

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

46 WRIT PETITION NO.4418 OF 2022

**Ghansham Radhakishan Agrawal,
Age: 52 years, Occ: Business,
R/o: Flat No. 3 Radhakrushna Apartment,
Yadavnagar, Post Office Road,
Jijamata Chowk, Jalna.**

...Petitioner

Versus

- 1. Church Of North India Trust Association,
(Maharashtra Committee),
Through Priest,
Madhukar Uttamrao Kasab,
Age: 66 years, Occ: Priest,
R/o: Bangala No. 28/A, Misson Compound,
Chhawani Aurangabad, Tq. & Dist. Aurangabad.**
- 2. The District Superintendent of Land Recrod,
Jalna, Dist. Jalna.**
- 3. The Deputy Superintendent of Land Record,
Jalna Dist. Jalna.**

...Respondents

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Advocate for Petitioner : Singare Ramdas B.
Advocate for Respondent No. 1 : Mr.Waramaa B. R.
AGP for Respondent Nos. 2 & 3/State : Mr. K.B.Jadhavar

...

CORAM : KISHORE C. SANT, J.

DATE : 21.07.2023.

PER COURT :

1. Heard the learned Advocate for the parties. The issue involved in this petition is very short. It is the case of the

petitioner that he resides at Flat No. 3 Radhakrushna Apartment, Yadavnagar, Post Office Road, Jijamata Chowk, Jalna. The respondent approached the DILR, Jalna against a mutation entry No. 23595 dated 01.10.2009 in respect of CTS No. 3807. While approaching the said authority there was delay of 10 years. In the delay condonation application the address given by the petitioner is as 'Ghanaysham Radhakishanji Agrawal, Age: 51 years, Occ: Business, Resident of Ramnagar Colony, Near Ghantrup Hanuman Temple, Taluka and District Jalna'. This is not the address of the petitioner, therefore, the notice was not served upon him.

2. The learned DILR however, decided the application and condoned the delay of about 10 years caused in filing an appeal. The order of condonation of delay was passed on 08.04.2021, whereas, the respondent lateron furnished the correct address by giving pursis on 27.08.2021. A notice of appeal came to be issued on this address. When the petitioner attended the proceedings he was shocked to see that the delay of 10 years is already condoned without hearing him. The petitioner, therefore approached this Court.

3. The learned Advocate for the petitioner made submission that when there was delay in filing the appeal, it could not have been condoned without giving hearing to the petitioner. The respondent No. 1 was knowing the address of the petitioner, however, the same was not given and the notice was therefore, issued on the incorrect address. He further submits that the serious prejudice is caused to the petitioner.

4. The learned Advocate Mr. Waramma, appearing for the respondent No. 1 submits that in fact no prejudice is caused to the petitioner as it is the petitioner, who has filed a Civil Suit in the Civil Court, Jalna in respect of the said property. The respondent has challenged only the mutation entry and the mutation entry will not change the nature of the rights of the parties. He further submits that the address which was given by the petitioner earlier was the address appearing in the said sale deed and there is no denial to that effect.

5. The fact that the delay was condoned without hearing the petitioner and the delay is of 10 years and thus, there was all the more reason for the authority to be more

cautious in passing the orders. This Court, therefore, pass the following order :

ORDER

- a) The impugned order dated 8.04.2021 passed by the DILR, Jalna in application for condonation of delay in appeal No. SR-15/2019 dated 12.02.2021 is quashed and set aside.
- b) Respondent No. 2, the DILR, is directed to pass fresh order after hearing the petitioner and the respondents.
- c) The parties to appear before the DILR on 01.08.2023.
- d) It is expected that the authority to pass the order by the end of August, 2023. If the delay is condoned, further appeal be decided within a period of three months thereafter. Needless to say that the petitioner is at liberty to file say to the application.
- e) With this the petition stands disposed off.

(KISHORE C. SANT)
JUDGE

mahajansb/