

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5650 OF 2022

Chhabubai Pandharinath Mhaske And Others ...Petitioners

Versus

Punjabari Laxman Mhaske ...Respondent

Mr. Satyajeet S. Dixit, Advocate for the petitioners .

Mr. Balasaheb Vishnu Dhage, Advocate for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th SEPTEMBER, 2022

ORDER :

1. The petitioners are aggrieved by the order dated 25.03.2022 passed by Sub Divisional Officer, Sangamner, in Delay Condonation Application No. 21/2021. thereby condoning the delay of more than 46 years in filing the proceeding.

2. The respondent has filed proceeding challenging the mutation entries no. 1512 and 6459. Since, the mutation entry no. 1512 was taken in the year 1973, there is delay of 47 years in challenging the same. Similarly, there was delay of six years in challenging the mutation entry no. 6459. The respondent has claimed that there was fraud in taking mutation entries as

though deceased Chandrbhan Dhondiba Mhaske had no concern with disputed land, name of Pandharinath Chandrabhan Mhaske was mutated as legal heir. This was claimed to be not brought to the notice of Talathi and even if it was brought to the notice of Talathi, it was ignored. Therefore, by relying on Section 17 of the Limitation Act, 1963, the respondent claimed that these mutation entries were noticed by the respondent when he went to obtain bank loan, and immediately after coming to know about these entries, he has obtained necessary documents and challenged the said entries, therefore, delay deserves to be condoned. The petitioners resisted the delay condonation application on merits.

3. By the impugned order, the delay is condoned by placing reliance on decision of Hon'ble Supreme Court in **A.V. Papayya Shastri Vs. State of Andhra Pradesh**, (2007) 4 SCC 221.

4. The learned advocate for the petitioners assailed the impugned order contending that no ground of fraud is made out by the respondent in the application seeking condonation of delay. Inordinate delay of more than 46 years is erroneously condoned by wrongly relying on the Supreme Court's decision,

which had no application to the facts of the present case. He therefore, submits that the impugned order is liable to be quashed and set aside.

5. The learned advocate for the respondent on the other hand supported the impugned order. He submits that ground of fraud is made out by the respondent in the averment made in the application.

6. Perusal of application shows that averment is made to the following effect:-

"Though, deceased Chandrabhan Dhondiba Mhaske had no concern with gut No. 132/1 and though his name was not recorded to the said gut No. 132/2 while correcting the 7/12 extract, the name of Pandharinath Chandrabhan Mhaske was recorded as legal heir to gut No. 132/1 by mutation entry no. 1512".

7. It is further stated that, the entry, recording the name of his legal heir is illegal and it is necessary to delete that entry and correct the 7/12 extract. A further statement is made: "either the concerned Talathi did not notice this or he has deliberately ignored that."

8. Taking into consideration the above statements, it cannot be positively said that the ground of fraud is made out by the respondent in the application. However, in view of the dispute amongst the parties, this Court is of the opinion that it is desirable that the matter is contested and decided on merits.

9. Following order would meet the ends of justice:

ORDER

- i) The writ petition is allowed.
- ii) The impugned order dated 25.03.2022 passed by the Sub Divisional Officer, Sangamner in Delay Condonation Application No. 21/2021, is hereby quashed and set aside.
- iii) Point of limitation is kept open to be decided by the concerned authority while deciding the appeal on merits.

10. It is made clear that this Court has not expressed any opinion on merits of the matter. All the contentions of the respective parties on the point of limitation and on merits are kept open.

[NITIN B. SURYAWANSHI, J.]