

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3003 OF 2014

1. Shri. Pandurang Dhondli Khape,
Through Legal Heir -

1a. Shivaji Pandrang Khape,
At/Po. Gardi, Taluke Khanapur,
District Sangli.

2. Yashoda Vithal Gaikwad
At/Po. Tadawale, Taluke Athpadi,
District Sangli.

.. Petitioners

Versus

1. Atmaram Bapu Shinde (deceased)
Through legal heir -
Tanubai Atmaram Shinde
R/o. Gardi. Tal. Khanapur, Dist. Sangli.

2. Dadu Atmaram Shinde
R/o. Gardi, Tal. Khanapur, Dist. Sangli.

3. Jaysingh Atmaram Shinde (deceased)
through legal heir
3a. Mangal Jaysingh Shinde
3b. Santosh Jaysing Shinde
3c. Amol Jaysing Shinde
3d. Savita Abaso Gaykwad
R/o Pachvad, Tal. Khatav, Dist. Satara.

4. Rajaram Atmaram Shinde
R/o. Gardi, Tal. Khanapur, Dist. Sangli.

5. Gajanan Atmaram Shinde
R/o. Gardi, Tal. Khanapur, Dist. Sangli.

6. Bajrang Atmaram Shinde
R/o. Gardi, Tal. Khanapur, Dist. Sangli.

7. Mukundrao Pandurang Khape
R/o. Gardi, Tal. Khanapur, Dist. Sangli.

8. **Sou. Ratnabai Bhagavan Mohite**
R/o. Tondolee, Tal. Kadegaon, Dist. Sangli.
9. **Sou. Rangutai Vitthal Pawar**
R/o. Tadsar, Tal. Kadegaon.
10. **Sou. Suman Janardhan Lawand**
R/o. Padli, Tal. Tasgaon, Dist. Sangli.
11. **Sou. Parvati Tulshiram Nikam**
R/o. Nagewadi, Tal. Khanapur, Dist. Sangli.
12. **Sou. Shashikla Bajrang Thorat**
R/o. Bobhlewadi Shalgaon, Tal. Kadegaon
13. **Sou. Hemlata Gyandev Mohite**
R/o. Soholi, Tal. Kadegaon, Dist. Sangli.
14. **Sou. Chayatai Bhimrao Salunkhe**
R/o. Gardi, Tal. Khanapur, Dist. Sangli.
15. **Dilip Mahadu Khape**
R/o. Maynee, Tal. Khatav,
(W.P. stand dismissed against
unserved R.No.15 as per Reg (J-I)'s
Order dtd.18/4/2017.)
16. **Namdev Kondi Khapte (deceased)**
 - 16a. **Sou. Sunanda Rajaram Mane**
R/o. Maynee, Tal. Khatav, Dist. Satara.
 - 16b. **Sou. Vandna Mahadeo Mane**
R/o. Ghanwad , Tal. Khanapur, Dist. Sangli
 - 16c. **Sou. Kalinda Kalidas Pawar**
R/o. Palashi, Tal. Khatav, Dist. Satara.
(W.P. stands dismissed against unserved
R.No.16(c) as per Reg (J-1)'s Order
dtd. 19/1/2017.)

.. Respondents

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- Mr. Abhishek Nandinath i/by Mr. U.R. Mankapure for Petitioners
 - Mr. Pramod G. Kathane a/w Mr. Vikas J. Wagh for Respondent No. 1
 - Mr. P.P. Pujari, AGP for State
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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 14, 2022

JUDGMENT :

1. By the present Petition, Petitioners have challenged the legality and validity of Order dated 23.09.2013 passed by the District Superintendent Land Record, Sangli. .

2. Briefly stated the facts are as under:-

2.1. Respondent No. 1 along with some of other Respondents originally filed Appeal No. 101/2011 under the provisions of Section 247 of the Maharashtra Land Revenue Code, 1966 before the District Superintendent Land Record, Sangli to challenge the order passed by Sub-District Inspector of Land Record and Inquiry Officer, Vita in respect of City Survey No. 216 on the ground that the said Applicants were entitled to a right of way on the said CTS Number.

2.2. It is the Petitioners' case that in the year 1986 after examining the record of the Grampanchayat and position of actual possession of the occupants on City Survey No. 216, report was submitted by Inquiry Officer.

2.3. It is the further contention of Petitioners that though the boundaries of City Survey No. 216 were decided as far back as on 20.08.1986, Respondent No. 1 and some other Respondents challenged the same by filing Appeal in the year 2011 i.e. after a

delay of more than 25 years. However, Respondents did not file any Application for seeking condonation of delay.

2.4. After considering the record of the case, the District Superintend Land Record, Sangli passed an Order dated 23.09.2013 and condoned the delay of 25 years.

3. This order is challenged in the present Petition on the ground that the District Superintend of Land Record did not have the jurisdiction to consider such an Application beyond the period of three years which is the limitation period prescribed in such cases. Petitioners have further averred that while passing the impugned order, the entire evidence has not been appreciated by the Competent Authority in its right perspective.

4. Heard Mr. Nandinath, learned Advocate appearing for Petitioners, Mr. Kathane, learned Advocate appearing for Respondent No. 1 and Mr. Pujari, learned APP appearing for state.

