

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6718 OF 2022**

Jitendra Shivaji Pawar ... Petitioner
versus
Gajanan Krushna Pawar and Ors. ... Respondents

Mr. Vijay Killedar for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 13 APRIL 2023

P.C.

1. Heard the learned Counsel for the Petitioner.
2. This Petition takes exception to an order dated 23 June 2021 passed by the Revenue Minister in RTS Revision No.RTS/3620/364/p.ra.kra.104/J-5A, whereby the Revision Application preferred by the Petitioner came to be dismissed by affirming the order dated 17 January 2020 passed by the Additional Commissioner, Pune in RTS Revision No.79 of 2019, whereby the Additional Commissioner had, in turn, affirmed the orders passed by the Additional Collector, Sangli and the Resident Deputy Collector, Sangli, declining to condone delay in preferring an appeal against the certification of mutation entry No.4207 in respect of Gat No.124/2, Mauje Sangliwadi, Tal. Miraj, Dist. Sangli (the subject land).
3. Late Krushna Rama Pawar was the common ancestor. In the year 1959, late Krushna had divided the agricultural lands amongst his sons. The subject land

came to be mutated in the name of Shivaji, the deceased father of the Petitioner, then minor, vide mutation entry No.926 dated 16 August 1959. Shivaji solemnized inter-faith marriage. The Petitioner alleges, the brothers of Shivaji, namely, Gajanan and Maruti in connivance with the revenue officials, got their names mutated to the cultivators column of the subject land vide mutation entry No.4207. Shivaji was ousted from the joint family and properties. Shivaji passed away.

4. After the death of Shivaji, the Petitioner made an endeavour to obtain requisite information from the Respondents. As the Petitioner was not apprised of the circumstances in which the name of Shivaji came to be deleted from the record of right of the subject land, the Petitioner made an application under the Right to Information Act. Thereupon, the Petitioner was furnished with the copies of the mutation entry. It transpired that Respondent Nos.1 and 2 had fraudulently got the mutation entry No.4207 certified. Shivaji had never given an application to mutate the names of Respondent Nos.1 and 2. Hence, the Petitioner preferred first appeal before the Resident Deputy Collector, Sangli along with an application for condonation of delay.

5. The Petitioner asserted that Shivaji passed away while he was quite young. The Respondents did not furnish requisite information to him, despite being called upon to do so repeatedly. Since the year 2013, the Petitioner made efforts to obtain the documents and information under Right to Information Act. Hence, there

was a delay.

6. By an order dated 19 August 2017, the Resident Deputy Collector, Sangli was persuaded to dismiss the application for condonation of delay. Being aggrieved, the Petitioner preferred second RTS Appeal before the Additional Collector, Sangli. By an order dated 29 July 2019, the Additional Collector also dismissed the Appeal, opining, inter alia, that there was no sufficient cause to condone the delay of more than 40 years as the disputed entry was certified in the year 1976. The Revision Application preferred by the Petitioner before the Additional Commissioner, Pune, met the same fate.

7. Eventually, the Petitioner preferred second Revision Application before the State Government. By the Impugned order dated 23 June 2021, the Revenue Minister declined to interfere with the orders passed by the authorities below. It was held that there was no sufficient cause to condone the delay of more than 30 years and, even otherwise, no case to interfere with the certification of mutation entry No.4207 was made out as the Civil Suit in respect of the subject land was subjudice. Being still aggrieved, the Petitioner has invoked the writ jurisdiction of this Court.

8. I have heard Mr. Vijay Killedar, learned Counsel for the Petitioner. Taking the Court through the orders passed by the authorities below and the extracts of mutation entry Nos.926 and 4207, Mr. Killedar made an endeavour to demonstrate that the authorities below lost sight of the fact that mutation entry No.4207 was got

certified fraudulently. Instead of considering the allegations of fraud clearly attributable to Respondent Nos.1 and 2, the authorities below proceeded to non-suit the Petitioner on the ground of delay alone.

9. Mr. Killedar would urge that the Petitioner had ascribed justifiable reasons with reference to the efforts made by the Petitioner to obtain the information under the Right to Information Act. Thus, the Petitioner's application for condonation of delay could not have been rejected mechanically. To bolster up the submission that the limitation would not bar the remedy where the fraud is alleged, Mr. Killedar placed reliance on a judgment of the Supreme Court in the case of **Commissioner of Customs V/s. Candid Enterprises**¹. In the said case, the Supreme Court observed that the Tribunal had lost sight of the cardinal principle which is enshrined in Section 17 of the Limitation Act that fraud nullifies everything. If the Tribunal was satisfied, as it ought to have been upon the facts of the said case that, there might be some fraud, there was every reason for the Tribunal to condone the delay and to hear the Appeal.

10. Ordinarily, the Courts lean in favour of condonation of delay so as to advance the cause of substantive justice. It is considered to be expedient in the interest of justice to hear the lis on merits rather than decide it on the basis of technicalities or ground of delay. Thus, the application for condonation of delay always receives a liberal consideration. However, where the delay is inordinate, onus

1 (2002) 9 SCC 764

lies on the party who seeks condonation of delay to satisfy the court that he was prevented by a sufficient cause from not preferring the proceeding within the stipulated period.

11. In the case at hand, the reasons ascribed by the Petitioner that for want of information and documents, he could not prefer appeal against the certification of mutation entry No.4207, at an earlier point of time, do not inspire confidence. It is the case of the Petitioner that his deceased father was ousted from the joint family property for solemnizing an inter-faith marriage. If that was the genesis of the dispute between the parties, it would be hard to believe that the Petitioner would have been unaware of the certification of Mutation entry No.4207. The fractious relationship between Shivaji and his brothers would have provided multiple opportunities to the Petitioner to assail the alleged usurpation of the subject land. The authorities were, thus, justified in arriving at a conclusion that the Petitioner failed to make out a sufficient cause for condonation of huge delay of 40 years. It would be naive to believe that during such a long period, the Petitioner had not had the opportunities and means to know the certification of mutation entry No.4207.

12. There is another substantive reason not to interfere with the impugned order in exercise of extra-ordinary writ jurisdiction in the face of concurrent findings throughout by the authorities below. The Petitioner and the persons who claimed through deceased Shivaji have already instituted a Civil Suit i.e. Regular Civil Suit

No.352 of 2016 against Gajanan and Maruti and the persons who claimed through them for declaration that the Petitioners are the owners of the subject land. In the said suit, certification of mutation entry No.4207 is also assailed.

13. In the backdrop of the allegations that Shivaji, the deceased father of the Petitioner, was ousted from the joint family property for having solemnized an inter-faith marriage, the dispute can only be resolved by the civil court. It would be contextually relevant to note that the compromise decree passed in the said Civil Suit between the Petitioner and the persons claiming through Shivaji, one the one side, and Gajanan and the persons claiming through him, on the other side, adverts to a number of proceedings between the parties including the suit instituted in the year 2013 by the Petitioner. This belies the claim of the Petitioner that he became aware of the mutation entry No.4207 in the year 2016.

14. Resultantly, no interference is warranted in the impugned order. Hence, the Petition does not deserve to be entertained.

15. The Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)