

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12303 OF 2019

1. Shri. Santosh Namdeo Koli
Age : Adult, Occ : Agriculture
2. Smt. Sarubai Namdeo Koli
Age : Adult, Occ : Household
Both R/o. At Mundhvi Tal-
Mangalwedha, District-Solapur
3. Smt. Tai Dnyaneshwar Koli
At. Brahmapuri, Tal. Mangalwedha
Dist.Solapur.
4. Smt. Rani Bapur alias @ Dharmaraj
Mane, Age : Adult, Occ : Household
R/o. At Chincholi, Taluka-Pandharpur.
5. Smt. Padmabai Dada Koli, Age : Adult
Occ : Household, r/o. At Mundhavi,
Tal.Mangalwedha, Dist-Solapur

PETITIONERS

VERSUS

1. Mr. Bhanudas Yesu Gadade
Through his Power of Attorney
Mr. Lingappa Bhanudas Gadde
Age : Adult, Occ : Agriculture
R/o. At Ozewadi, Tal.Pandharpur.
Dist. Solapur.
2. Namdeo Hari Koli, Died through Legal
Heirs
- 2A] Nagnath Namdeo Koli, Age : Adult,
Occ : Agriculture, R/o. Mudhvi, Tal.
Mangalwedha, Dist. Solapur

- 2B] Swapnil Machindra Koli
Age : Adult, Occ : Agriculture,
At. Chincholi, MIDC Tal. Mohol
Dist. Solapur
- 2C] Hanmant Dada Koli
Age : Adult, Occ . Agriculture
- 2D] Ramesh Dada Koli
Age : Adult Occ : Agriculture
- 2E] Chetan Dada Koli
Age : Adult, Occ : Agriculture
No.2C to 2E at Mudhvi,Tal.
Mangalwedha, Dist. Solapur.
- 3] Mahadeo Bandoba Mane
Died through legal heirs.
- 3A] Smt. Phulabai Mahadeo Mane
Age : Adult, Occ : Household
- 3B] Shashikant Mahadeo Mane
Age : Adult, Occ : Agriculture
- 3C] Anil Mahadeo Mane
Age : Adult, Occ : Agriculture
- 3D] Sunil Mahadeo Mane
- 3E] Smt. Nanda Laxman Shinde
Age : Adult, Occ : Agriculture
Sr.3A to 3E, At Tukai Nagar,
Mangalwedha, Dist. Solapur.
- 4] District Superintendent of Land Record
At Solapur.

RESPONDENTS

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Mr. Ajay A. Joshi, Advocate for the Petitioner.

Mr. S.S. Patwardhan, Advocate for Respondent no.1.

Mr. A.P. Vanarse, AGP for State.

CORAM : SANDEEP V. MARNE, J.

DATED : JULY 21, 2023.

ORAL JUDGMENT (*Per Sandeep V. Marne, J.*) :

1. **Rule.** Rule made returnable forthwith. With the consent of the learned counsels for the parties, petition taken up for final hearing.

2. By this petition, Petitioners challenge order dated August 21, 2019 passed by the District Superintendent of Land Records, Solapur thereby condoning the delay in filing Appeal for correction of area of Respondent's land under the Consolidation Scheme.

3. Briefly stated, facts of the case are that the land bearing Survey No. 115 admeasuring 27 Hectares 6 Gunthas was originally owned by Hari G. Koli. Out of that area, land admeasuring 8 Acres 26 Gunthas was purchased by Yesu Gadade by sale-deed dated June 30, 1968. Respondent is the son of Yesu Gadade, who died in the year 1972. The Consolidation Scheme was implemented in the village in the year 1964-65. Under the Consolidation Scheme, the land at by which Survey No.115 was given Gat No.424. Accordingly, Mutation Entry no. 1008 was

effected and the area of Respondent's land at Gat No. 424 was erroneously stated as 2 Hectares 89 Ares instead of 3 Hectares 47 Ares.

4. It appears that in the year 1993, the Respondent applied to the Tehsildar for area correction of land at Gat No. 424 and the Tehsildar passed order dated June 1, 1993 correcting the area of land as 3 Hectares 47 Ares. However, the necessary correction was not effected in the Consolidation Scheme. With a view to effect necessary correction in the Consolidation Scheme, Respondent filed an application before the District Superintendent of Land Records, Solapur in the year 2014 and sought correction of the Scheme to the limited extent of area. Respondent also sought condonation of delay in filing his application. By order dated December 31, 2014, the District Superintendent of Land Records was pleased to reject the application for condonation of delay. Respondent preferred an appeal before the Deputy Director of Land Records, Pune bearing Appeal No. 3215/2015 challenging the order of the District Superintendent of Land Records, Solapur dated December 31, 2014. The Deputy Superintendent of Land Records, Pune was pleased to allow the Appeal by his order dated August 16, 2017 and set aside the order of the District Superintendent of Land Records, Solapur and remanding the proceedings for fresh determination of issue of delay

condonation. It appears that, after the proceedings were remanded before the District Superintendent of Land Records, Solapur, Respondent filed fresh application on March 19, 2019 seeking condonation of delay. He also filed an application dated May 21, 2019 for amendment of the application for condonation of delay.

