

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14709 OF 2022

Shri. Chhaburao Laxman Ghogaje

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr. Uday Warunjikar a/w. Ms. Sonali R. Chavan, Mr. S.A. Pilankar,
for the Petitioner.

Mr. C.D. Mali, AGP for State.

Mr. C.R. Nagare, for Respondent Nos.2 (a) to 2(f).

Mr. Sajid Shaikh a/w. Mr. Bharat Patel i/by. Kaleeyantey Law firm for
Respondent Nos.9 and 10.

CORAM : SANDEEP V. MARNE, J.

Dated : 14 September 2023.

P.C. :

1. By this petition, Petitioner challenges order dated 28 April 2022 passed by the Additional Divisional Commissioner, Pune allowing RTS Revision No. 28/2021 filed by Respondent Nos.2 and 3 herein and directing mutation of names of Respondent Nos.2 and 3 in the record of rights of the land in question.

2. It appears that Respondent Nos.2 and 3 had instituted RTS Appeal) No. 135/2017 before the Sub-Divisional Officer, Maval, Mulshi challenging Mutation Entry No. 713. Citing the reason of filing of Appeal after the delay of 44 years, the Sub-Divisional Officer rejected the Appeal by order dated 15 July 2019. The Additional Collector upheld the order passed by the Sub-Divisional Officer. When the matter was taken up in revision before the Additional Divisional Commissioner, rather than deciding the correctness of findings of the Sub-Divisional Officer and Additional Collector on the issue of delay, the Additional Divisional Commissioner entered into the merits of the matter and passed order dated 28 April 2022 not only setting aside the orders passed by the Sub-Divisional Officer and Additional Collector, but also directing mutation of the names of the Revision Applicants in the records of rights of the property in question. This course of action adopted by the Additional Divisional Commissioner is unknown to law. He was to examine the merits of the decision of the Sub-Divisional Officer and Additional Collector in not entertaining the Appeal filed by Respondent Nos.2 and 3/Revision Applicants after the delay of 44 years. The Additional Divisional Commissioner has also noted the provisions of Proviso to Section 257 of the Maharashtra Land Revenue Code which contains a prohibition on Revenue Authorities in respect of any mutation entry which has been finalised before five years. Despite this position, rather than deciding the issue whether the delay in filing the Appeal before the Sub-Divisional Officer is to be condoned or not, the Additional Divisional Commissioner ventured into the

merits of the matter. Perusal of the order passed by the Additional Divisional Commissioner on 28 April 2022 would indicate that he has not recorded even a single finding with regard to the delay and has straightaway proceeded to decide the merits of the matter. The order passed by the Additional Divisional Commissioner is therefore totally unsustainable. Therefore, though in ordinary course this Court could have relegated Petitioners to the alternate remedy of filing further revision before the State Government, the error committed is so gross that this Court would be justified in interfering with the order.

3. Accordingly the order dated 28 April 2022 passed by the Additional Divisional Commissioner is set aside and the proceedings are remanded to the Additional Divisional Collector for being considered afresh only on the issue of delay in filing RTS (Appeal) No. 135/2017 before the Sub-Divisional Officer. While deciding the issue of delay, the Additional Divisional Collector shall refer to the provisions of Proviso to Section 257 of the Code. The Writ Petition is accordingly **allowed and disposed of**.

**NEETA
SHAILESH
SAWANT**

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.09.16
16:03:27 +0530

SANDEEP V. MARNE, J.