

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

WRIT PETITION NO.3344 OF 2019

Narayan Gopal Kapase

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

...

Mr. D. R. Shelke, Advocate for the Petitioner

Mr. S. N. Kendre, AGP for Respondent Nos.1 to 4

Mr. M. R. Sonawane, Advocate for Respondent Nos.6, 8, 9 & 13 to 15 & 38.

Mr. S. K. Chavan, Advocate for Respondent Nos.5, 7, 10 to 12

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th September, 2022

PER COURT :-

1. Challenge in this petition is to the order dated 08-01-2019, passed by respondent no.1 in Appeal No.2018/pra.kra.260/j-7 filed by respondent nos.5 to 15 herein under Section 257 of the Maharashtra Land Revenue Code, 1966 (for short 'the MLR Code').

2. By filing appeal under Section 32(1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'the said Act') before respondent no.3, petitioner sought correction in final consolidation scheme, in respect of Survey No.38, situated at Mauje Malshendra, Taluka and District Jalna (for short 'the said land'). The said appeal was partly allowed and it was

directed that all sub-shares (pot hisse) in Survey No.38 be measured and after inquiry, correction proposal under Section 32(1) of the said Act be submitted.

3. The respondent nos.5 to 15 challenged the said order by filing Appeal No.260/2018 before respondent no.1. By the impugned order dated 08-01-2019, the said appeal is allowed. Hence, the present petition.

4. Heard the learned Advocate for the petitioner, the learned Assistant Government Pleader for respondent nos.1 to 4, the learned Advocate for respondent Nos.6, 8, 9 & 13 to 15 & 38 and the learned Advocate respondent nos.5, 7, 10 to 12.

5. The learned Advocate for the petitioner assailed the impugned order contending that respondent nos.5 to 15 had earlier approached before respondent no.2 by challenging the order passed by respondent no.3. By suppressing this fact, they filed appeal before respondent no.1, which was not maintainable. The respondent no.1 has failed to consider that prior to implementation of consolidation scheme, they were only two sub-division (pot hisse) of respondents. According to him, the subject land was never put in possession. The respondent - Jaiwanta Ashru and the petitioner continued to be in possession of the same. In support of that, he relies on panchanama, which shows possession of

petitioner. He submits that statutory provisions are ignored by allowing the appeal filed by respondent nos.5 to 15. In support of his submissions, he placed reliance on **Vidya Devi Vs. The State of Himachal Pradesh & Ors.** in **Civil Appeal Nos.60-61/2020**, **Tukaram Kana Joshi & Ors. Vs. Maharashtra Industrial Development Corporation & Ors.** reported in **(2013) 1 SCC 353**, **Bhimandas Ambwani (Dead) Through LRS Vs. Delhi Power Company Limited** reported in **(2013) 14 SCC 195**, **K.B. Ramchandra Raje URS (Dead) by Legal representatives Vs. State of Karnataka & Ors.** reported in **(2016) 3 SCC 422**, **Shri Sakharam Jivala Bhadange Vs. Shri Rajaram Gaikwad** reported in **MANU/MH/3151/2019** and **A.V. Papayya Sastry & Ors. Vs. Govt. of A.P. & Ors.** reported in **(2007) 4 SCC 221**.

6. The learned Advocate for respondent nos.6, 8, 9 & 13 to 15, on the other hand, has supported the impugned order by relying on the decisions in **Dattu Appa Patil (since deceased) by LR. Vs. State of Maharashtra & Ors.** reported in **2006 (11) LJSOFT 9**, **Ganpati Dadu Mali Since deceased through LR. Vs. State of Maharashtra & Ors.** reported in **2012 (2) LJSOFT 54**, **Bapu Gunda Mirje & Ors. Vs. State of Maharashtra through its Minister of State for Revenue Affairs & Ors.** reported in **2014 (8) LJSOFT 97** and **Jalindar Sadashiv Hirde & Ors. Vs. State of Maharashtra & Ors.** reported in **2018 (4) Mh.L.J.**

7. By relying on the statements made in their affidavit-in-reply, he submits that the said land has been sold from time to time and Jaiwanta Ashru was put in possession of the said land on account of sale deeds. The son of Jaiwanta Ashru has sold portion of the subject land to the daughter of petitioner and petitioner is witness to the said transactions. He therefore submits that reasoning given by respondent no.1, while passing the impugned order, is in consonance with the record and no case is made out by petitioner to interfere in the same.

