

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

WRIT PETITION NO.13947 OF 2019

**UMESH TRIMBAK MULE
VERSUS
THE DISTRICT COLLECTOR, OSMANABAD AND ANOTHER**

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Advocate for Petitioner : Mr. Pankaj A. Bharat
AGP for Respondent No.1 – State : Mr. K. B. Jadhavar
Advocate for Respondent No.2 : Mr. A. V. Indrale Patil

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CORAM : SMT. BHARATI DANGRE, J.

DATE : 24th JANUARY, 2022

PER COURT :

1. At the outset, it must be clarified that the impugned order passed by the Additional Collector, Osmanabad, on 18-03-2019, is passed on a revision preferred by the petitioner by invoking Section 23(2) of the Mamlatdars' Courts Act and not in exercise of powers conferred under Section 247 of the Maharashtra Land Revenue Code.

With the aforesaid facts being clarified, when the learned counsel for petitioner, the learned counsel for respondent No.2 and the learned AGP for respondent No.1 – State are heard, the controversy lay in a very narrow compass. The petitioner who is the owner and possessor of the land situated in Gat No.272 of Village Salgara (D), was aggrieved by the action of respondent No.2 making grievance to the

revenue authority that the cart way is available to him from the land of petitioner and the petitioner is obstructing his way. Respondent No.2 filed application before the Mamlatdar Court i.e. Tahsildar, who allowed the application and direction was issued to the petitioner to remove the obstruction.

Admittedly, the remedy against the said order would lay in the form of revision being preferred under Section 23(2) of the Mamlatdars' Courts Act. But, instead the petitioner wrongly knocked doors of the this Court by filing a writ petition on 04-04-2017, being aggrieved by the order dated 27-02-2017 passed by the Mamlatdar. On 13-03-2018 the writ petition came to be disposed of as withdrawn with liberty to avail alternate remedy. While disposing off the said writ petition, the following observation made by the learned Judge of this Court is relevant and is reproduced as under:-

“2. If such alternate remedy is exhausted within three weeks from today, the learned Collector while considering the point of limitation, may consider the time spent in pursuing this writ petition.”

The writ petition being withdrawn and disposed of, on 28-03-2018 the petitioner approached the revisional authority by invoking Section 23(2) of the Mamlatdars' Courts Act along with the application for condonation of delay. He sought delay of 01 year and 24

days to be condoned and by giving sequence of events and the facts that he had wrongly approached the High Court instead of filing revision and by relying upon the observation made in the High Court, the delay was sought to be condoned.

2. It is this application which is rejected by the Additional Collector, Osmanabad and on perusal of the said order it can be seen that the concerned authority has failed to grant benefit of Section 14 of the Limitation Act to the applicant, since he was prosecuting wrong remedy before the High Court and even the High Court while permitting him to withdraw his writ petition and avail the remedy available to him by preferring revision, has granted indulgence by considering the period spent by the applicant wrongly before this Court instead of revision. The impugned order, however, completely loses focus of the said aspect and instead did not find substance in the contention on the pretext that the applicant could not have pleaded that he is illiterate and unable to collect the documents and therefore, there was a delay. Had he perused Section 14 of the Limitation Act and the order of this Court which directed him to consider a period spent by the applicant in prosecuting wrong remedy, probably he would have reached a right conclusion.

Necessarily, the impugned order cannot sustain. The

Additional Collector, Osmanabad, is directed to register the revision by condoning the delay and afford opportunity of hearing to both the parties and pass appropriate orders. Accordingly, the writ petition is allowed, by setting aside the impugned order.

(SMT. BHARATI DANGRE, J.)