counsel, in case a party found to be negligent or for want of bonafides on his part or found to have not acted diligently, there cannot be a justified ground to condone the delay. Learned counsel ultimately urged for setting aside the impugned order.

6. Mr. Gawali, learned counsel for Respondent Nos.6(A) to 6(E) would, on the other hand, submit that the Tahsildar, Ahmednagar had passed order against a dead person. The order is, therefore, non est in the eyes of

law. The proceeding before the Tahsildar was initiated by the petitioner by giving wrong name of deceased Respondent No.6 and his incorrect address. Learned counsel took me through Rule 31 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971. Learned counsel would further submit that since the impugned order was a nullity, the question of limitation in challenging the same would be of no consequence. He, therefore, urged for dismissal of the petition.

7. A copy of the application for condonation of delay preferred along with the appeal memo in R.T.S. No. 47 of 2013 is on record. It has been averred in the said application that the petitioner herein had preferred crop inspection (पीक पाहणी) case against original Respondent No.6. In the said proceeding, the surname of Respondent No.6 was given as Shaikh instead of Rajkotwala and his address was shown at village Burhannagar. When the said proceeding was initiated, original Respondent No.6 – Iqbal Rajkotwala was not alive. His legal representatives (Respondent Nos. 6A to 6E) were not parties before the Tahsildar, Ahmednagar in the said proceeding. As such, the crop inspection case was conducted against a dead person. It has also been averred in the said application that the petitioner filed Regular Civil Suit No. 894 of 2012 against Respondent Nos. 6A to 6E. On inspection of documents in the said suit, it was realised that the crop inspection case was conducted against a dead person.

8. Learned counsel for the petitioner did not traverse the aforesaid facts. As such, it prima facie appears that the crop inspection case was conducted against a dead person. The decision given therein may, therefore, be non est in the eyes of law. It is only after having come to know about the said fact, the respondents preferred appeal to the S.D.O. It appears that the S.D.O. did not consider the averments in the delay condonation application.

9. In the aforesaid factual backdrop, learned Minister was justified in allowing the revision application. No interference therewith is therefore called for. Writ Petition, therefore, fails. Same is dismissed.

(R.G. AVACHAT, J.)

SSD