5. Petitioners herein contested the application for amendment. The District Superintendent of Land Records by his order dated August 21, 2019 has allowed the application for condonation of delay and has fixed the main proceedings for decision on merits. Petitioners are aggrieved by the order dated August 21, 2019 and have filed the present petition.

6. Mr. Ajay Joshi, the learned counsel for the Petitioners would submit that there was inordinate delay of 44 years in filing the proceedings before the District Superintendent of Land Records, Solapur. That perusal of the impugned order would show that there is no finding recorded about sufficient cause being made out by the Respondent for condonation of delay. That instead of restricting his order to condoning the delay for showing sufficient cause, the District Superintendent of Land Records has considered merits of the matter and on that ground, condoned inordinate delay of 44 years delay, which is impermissible in law. That therefore there is a jurisdictional error

in the impugned order. Mr. Joshi, would further submit that though the power of condoning the delay is discretionary, in absence of any foundational facts being laid by the Respondent, the Authority could not have condoned such an inordinate delay. That there is patent illegality in the order, on account of which the same deserves to be set aside. In support of his contentions, Mr. Joshi would rely upon following judgments:

(i) **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others** (2013) 12 SCC 649.

(ii) **Mathuradas Mohta College of Science, Nagpur vs. R.T. Borkar and Others**. 1997(2)Mh.L.J. 168.

(iii) **Suresh Bapu Sankanna and Others Vs. State of Maharashtra and Others** 2018(4)Mh.L.J. 331.

7. *Per contra* Mr. Patwardhan, the learned counsel appearing for Respondent would oppose the petition and support the order passed by the District Superintendent of Land Records. He would submit that the delay was not of 44 years as sought to be contended by Petitioners as Tehsildar's order of 1993 would reduce the delay considerably. That the Authority has exercised discretionary power of condoning the delay by recording a finding that the effect of Tehsildar's order of 1993 needs to be examined on merits. For examining the said issue on merits, he has proceeded to condone the delay. In such circumstances, it is the submission of Mr. Patwardhan, that this Court need not exercise its extraordinary jurisdiction under Article 227 of the

Constitution of India. He would submit that the period of 3 years is not statutorily provided but this Court has held period of 3 years in ordinary circumstances to be reasonable for challenging a consolidation scheme. In support of this contention, Mr. Patwardhan would rely upon the judgment of Division Bench of this Court in **Gulabrao Bhaurao Kakade, since deceased by L.R.s and Others vs. Nivrutti Krishan Bhilare and Ors. 2001 (4) Mh.L.J. 31.**

8. I have also heard Mr. Vanarase, the learned AGP appearing on behalf of the State. He would submit that there was an apparent mistake in records by reducing the area of Respondent's land by 60 Ares without any justification and that therefore the delay has rightly been condoned by the District Superintendent of Land Records.

9. Rival contentions of the parties now fall for my consideration.

10. No doubt, there is substantial delay on the part of the Respondent in filing the proceedings under the provisions of Section 32 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Though no specific period of limitation is stipulated under Section 32 of the Act, it has been repeatedly held by various judicial pronouncements that ordinarily a period of three years is required to be taken as a

reasonable period, within which proceedings are required to be adopted for correction in the Consolidation Scheme. This view has been expressed by the Division Bench of this Court in ***Gulabrao Bhaurao Kakade*** (supra). It would be apposite to reproduce the findings recorded by the Division Bench in paras-5 and 6 of the judgment as under:

“5. There is no dispute that the scheme was finalised by following the procedure contemplated under the Act of 1947 way back in the year 1973 whereby the earlier Survey No. 95/4 was divided into different Gat numbers and the said scheme was enforced and remained in force without any demur or objection by any party for about 15 years. Section 32 gives power to the Settlement Commissioner to vary the scheme on the ground of error, irregularity for informality other than the errors referred to in Section 31A. Section 32 reads thus :

"32. (1) If after a scheme has come into force it appears to the Settlement Commissioner that the scheme is defective on account of an error other than that referred to in section 31A, irregularity or informality the Settlement Commissioner shall publish a draft of such variation in the prescribed manner. The draft variation shall state every amendment proposed to be made in the scheme.

(2) Within one month of the date of publication of the draft variation any person affected thereby communicate in writing any objection to such variation to the Settlement Commissioner.