5. I have perused the Order dated 23.09.2013. The said order has been passed after hearing the respective parties and is a well reasoned order. The Competent Authority has after hearing the parties and investigation of the record opined that both parties have submitted written submissions in respect of the issue of condonation of delay which has been taken on record and considered by the Competent Authority. Respondents' case before the Competent

Authority was that by virtue of a registered sale deed bearing No. 2504 dated 22.06.1967, they had right, title and interest in City Survey No. 216. The Competent Authority has specifically concluded that the decision of the Inquiry Officer when read clearly reveals that when the inquiry was done, at that time Respondents (i.e. Appellants before the Competent Authority) were not given any notice of such inquiry which is evident from inspection of the Inquiry Register which has been inspected by the Competent Authority. A categorical finding is recorded in the impugned order that the fact of having given notice to Respondents (Appellants) in the inquiry proceedings is not notified or entered into and does not appear in the inquiry register. It is further seen that the registered sale deed in favour of Respondents is of the year 1967 i.e. 19 years before the date of inquiry. Therefore it was incumbent upon the Inquiry Officer to have given notice to the Respondents and all concerned persons who had interest in the subject land. This is the *prima facie* finding recorded by the Competent Authority in the impugned order and therefore, the Competent Authority has come to the definite conclusion that in view of this finding, delay of 25 years deserves to be condoned. It is stated that merely on the ground of delay, substantive right of the Respondents emanating from the registered sale deed cannot be overlooked. Admittedly in 1986 when survey took place, it has come on record that Respondents were never issued any notice. The Competent Authority

has further clearly opined that in so far as the substantive right of the Petitioners and Respondents in the subject / suit property is concerned, the same shall be subject to a detailed inquiry that shall be undertaken on its own merits and both parties shall be given an opportunity of hearing before passing any final order in respect of the boundaries are / or demarcation of CTS NO. 216. Hence contentions of all parties, including that of the Petitioners are kept open.

6. On minutely perusing the impugned order dated 23.09.2013 and the pleadings, it is seen that Respondent Nos. 1 to 6 have claimed to be the owner of City Survey No. 216 (old Plot Nos. 330, 331 and 332 part) admeasuring 256.15 sq. mtrs. under the registered sale deed No. 2504 dated 22.06.1967 and have also claiming occupation, possession and enjoyment of the said land.

7. In view of the above discussion, once the Competent Authority has come to the conclusion that when mutation of City Survey No. 216 was carried out, no notice was issued to Respondents is confirmed after inspecting the Inquiry Register itself, there is no infirmity in passing of the impugned order. The impugned order has been passed correctly in accordance with law and deserves to be sustained. It does not call for any interference. In so far as the issue of delay of 25 years is concerned, it can only be made attributable to the Respondents if the Respondents were actually served the notice of

inquiry in 1986, that they had knowledge about the inquiry proceedings and despite that did not attend. Once the Competent Authority has concluded after due investigation that no notice whatsoever was issued to the Respondents, a detailed inquiry as contemplated in the impugned order is necessitated to determine the rights of the parties. Hence, submissions of Petitioners that Respondents are not entitled to be heard at all on the ground of delay stands rejected.

8. Mr. Nandinath, learned Advocate appearing for Petitioners in support of his submissions has referred to and relied upon the following decisions:-

(I) Pundlik Jalam Patil (dead) by LRS v. Executive Engineer, Jalgaon Medium Project & Anr.¹;

(ii) Suresh Bapu Sankanna & Ors.v. State of Maharashtra & Ors².

8.1. Mr. Nandinath contended that on the ground of limitation, the Application / Appeal of Respondents could not have been allowed by the Competent Authority. It is pertinent to note that the statute of limitation would apply in the case where long dormant claims have more of cruelty than justice in them. That when a Defendant might have lost the evidence to dispute the stated claim and when persons with good causes of actions should pursue them with reasonable diligence. It is further pertinent to note that the Supreme Court in the

1 (2008) 17 SCC 448

2 2018(4) Mh.L.J. 331

case of ***Rajender Singh v. Santa Singh***³ in paragraph No. 18 of the said decision has observed as under:-

"18. The object of law of Limitation is to prevent disturbance and deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches"

9. On perusal of the pleadings, it is seen that Petitioners have not furnished any evidence whatsoever about their right, title and enjoyment in respect of City Survey No. 216 or any adjoining CTS No. so as to enable this Court to believe that Petitioners are the owners of the said land. Without disclosing their right, tile and entitlement, Petitioners have opposed the impugned order merely on the ground of delay and it *prima facie* appears that Petitioners do not want the inquiry which is contemplated in the impugned order by the Competent Authority. There is no infirmity observed in the impugned order in view of the fact that Respondents were never given notice of inquiry and it is within their right to challenge the original proceedings and the Competent Authority has correctly condoned the delay in filing the challenge to demarcation of boundaries of City Survey No. 216 by the Respondents.

10. Hence the Petition fails. However, considering the dispute between the parties, it is directed that the Competent Authority i.e the District Superintendent of Land Record, Sangli shall complete the

3 (1973) 2 SCC 705

Inquiry contemplated between the parties as stated in the impugned order within a period of six months from the date of uploading of this Judgment.

11. Both Petitioners and Respondents shall be given opportunity of hearing by the Competent Authority. They shall be entitled to file their written submissions and documents in support of their respective claims / cases and also exchange the same before being finally heard. If the Competent Authority desires to rely upon any report in respect of the aforesaid dispute / issue / inquiry, copy of the said report shall be given to both parties to enable them to meet the same..

12. With the above directions, Writ Petition stands disposed of.

[MILIND N. JADHAV, J.]