

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1128 OF 2019

Mukta Mahadu Bombe (Deceased)
Through her Legal Heirs
Nanabhau Mukta Bombe and Anr.

.. Petitioners

Versus

Savala Mahadu Bombe (Deceased)
Through his Legal Heirs and Ors.

.. Respondents

.....

- Mr. Uday Nighot, Advocate for the Petitioner.
- Mr. Pramod J. Pawar, Advocate for Respondent Nos.1 to 4.
- Mr. C.D. Mali, AGP for Respondent Nos.5 to 7 - State.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 07, 2022.

P.C.:

1. Heard Mr. Nighot, learned Advocate appearing for the Petitioner; Mr. Pawar, learned Advocate for Respondent Nos.1 to 4 and Mr. Mali, learned AGP for the State at length.

2. The grievance between the parties pertains to Mutation Entry No.637 dated 27.05.1944 as also the *Phalani – Bara Nakasha, Gat Nakasha and Yojnapatra Durusti*. The order dated 14.08.2017 passed by the learned District Superintendent of Land Records, Pune is a twin order which condones the delay of 72 years (which is opposed by the Respondents herein) and simultaneously allows the Appeal filed by the Respondents. It is settled law that unless the delay is condoned, the Court hearing the dispute between the parties will not

get jurisdiction.

3. Mr. Nighot, learned Advocate appearing for the Petitioner has placed on record two decisions of this Court in the case of ***Shankar Ramrao Rangnekar Vs. Narayan Sakharam Sawant and Ors.***¹ and ***Yashomandir Sahakari Patpedhi Maryadit Vs. Ashok Raj Enterprises and Ors.***² and contended that the jurisdiction to consider the controversy between the parties becomes available to the Tribunal/Forum hearing the dispute only after the delay stands condoned.

4. Paragraph No.8 of the judgment in the case of ***Shankar Ramrao Rangnekar (Supra)*** is relevant and reads:-

“8. The law in this respect is well settled. When there is delay, the Tribunal has to first proceed to consider its condonation. It gets jurisdiction to consider the controversy on merits only after such delay is condoned. Here consideration of merits as also consideration of the prayer for condonation of delay is simultaneous. View of this Court in M. M. College of Science vs R.T.Borkar 1997 (2) Mh.L.J. 168 and National Building Construction vs Regional Labour Commissioner 2006 (1)Mh.L.J. 669 clinch the issue in favour of Petitioner.

5. Mr. Pawar, learned Advocate for Respondent Nos.1 to 4 has vehemently submitted that the record would clearly indicate that there is no delay on the part of Respondents and in that view of the matter the order passed by the Superintendent of Land Records, Pune condoning the delay is required to be adjudged as a correct order. He submitted that the letter dated 07.01.2014 addressed by the Petitioner

1 2013 (1) Mh.L.J. 706

2 2013 (7) ALL MR 1

to the President of *Gram Tanta Mukti Samiti* is relevant in this respect.

6. In that view of the matter, I find that the order dated 14.08.2017 is contrary to the settled position in law and deserves to be quashed and set aside. As a consequence, the orders dated 23.07.2018 passed by the Deputy Director of Land Records, Pune and 13.12.2018 passed by the learned Revenue Minister also stand quashed and set aside.

7. Parties are relegated to appear before Respondent No.5 i.e. the District Superintendent of Land Records, Pune. Respondent No.5 is directed to hear the parties afresh in accordance with law and decide the Application seeking condonation of delay on its own merits first. After passing necessary orders and if delay is condoned, the Respondent No.5 shall then look into the controversy on merits and decide the dispute with respect to Mutation Entry No.637 dated 27.05.1944 and other grievances.

8. Respondent No.5 i.e. the District Superintendent of Land Records, Pune shall not be influenced by any observations made in the present order.

9. All contentions of both the parties are expressly kept open.

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

[MILIND N. JADHAV, J.]