

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5930 OF 2019

Smt. Shobha Sheshrao Magar and anr.

Vs.

State of Maharashtra and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. G.L. Agrawal, Advocate for petitioners.
Mr. K.L. Dharmadhikari, Advocate for respondents/State.
Mr. S.U. Nemade, Advocate for respondent No.4.

CORAM : MANISH PITALE J.

DATE : 29.03.2022

By this writ petition, the petitioners have challenged concurrent orders passed by three authorities below i.e. the Sub-Divisional Officer, the Collector and the Commissioner, whereby an application filed on behalf of the petitioners to challenge the mutation entry pertaining to a particular property, has been rejected on the ground of delay. It is recorded that the petitioners approached the Sub-Divisional Officer to challenge the mutation entry made in favour of the contesting respondent after about 11 years.

2. Mr. Agrawal, learned counsel appearing for the petitioners submitted that merely because the challenge was raised after 11 years could not be a ground to throw out the same, for the reason that the petitioners had placed sufficient material on record to explain that they acquired knowledge about the document purporting to be a sale-deed executed by their mother only in the year 2013 and till that time they were under an impression that the document in question was only a lease deed for ten years executed by their mother in favour of the contesting respondent. It is submitted that for this reason, although the mutation entry was made in favour of the contesting respondent in the year 2002, on the strength of aforesaid document, the petitioners were justified in raising a challenge after about 11 years, because they acquired knowledge about the said document being a sale-deed only in the year 2013. It is their case that the contesting respondent had duped the mother of the petitioners and that there was no exchange of consideration for execution of the said document. Certain submissions were sought to be made on the merits of the matter, but since this Court in this petition is concerned with the question as to whether sufficient cause was shown by the

petitioner for condonation of delay, the aspects on the merits of the matter cannot be looked at.

3. On the other hand, Mr. Nemade, learned counsel appearing for the contesting respondent No.4, brought to the notice of this Court that it cannot lie in the mouth of the petitioners to claim that they were not aware about the execution of sale-deed and the nature of the document for the reason that it is a registered document and more importantly, the petitioner No.2 herself is one of the witnesses to the aforesaid registered sale-deed. It is also brought to the notice of this Court that execution of the registered sale-deed was preceded by execution of a registered agreement to sale between the mother of the petitioners and the respondent No.4. On this basis, it is submitted that the petitioners are not entitled to claim that they had no knowledge about the said document or its nature and that therefore, they were justified in raising challenge to the mutation entry after about 11 years.

4. Mr.K.L.Dharmadhikari, learned Assistant Government Pleader has appeared on behalf of respondent Nos.1 to 3 and he has defended the impugned orders passed by the authorities.

5. In the present case, there is no dispute about the fact that the petitioners filed appeal before the Sub-Divisional Officer to challenge the mutation entry after about 11 years. The specific case of the petitioners before the authorities below was that they were not aware about the nature of the document executed between their mother and respondent No.4 and they were under an impression that the document was actually a lease deed executed for a period of ten years.

6. The aforesaid contention raised on behalf of the petitioners, is not borne out from the record. The respondent No.4 is justified in claiming that when the petitioner No.2 herself was a witness to the aforesaid document which was a registered sale-deed, it could not lie in the mouth of the petitioners to claim that they were not aware about the nature of the document.

7. It is also an admitted fact that the registered sale-deed was preceded by execution of a registered agreement to sale between the mother of the petitioners and respondent No.4. In the face of such facts, it cannot be said that the authorities below erred in concurrently holding that the delay of 11

years was not sufficiently explained by the petitioners in the facts and circumstances of the present case.

8. As regards, the merits of the matter sought to be highlighted on behalf of the petitioners, this Court is refraining from making any comment on the same, for the reason that the only question in the present writ petition is restricted to delay of 11 years on the part of the petitioners is approaching to the Sub-Divisional Officer. The other contentions pertaining to absence of consideration and other such matters cannot be considered by this Court in the present writ petition.

9. If at all the petitioners have any grievance as regards the aforesaid document i.e. the registered sale-deed dated 29.05.2002, the petitioners would obviously be at liberty to initiate appropriate proceedings in accordance with law.

10. In view of the above, the writ petition is dismissed.

JUDGE

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