8. The learned Advocate for respondents further pointed out from the affidavit-in-reply the manner, in which, the subject land was transferred from time to time by the uncle and father of petitioner. Son of Jaiwanta Ashru has sold the land in question to the real brother of petitioner and portion of the said land is sold to the daughter of petitioner.

9. The learned Assistant Government Pleader supports the impugned order by relying on the affidavit-in-reply filed on record.

10. It is a matter of record that, petitioner at the time of filing appeal under Section 32(1) of the said Act before respondent no.3 sought condonation of delay of 45 years, on the ground that delay is not deliberate, as he did not have knowledge as to which office should be approached for seeking correction in the consolidation

scheme. It is, therefore, clear that inordinate delay of 45 years has been erroneously condoned by respondent no.3.

11. It is clear from the record that, petitioner is signatory as witness to the sale deed dated 15/04/2005 executed in respect of the said land, by which, his daughter has purchased portion of the said land. Thus, he was well aware about the transfer of portion of the said land. Therefore, it is not possible to agree with the submission of petitioner that delay was not deliberate.

12. While passing the impugned order, respondent no.1 has taken into consideration the decision of Civil Court passed in Regular Civil Suit No.57/2014 filed by son and daughter of petitioner against respondent no.18 & others, which was dismissed under Order VII Rule 11 of the Code of Civil Procedure. It is thus clear that, immediately, after dismissal of the said suit, present proceedings were initiated by respondent no.1.

There appears substance in the contention of respondents that petitioner has no concern with the said land and from the year 1966, Jaiwanta Ashru was in possession of the said land, as per Mutation Entry No.88, which is prior to the consolidation scheme. Respondent no.1, in the impugned order, has held that all the sale transactions of the said land have been held to be valid by the Competent Civil Court and the name of Jaiwanta

Ashru was appearing as per Mutation Entry No.88 to the said land, even prior to the consolidation scheme. Real brother of petitioner, namely, Janardhan Gopal Kapase has sold the said land, which he inherited, in favour of respondent-Jaiwanta Ashru. Therefore, sale deeds executed in favour of respondent are valid.

13. There is no illegality or perversity in the order impugned in the present petition. The order passed by respondent no.3, thereby condoning inordinate delay of 45 years is erroneous and the same is contrary to the ratio in **Gulabrao Bhaurao Kakade (Deceased) by his LRs. & Ors. Vs. Nivrutti Krishna Bhilare & Ors.** reported in **2001 (4) Mh.L.J. 31**. The respondent no.1 has rightly allowed the appeal.

14. In Vidya Devi (*Surpa*), it is held that plea of delay and latches cannot be raised when there is continuing cause of action.

In the case in hand, cause of action cannot said to be continuing one and therefore, this ratio does not help the petitioner.

15. In Tukaram Kana Joshi (*Supra*), it is held that there is no period of limitation to exercise constitutional power under Article 226 of the Constitution of India. This decision also would not help the petitioner, as the proceedings filed by petitioner were not under Article 226 of Constitution of India.

16. In Bhimandas Ambwani (Supra), the point, under consideration, was dispossessing the land owner without following procedure prescribed under law and it was held that it amounts to encroachment. This decision since is rendered in different facts, is not of any help to the petitioner.

17. In K.B. Ramchandar (Supra), it is held that law of limitation does not apply when the fairness of government action, touching to issue of public importance is questioned. No question of public importance is involved in the present petition. Therefore, this ruling is also not applicable in the present case.

18. In Sakharam Jivala Bhadange (*Supra*), it is held that prior ownership and possession is *sine qua non* for allotment of land and vesting of title does not depend upon grant of certificate of transfer. Even this ruling is of no assistance, since the petitioner is rendered in the different facts.

19. For for the aforesaid reasons, there is no merit in the challenge raised in the present petition. The writ petition is, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]