(3) After receiving the objections under sub-section (2) the Settlement Commissioner may, after making such enquiry as he may think fit, make the variation with or without modification or may not make any variation.

(3A) If the scheme is varied under sub-section (3), a

notification stating that the scheme has been varied shall be published in the Official Gazette, and the scheme so varied shall be published in the prescribed manner in the village or villages concerned.

(4) From the date of the notification stating that the Scheme has been varied the variation shall take effect as if it were incorporated in the scheme."

6. The power given to the Settlement Commissioner for variation of the scheme is on account of an error other than that referred to in section 31A, irregularity or informality after following the procedure prescribed. Though there is no time limit prescribed under Section 32(1) for the Settlement Commissioner to vary the scheme which has come into force, but obviously even in the absence of any period prescribed under section 32, the said power can only be exercised within reasonable period in any case. **What would be the reasonable period for exercise of power under Section 32(1) by the Settlement Commissioner may depend on facts and circumstances of each case and we do not intend to lay down any specific period for exercise of that power by Settlement Commissioner but ordinarily exercise of such power after three years of finalisation of scheme under section 22 may not be justified.** In the facts and circumstances of the present case, the exercise of power by Settlement Commissioner for variation of scheme which has come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within reasonable time. The fact is and that is not disputed that the earlier scheme was finalised in the year 1973 under the Act of 1947 to the knowledge of all the parties concerned. Nobody was aggrieved by the said scheme finalised under the Act of 1947 and the scheme came into force under section 22. The said scheme which had been finalised in accordance with law and came into force and continued to be in force, could not have been unsettled by initiating the proceedings for variation under section 32 on the purported ground of error, irregularity or informality after a lapse of about 15 years. Thus, the exercise of power by Settlement Commissioner under section 32 for variation of the scheme in the facts and circumstances of the present case is grossly unjustified."

(emphasis added)

11. In the present case, Respondent has failed to adopt the necessary proceedings within reasonable time of three years. However, since there was delay in filing the proceedings, the Respondent has filed application for condonation of delay. One of the reasons pleaded in the application for condonation of delay is the order passed by the Tehsildar directing correction of area on June 1, 1993. Though the order of the Tehsildar has not been placed on record, it appears that the Petitioners do not dispute the fact that the Tehsildar did pass such an order on June 1, 1993. In this connection, the pleadings made by the Petitioners in para-2 of the petition would be relevant. The same are as under :

“By order dated 1 June 1993 the area was ordered to be corrected. As per that order the area of the land block number 424 has been corrected as 3 Hector and 47 R but the area mentioned or entered in the consolidation scheme is to be rectified, and this fact was not known or within knowledge of the respondent no.1 and therefore they constrained to file the present appeal.”

12. The Petitioners thus do not dispute the fact that the Tehsildar passed an order to the effect that the area of land bearing Gat No.424 is required to be corrected as 3 Hectares 47 Ares. It is Respondent's case that he was not aware about the fact that after the direction issued by the Tehsildar on June 1, 1993, it was also necessary for him to file proceedings for correction in the Consolidation Scheme. These are the reasons pleaded in the application for condonation of delay.

13. The most striking aspect of the matter is that while the Petitioners are painstakingly challenging the order dated August 21, 2019 condoning the delay, they did not bother to file any reply opposing the application for condonation of delay. The records would indicate that the only pleadings filed by the Petitioners before the District Superintendent of Land Records were in the form of reply opposing the amendment application. Beyond the said reply, the Petitioners did not file any pleadings opposing the application for condonation of delay. Therefore, the averments pleaded in the application went uncontested.

14. Since the Petitioners do not dispute the fact that the Tahsildar did order correction of area of Gat No.424 as 3 Hectares 47 Ares on June 1, 1993, this became a relevant factor for consideration of delay condonation. On that count, the delay gets reduced considerably to about 21 years from, 44 years. Respondent further pleaded in his application that he was not aware about requirement of effecting necessary correction in the consolidation scheme and filed proceedings under Section 32 of the Act only after acquiring knowledge of such requirement. Respondent further pleaded that though lesser area is recorded after implementation of consolidation scheme, he continues to be in possession of the land which falls short in revenue records. Petitioners did not deny these assertions on the part of Respondents by filing reply opposing the application.

15. True it is that the delay sought to be condoned is inordinate. However, the District Superintendent of Land Records has arrived at a conclusion that there is a direction issued by the Tehsildar on June 1, 1993 and the effect of that direction is required to be considered on merits rather than rejecting the proceedings on the ground of delay. On account of passing of order by Tehsildar on June 1, 2023, the present case would travel from category of an ordinary case of delay in reopening the finalized consolidation scheme to a peculiar case where the concerned authority wishes to examine the impact of Tehsildar's order. In peculiar facts and circumstances of the present case, it would be difficult to hold that exercise of discretionary power of condonation of delay by the Deputy Superintendent of Land Records so perverse so as to warrant exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. I am therefore of the view that there is no error committed by the District Superintendent of Land Records in allowing the application for condonation of delay.

