

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.3992 OF 2019
WITH
CIVIL APPLICATION NO.1307 OF 2019
WITH
CIVIL APPLICATION NO.1308 OF 2019
WITH
WRIT PETITION NO.3992 OF 2019**

Keru Ganpati Satkar & ors. .. Petitioners
vs.

Ganpati Gopala Satkar
deceased through Lrs.

1A. Babu Ganpati Satkar & ors. .. Respondents

Mr. Nitin P. Deshpande for the Petitioners.

Mr. M.M. Chaudhari for Respondent Nos.1 to 6.

Mr. S.H. Kankal, AGP for the State/Respondent No.7.

CORAM : M.S.KARNIK, J.

DATE : MARCH 24, 2021

P.C.

Heard learned counsel for the parties.

2. Learned counsel for the Petitioners submitted that the order passed by the District Superintendent of Land Records ('DSLRL' for short) condoning the delay of 50 years in filing the Appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 ('the Code' for short) is without jurisdiction. According to him the reliefs claimed in the Appeal relate to change/variation in the consolidation scheme and therefore any challenge relating to the consolidation scheme can be made only as per the remedy provided under Section 32 of the Bombay Prevention of

Fragmentation and Consolidation of Holdings Act, 1947 ('the said Act' for short). He further submits that in any case at such a belated stage such a challenge should not have been entertained by condoning the delay.

3. I have found some substance in the arguments of learned counsel for the Petitioners that it would not be open for the Respondents to seek any change/variation in the consolidation scheme by way of an Appeal provided under Section 247 of the Code. Learned counsel for the Respondent Nos.1 to 6 however submits that the Petitioners have an alternate remedy of filing an Appeal/Revision under Section 247 of the Code before the Deputy Director of Land Records. Learned counsel for the Respondent Nos.1 to 6 on instructions has submitted that he is not seeking any variation or change in the consolidation scheme but is limiting his Appeal only for mutating names of the Respondents which names remained to be mutated pursuant to the implementation of the consolidation scheme. In this view of the matter, I do not propose to go into the issue whether the impugned order is passed in excess of the jurisdiction in this Petition as the Petitioners have an alternate efficacious remedy of filing an Appeal/Revision under Section 247 of the Code.

4. Accepting the statement made on behalf of the Respondent Nos.1 to 6 that they are not seeking any variation or change in the consolidation scheme and that what has been sought is only

mutating their names in the record of rights pursuant to the implementation of the consolidation scheme, the Petitioners are relegated to the remedy of an Appeal/Revision under Section 247 of the Code.

5. If the Appeal/Revision is filed under Section 247 of the Code by the Petitioners challenging the impugned order before the Deputy Director of Land Records within a period of four weeks from today, learned counsel for the Respondent Nos.1 to 6 fairly submits that he will not object to the belated filing of the Appeal as the present Petition has been prosecuted bonafide by the Petitioners. The Deputy Director of Land Records to decide the Appeal/Revision on its own merits.

6. It is pointed out by learned AGP that due to some misunderstanding the DSLR has decided the matter on merits. The challenge to the order passed by the DSLR condoning the delay was pending in this Petition. This Court by an interim order dated 04.04.2019 had granted interim reliefs in terms of prayer clause (b) staying the effect and implementation of the impugned order condoning the delay. In these circumstances the DSLR could not have proceeded with the hearing of the Appeal on merits. The DSLR nevertheless proceeded to hear the Appeal on merits and decided the Appeal by an order dated 13.05.2019. These facts are brought on record by the Petitioners in Civil Application No.1307 of 2019. The Petitioners also filed Civil Application No.1308 of 2019

praying for amendment in the prayer clause thereby challenging the order dated 13.05.2019 passed by the DSLR.

7. Civil Application No.1308 of 2019 for amendment deserves to be allowed. Amendment to be carried out within one week from today.

8. It is informed that after it was brought to the notice of the DSLR that the order dated 13.05.2019 was passed despite the stay granted by this Court operating, the DSLR has stayed his own order. In this view of the matter, the order dated 13.05.2019 passed by the DSLR is set aside.

9. The DSLR to rehear the Appeal on its own merits subject to such orders as may be passed in the Appeal/Revision which the Petitioners would be filing against the order impugned in this Petition. The Appeal before the DSLR under Section 247 as well as the Appeal/Revision which the Petitioners may file before the Deputy Director of Land Records against the order impugned in this Petition to be decided on its own merits and in accordance with law. To enable the Petitioners to file the Appeal/Revision and apply for appropriate interim reliefs, it is expected that the DSLR will not proceed with the hearing of the Appeal for a period of six weeks from today.

10. All contentions are kept open including the question of jurisdiction of the District Superintendent of Land Records to entertain the Appeal. I may not be understood to have expressed any opinion on the merits of the contentions raised.

11 The Writ Petition is disposed of .

12. Civil Application No.1308 of 2019 is allowed. Civil Application No.1307 is disposed of.

(M.S.KARNIK, J.)

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