

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

WRIT PETITION NO.6333 OF 2022

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|------|------------------------------------|---|
| 1. | Ashok Nanasaheb Ekhande (Deceased) |] |
| | Through LR. |] |
| 1-A) | Smt. Shobhabai Ashok Ekhande |] |
| | Age : 52 years, Occ : Agri |] |
| 1-B) | Usha Datta Gore |] |
| | Age : 35 years, Occ : Household, |] |
| 1-C) | Yogesh Ashok Ekhande, |] |
| | Age : 38 years, Occ : Agri. |] |
| 1-D) | Sonu Ashok Ekhande, |] |
| | Age : 32 years, Occ : Agri. |] |
| 2. | Subhash Nanasaheb Ekhande |] |
| | Age : 52 years, Occ : Agri., |] |
| 3. | Smt. Padmabai Sheshrao Ekhande |] |
| | Age : 77 years, Occ : Agri., |] |
| 4. | Sunil Sheshrao Ekhande |] |
| | Age : 40 years, Occ : Agri |] |
| 5. | Sumanbai Nanasaheb Ekhande |] |
| | Age : 69 years, Occ : Agri |] |
| 6. | Sanjay Eknath Ekhande |] |
| | Age : 59 years, Occ : Agri |] |
| 7. | Suresh Tukaram Ekhande |] |
| | Age : 55 years, Occ : Agri |] |
| 8. | Mayur Ashok Ekhande |] |
| | Age : 33 years, Occ : Agri |] |
| | All R/o Nagewadi, |] |
| | Tq. & Dist. Jalna. |] |

... Petitioners.

Versus

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|----|---|---|-----------------|
| 1. | The Deputy Director of Land Records,
Aurangabad. |] | |
| 2. | The Superintendent of Land Records,
Jalna. |] | |
| 3. | Suresh Yadavrao Ekhande
Age : 47 years, Occ : Agri |] | |
| 4. | Ramesh Yadavrao Ekhande
Age : 45 years, Occ : Agri |] | |
| 5. | Vatsalabai Yadavrao Ekhande
Age : 72 years, Occ : Agri |] | ... Respondents |

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Advocate for Petitioners : Mr. Pratik A. Bhosle
AGP for Respondent Nos.1 and 2 : Mr. K. B. Jadhavar
Advocate for Respondent Nos.3 to 5 : Mr. R. A. Joshi

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CORAM : MANGESH S. PATIL, J.

DATED : 22 JUNE 2022

ORAL ORDER :

1. Heard. Issue notice. Learned AGP Mr. Jadhavar waives service for respondent no.1 and 2 and learned advocate Mr. Mr. R. A. Joshi waives service for respondent nos.3 to 5.

2. Rule. Rule is made returnable forthwith. At the request of both the sides, the matter is heard finally at the stage of admission.

3. I have heard the learned advocates of both the sides as also the learned AGP.

4. The respondents no.3 to 5 preferred an appeal under section 247 of the Maharashtra Land Revenue Code, 1966 (for short, “the Code”) challenging the mutation entry no. 494. The District Superintendent of Land Records by invoking the powers under section 255(3) of the Code condoned the delay and in the process cancelled the sub division of land Survey no. 94 effected during implementation of a scheme under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. He further directed to carry out the measurement afresh and if necessary to submit a proposal for modification of the scheme finalized under that Act.

5. Pursuant to such order, the Deputy Director of Land Records by communication dated 9 September 2015 directed the District Superintendent to undertake the measurement and if necessary to submit a concrete proposal for modification.

6. Aggrieved by the order passed by the District Superintendent of Land Records as also the communication of Deputy Director of Land Records, the petitioners approached this Court in Writ Petition No. 2667 of 2016. After hearing both the sides, the writ petition was disposed of by order dated 17 January 2018 with following directions:-

“(a) As per the request of the litigating sides, they shall appear before Respondent No.2/ Deputy Director of Land Records,

Aurangabad on 03.02.2018 at 03:00 pm. Formal notices need not be issued.

