

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

WRIT PETITION NO.14090 OF 2017

- 1] Dr.Suhas Shriram Bavikar
Age Major, Occu.Medical Practitioner,
R/o Utkarsh Hospital,Samatanagar, .. PETITIONER/
Aurangabad (Orig.respondent No.4)
- 2] Dr.Mrs.Jayashree Suhas Bavikar
Age Major, Occu.Medical Practitioner,
R/o Utkarsh Hospital,Samatanagar, .. PETITIONER
Aurangabad (Orig.respondent No.5)

VERSUS

- 1] Mazharulla Khan S/o Amanulla Khan
Age 60 years,Occ : Business
R/o Barudgarnala,Amanat Complex .. RESPONDENT NO.1
Aurangabad through his GPA Holder (Ori.Applicant)
Shaikh Salim Shaikh Shabbir
Age : 32 years, Occ : Business
R/o Plot No.189, Shilpnagar,
Sudhakarnagar Road,
Satara, Aurangabad
- 2] Deputy Director, Land Records
Aurangabad Division, Damdi Mahal
Beside Panchayat Samiti,Aurangabad
- 3] District Superintendent,Land Records,
Aurangabad
- 4] Tahsildar, Aurangabad
- 5] The Talathi, Satara,
Tq. And Dist.Aurangabad
- 6] Hasan Yar Khan
S/o Usman Yar Khan,
Age : Major, Occ.Nil,
- 7] Akbar Yaar Khan

S/o Usman Yar Khan
deceased through L.Rs.

- 7.a. Shakera Begum @ Shakila
Begum W/o Akbar Yar Khan
- 7.b. Roshan Jahan D/o Akbar Yar Khan,
- 7.c. Israr Yar Khan S/o Akbar Yar Khan,
- 7.d. Masrat Jahan D/o Akbar Yar Khan,
- 7.e. Izar Yar Khan S/o Akbar Yar Khan,
- 7.f. Abrar Yar Khan S/o Akbar Yar Khan,

All Major, R/o Osmanpura,
Aurangabad

- 8. Jakiya Sultana Hasan Yar Khan,
Age : Major, Occ : Household
R/o Osmanpura, Aurangabad

.. RESPONDENTS

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Shri S.V.Adwant, Advocate for the petitioners
Shri H.I.Pathan, Advocate for respondent no.1.
Shri K.B.Jadhavar,A.G.P. for respondent nos.2 to 5

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CORAM : MANGESH S. PATIL,J.

DATED : 10/08/2021.

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ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. Learned Advocate Shri Pathan waives service for respondent no. 1 and learned A.G.P. waives service for respondent nos.2 to 5. With the consent of both the sides, the matter is heard finally at the stage of admission.

2] The petitioners had purchased an immovable property and Mutation Entry No.832 was certified in their favour. Respondent no.1

challenged that order by preferring an Appeal under Section 247 of the Maharashtra Land Revenue Code. Since there was a delay of more than 26 years, even a request for condonation of delay was made. By the impugned order the appellate authority has condoned the delay.

3] After having heard the learned advocates of both the sides it transpires that the learned authority seems to have forgotten that though he was empowered to exercise a quasi judicial power and the justice not only ought to have been rendered but it should have been seen to be rendered has gone ahead and decided to condone the delay apparently, leaving some loopholes to create a reasonable doubt as to if an opportunity of being heard was really extended to the petitioners who were the respondent nos.4 and 5 therein.

4] The reasons for entertaining such a doubt are very many. As can be seen from the Roznama dated 11/7/2017 marking the presence of advocate for the respondent no.1 and personal presence of the respondent no.3, without mentioning as to if any arguments were indeed heard on the point of condonation of delay, the matter was directed to be listed for further date for decision on the request for condonation of delay. The matter subsequently seems to have been taken up on 12/9/2017 and appeal was directed to be listed on 21/9/2017 for arguments. It transpires that on 21/9/2017 the arguments of advocate for the respondent no.1 herein were heard. It does not mention if the arguments of the petitioners herein were also simultaneously heard.

5] As can be seen from the impugned order it seems to have been pronounced on 28/8/2017, however, no such Roznama of that date can be found. Though in the initial part it has been specifically mentioned in the impugned order about having heard the arguments on several dates, conspicuously there is no reference about any arguments having been

heard on behalf of the petitioners herein, the respondent nos.4 and 5 in that proceeding. Again in the later portion of the order the authority has reproduced some portion from the written submission filed on behalf of the petitioners.

6] All these circumstances certainly give rise to a reasonable doubt as to if the request for condonation of delay made by the respondent no.1 herein was really considered and decided judiciously.

7] It is in view of such peculiar facts and circumstances, in my considered view it would be appropriate to relegate the parties before the appellate authority with a direction to the latter to hear the parties and decide the request for condonation of delay afresh.

8] The Writ Petition is allowed. The impugned order is quashed and set aside. The parties shall appear before the appellate authority on **18/08/2021** who shall now extend an opportunity to all interested to address it on the point of condonation of delay and decide the issue afresh. There shall be no need for it to issue notices to anybody.

9] Couple of Applications have been filed by few persons to intervene in the Writ Petition. Those are disposed of without expressing anything about their rights.

10] It is made clear that nothing is expressed as to the merits of the case. The decision shall be taken within a period of 2 months.

11] The Rule is made absolute.

(MANGESH S. PATIL,J.)

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