

WRIT PETITION NO. 7512 OF 2020

Mr. Anant Devakate, Advocate for petitioner
Mr. Y. G. Gujrathi, AGP for respondent Nos. 1 to 3
Mr. R. G. Gore, Advocate for respondent Nos. 4 to 7

DATED : 29th JANUARY, 2021

PER COURT :-

. Heard learned counsel for the parties.

2. The order dated 17.04.2020 passed by the Deputy Collector (EGS), Aurangabad, rejecting application for condonation of delay in preferring revision application against the judgment and order dated 22.01.2019 passed by the Naib Tahsidar, Kannad, is under challenge in this writ petition.

3. The petitioners are the original respondents in a proceeding under Section 5(2) of the Mamlatdar's Courts Act, 1906 (for short 'the Act of 1906'). The Naib Tahsildar, allowed the said

application on 22.01.2019. Against the decision/order passed under Section 5 of the Act of 1906, no appeal is provided. Sub-section (2) of Section 23 empowers the Collector to call for and examine the record in a suit under the Act of 1906 and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit. The Act of 1906, is however, silent to provide the period of limitation for the exercise of powers. As regards period of limitation within which an application for revision could be preferred or the Collector may *suo-motu* initiate proceedings of revision. Whenever there is no period of limitation prescribed for filing of appeal or revision, then the same should be filed within a reasonable time.

In the case in hand, the Mamlatdar gave his decision on 20.01.2019. The petitioners preferred revision on 11.06.2019 i.e. about five months after the Naib Tahsildar's decision. In spite of having been observed by the Naib Tahsildar that the parties be communicated the decision, there is no record to indicate the same to have been communicated to the petitioners. It has been specifically averred in the petition that when the petitioners made inquiry as to whether decision has been given by the Naib Tahsildar,

only on 13.05.2019 they came to know about the impugned order. The petitioners, immediately applied for a certified copy of the decision given by the Naib Tahsildar. Within a month thereof i.e. on 11.06.2019, the petitioners filed revision application.

4. There is no traverse to the aforesaid facts. The learned Deputy Collector, therefore, ought to have condoned the delay. Since he refused to condone the delay and the ground for condonation of delay has been made out, the impugned order needs to be set aside.

5. The petition, thus, succeeds. The impugned order dated 17.04.2020, passed by the Deputy Collector (EGS), Aurangabad, is hereby set aside. The delay, if any, occurred in preferring the revision application, is condoned. The Deputy Collector (EGS), Aurangabad is requested to decide the revision application on its own merits.

6. The writ petition is accordingly disposed of.

[R. G. AVACHAT, J.]