- (b) After the measurements of the lands have been carried out under the order dated 09.09.2015, Respondent No.2 shall supply the copies to the litigating sides for proper assistance.*
- (c) Respondent No.2, thereafter, shall first decide whether, the delay of 31 years condoned by the District Superintendent of Land Records, Jalna is a sustainable order or not.*
- (d) If Respondent No.2 concludes that the delay can be condoned, subject to further legal remedies available to the Petitioners, he would proceed to consider the appeal of the Petitioners on it's own merits by affording a reasonable opportunity of hearing and decide the same within a period of SIX MONTHS from the date of his order on the condonation of delay.*
- (e) It is made clear that this Court has not expressed any opinion about the merits of the contentions of the parties and especially with regard to the aspect of 31 years delay.”*

7. Pursuant to such directions, the parties remained present before the Deputy Director of Land Records Aurangabad-respondent no.1. The petitioner's revision under section 257 of the Code was then decided by the order under challenge in this petition.

8. As can be appreciated, the directions (c) and (d) issued by this court expected the Deputy Director of Land Record, to first, decide as to

whether the delay of 31 years condoned by the District Superintendent of Land Records was sustainable or not.

9. As mentioned in direction (d), if the District Superintendent of Land Records was to conclude that the delay was rightly condoned, the petitioners were permitted to resort to the appropriate legal remedies.

10. Instead of following the course and directions, the learned Deputy Director of Land Records has proceeded to decide the appeal on its own merits by observing that though pursuant to the directions of this court the matter was to be examined to the extent of the order passed by the District Superintendent of Land Records condoning the delay, still both the sides had argued the appeal finally on its merits.

11. True it is that such observation *prima facie* shows that even the petitioners connived in the course that was devised by the Deputy Director of Land Records to decide the appeal finally on its own merits instead of following the direction (c) of this Court.

12. But then, the further reading of the order under challenge would clearly demonstrate that the Deputy Director of Land Records has abdicated his duty. When the petitioners were before him in a statutory appeal questioning even the order condoning the delay passed by the lower authority i.e. District Superintendent of Land Records and when this court had even

called upon it to decide that aspect of the appeal initially, the order is *sans* any reason as to on what grounds the Deputy Director of Land Records was subscribing to the order passed by the lower authority condoning the delay. In one line, he has simply observed that the order passed by the lower authority was correct and didn't call for any interference.

13. Being a quasi-judicial authority conferred with the requisite powers to decide the disputes, such an approach clearly indicates that it was oblivious of the powers and duties of the post. There is no semblance of reasoning. It also doesn't show as to which observation of the lower authority he intended to substantiate. It only demonstrates that the appellate authority has merely subscribed to the ultimate conclusion without objectively scrutinizing the reasoning given by the lower authority or, has independently, undertaken any examination on its own.

14. This is an approach bordering contempt. It was expected of him to have borne in mind the direction of this Court (*supra*), apart from the principles laid down by this court in the matter of **Smt. Savitri Chandrakesh Pal Vs. State of Maharashtra & Ors.; 2009(4) Mh.L.J. 406**, laying down the parameters to be borne in mind by the quasi judicial authorities while deciding the proceeding before them.

15. In these circumstances, though the impugned order purports to

decide the entire appeal before the respondent no.1 - the Deputy Director of Land Records, since the decision is in blatant violation of the directions of this court and even without any reasons as far as the aspect of delay is concerned, it would be appropriate that the order under challenge is quashed and set aside and the parties are relegated before that authority for decision afresh in compliance with the directions of this court in writ petition no. 2667 of 2016 as also the observations made herein above.

16. Writ petition is partly allowed. The impugned order is quashed and set aside.

17. The parties shall appear before the Deputy Director of Land Records on 12-07-2022. He shall thereafter, in accordance with the observations made herein above, first decide the aspect of delay.

18. Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

Tandale/-