16. What remains now is to deal with various judgments relied upon by Mr. Joshi :

(I) ***Esha Bhattacharjee*** (supra) is relied upon by Mr. Joshi in support of his contention that there is a distinction between inordinate delay and delay of short duration. He has placed reliance on paras-21.8 to 21.11 of the judgment

which reads thus :

“21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

There can be no dispute to the proposition expounded by the Apex Court. However, in the present case, the District Superintendent of Land Records has held that issuance of direction by the Tehsildar in the year 1993 is a relevant aspect which may have impact on the prayer made by the Respondent for correction in the Consolidation Scheme. This is a peculiar fact which is taken into consideration by the District Superintendent of Land Records for condoning the delay. As held by the Apex Court, conduct of the parties is required to be taken into consideration while deciding the aspect of condonation of delay. Considering the Respondent's conduct of filing proceedings before Tehsildar in 1993 and

procuring a favorable order, it cannot be said that Respondent had slept over the matter or acquiesced in wrong area assigned to his Gat number.

(II). ***Mathurdas Mohta College of Science*** (supra) is relied upon by Mr. Joshi in support of his contention that in absence of any foundation and failure to furnish a cause for condonation of delay, the inordinate delay could not have been condoned. Reliance is placed on following observations of the Division Bench of this Court in para-9 of the judgment:

“9. Even though this is a rule of procedure and liberally construed to impart substantive justice, it cannot be forgotten that it is a statutory provision and, therefore, it is necessary for the appellant to show sufficient cause for not preferring the appeal within the time limit prescribed. Absolute absence on the part of the appellant to explain the delay and or to furnish cause to the sanctification of the Tribunal takes away the jurisdiction of the Tribunal to entertain the appeal, it is pertinent to note in the present matter that the services of the respondent No.1 were terminated with effect from 17th March, 1982 by order dated 16th March, 1982 and, therefore, appeal should have been filed on or before 15th April, 1982. However, the respondent No.1 has filed appeal on 22nd November, 1982 and thus, there is inordinate delay in filing the appeal. The said delay was not explained even formally assigning any sufficient cause so that it can be considered by the Tribunal to satisfy itself to condone the delay and entertain the appeal, we also do not find in the judgment of the Tribunal any sufficient cause being considered by the Tribunal and the delay has been condoned by the Tribunal and, therefore, we feel that the Tribunal has committed an illegality in entertaining the appeal and exercising the jurisdiction under Section 9 of the MEPS Act. In view of the facts and circumstances stated above, we find that the order of the Tribunal is bad and illegal, and is required to be quashed

and set aside.”

In the present case, it cannot be said that there was total absence of explanation on Respondent’s part to explain the delay. The facts of the present case are peculiar as noted above and considering the peculiar facts and circumstances of the present case, the District Superintendent of Land Records, has decided to condone the delay. The judgment in *Mathuradas Mohta College of Science* in my opinion, would have no application to the present case.

(III) Mr. Joshi has strenuously relied upon the judgment of Division Bench of this Court in *Suresh Bapu Sankanna* (supra) in support of his contention that, consolidation proceedings cannot be reopened after inordinate delay of 44 long years. It is the submission of Mr. Joshi that the case before the Division Bench of this Court involved similar facts where Consolidation Scheme was sought to be reopened after passage of 44 years. However, facts in the case of *Suresh Bapu Sankanna* are clearly distinguishable. In that case, the Consolidation Scheme was sought to be reopened on account of directions issued by the higher authority. That was not a case where proceedings were initiated under Section 32 by seeking condonation of delay. In that case, the Consolidation scheme finalized in the year 1971 was sought to be reopened after 44 years i.e in

December 2015. In the present case, the Respondent has pleaded that there is delay in filing the proceedings under Section 32 of the Act and has filed application for condonation of delay. Considering the peculiar facts of the case, the District Superintendent of Land Records exercised its discretionary jurisdiction in condoning the delay. Therefore the judgment in ***Suresh Babu Sankanna*** would have no application to the peculiar facts of the present case.

17. Resultantly, I do not find any merit in the petition filed by the Petitioners. Accordingly, the Writ Petition is dismissed. Rule is discharged. There shall be no orders as to costs.

Later:

18. After the order was pronounced, Mr. Joshi would request that since the interim order has been operational since December 16, 2019, the same be continued for a period of 10 (ten) weeks. Mr. Patwardhan would oppose the prayer. Considering the fact that, the interim order is operational since December 16, 2019, the same shall continue to operate for a period of eight (8) weeks from today.

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(SANDEEP V. MARNE, J.)