

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SANTOSH
SUBHASH
KULKARNI

WRIT PETITION NO. 1099 OF 2022

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2023.03.13
17:24:38 +0530

- 1 Ramesh Lakshman Ramdasi
Age : 48 years, Indian inhabitant, residing
at : Kevighar, Mali Galli, Patange Vadi, 61/
A/3, Barshi Solapur.
- 2 Arun Lakshman Ramdasi
An adult, Indian inhabitant, residing at :
Kevighar, Mali Galli, Patange Vadi,
61/A/3, Barshi Solapur.
- 3 Sunil Lakshman Ramdasi
An adult, Indian inhabitant, residing at :
Kevighar, Mali Galli, Patange Vadi,
61/A/3, Barshi Solapur.
- 4 Vaibhav Ashok Ramdasi
An adult, Indian inhabitant, residing at :
99 Plot No.5, Ujjvalkunj Dhayri, Haveli,
Pune.
- 5 Vivek Ashok Ramdasi
An adult, Indian inhabitant, residing at :
99 Plot No.5, Ujjvalkunj Dhayri, Haveli,
Pune.
- 6 Vaishali Ravindra Upasani
An adult, Indian inhabitant, residing at :
99 Plot No.5, Ujjvalkunj Dhayri, Haveli,
Pune.

...Petitioners

Versus

- 1 Additional Divisional Commissioner
Pune Division, Pune
- 2 Suman Bharath Gosavi
An adult, Indian inhabitant, residing at :
Shriharinagar, Malinagar, Malshiras,
Solapur.
- 3 Nithin Bharath Gosavi
An adult, Indian inhabitant, residing at :
Shriharinagar, Malinagar, Malshiras,
Solapur.

- 4 Purushottam Ramkrishna Gosavi
An adult, Indian inhabitant, residing at :
144, Kasba Peth, Pune.
- 5 Madhav Ramkrishna Gosavi
An adult, Indian inhabitant, residing at :
144, Kasba Peth, Pune.

...Respondents

Mr. P. B. Shah, a/w Ms. Gunjan Shah, i/b Kayval P. Shah, for
the Petitioners.

Mr. S. D. Rayrikar, AGP for the State/Respondent No.1

Ms. Manisha Devkar, for Respondent Nos.2 to 5.

CORAM: N. J. JAMADAR, J.

DATED : 10th MARCH, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the Counsels for the parties heard finally.

2. This petition under Article 227 of the Constitution of India assails the order passed by the Divisional Commissioner, Pune Division, Pune, in RTS Appeal No.357 of 2019 on 23rd August, 2021, whereby the Divisional Commissioner condoned delay in filing appeal.

3. Shorn of unnecessary details, the background facts can be stated as under:

The petitioners claim that they are the holders of agricultural land bearing Survey Number 430/1 admeasuring 13 Acres, situated at village Mhalung, Taluka Malshiras, District Solapur ("the suit land"). The suit land was in the possession

of the Maharashtra State Agricultural Corporation. Vide an order dated 29th July, 2013, the Committee headed by the then Sub-Divisional Officer, Madha Sub-Division, Kurduwadi, allotted the suit land to the petitioners as the legal representatives of Lakshman Ramdasi. Respondent Nos.2 to 3, who claim to be the legal representatives of Bharath Gosavi (Ramdasi) and respondent Nos.4 and 5, who claim to be the legal representatives of Ramkrishna Gosavi (Ramdasi), professed to file an appeal against the said order. An application for condonation of delay of 6 years, 1 month and 7 days in preferring the said appeal was also filed. By the impugned order, the Divisional Commissioner condoned the delay opining, *inter alia*, that there was delay of about five months only from the order impugned before him dated 16th January, 2019.

4. Being aggrieved the petitioners have invoked the writ jurisdiction of this Court.

5. Mr. Shah, the learned Counsel for the petitioners, would urge that the patent error in the impugned order was noted by this Court on the very first day when the matter was listed before the Court. This Court, *inter alia*, observed that *ex facie* it appeared that respondent Nos.2 to 5 had preferred the said appeal along with an application for condonation of delay

aggrieved by order of the Committee dated 29th July, 2013 and the Divisional Commissioner proceeded on the premise that the impugned order was passed on 16th January, 2019. In a subsequent order dated 10th February, 2019, upon perusal of the original file tendered by the learned AGP, this Court further recorded that the said order dated 16th January, 2019 referred to by the Divisional Commissioner in the impugned order pertained to a totally different matter. Thus, the Court stayed the impugned order.

6. Ms. Devkar, the learned Counsel for respondent Nos.2 to 5, attempted to salvage the position by inviting the attention of the Court to the proceedings initiated by the respondents assailing the order of allotment of the suit land dated 29th July, 2013. It was submitted that, by an order dated 14th September, 2016 in the complaint Application No.SR/47/2012, the head of the Committee and Sub-Divisional Officer, Malshiras, Sub-Division Akluj, rejected the complaint application advising respondent Nos.1 and 2 to initiate appropriate proceedings before the appropriate forum against the decision of the Committee. The said decision was further challenged by respondent Nos.1 and 2 in 2nd RTS Appeal No.580 of 2017 before the Additional Collector, Solapur. By an order dated 16th

January, 2019, the Additional Collector dismissed the appeal and confirmed the decision of the Sub-Divisional Officer, Akluj, in RTS Complaint No.104/2016 dated 16th November, 2016. An endeavour was thus made to demonstrate that the respondents have all along been pursuing the remedies in respect of the order of allotment dated 29th July, 2013.

7. The aforesaid submission, even if taken at par, is of no assistance to respondent Nos.2 to 5. From the perusal of the copy of RTS Appeal No.357 of 2019, it becomes evident that what respondent Nos.2 to 5 assailed was the order of allotment passed by the Committee on 29th July, 2013. Had the Divisional Commissioner condoned the delay by ascribing the reasons that the delay of 6 years, 1 month and 7 days occurred on account of the fact that respondent Nos.2 to 5 were prosecuting the remedies before wrong forums, different consideration would have come into play. Instead, the Divisional Commissioner proceeded on the premise that there was delay of about five months. Thus, the discretion to condone the delay was exercised on a completely erroneous premise.

8. In the circumstances, the impugned order deserves to be quashed and set aside and the application for condonation of

delay is required to be remitted for afresh determination in accordance with law.

9. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned order dated 23rd August, 2021 passed by the Divisional Commissioner, Pune, in RTS Appeal No.357 of 2019 stands quashed and set aside.
- (iii) Application for condonation of delay stands restored to the file of the Divisional Commissioner, Pune.
- (iv) The Divisional Commissioner is requested to decide the application afresh after providing an opportunity of hearing to the parties and in accordance with law.
- (v) All contentions are kept open for consideration.

Rule made absolute to the aforesaid extent.

No order as to costs.

[N. J. JAMADAR, J.]