



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1695 OF 2020

(SAKHARAM HARIDAS RATHOD..VS.. HARIDAS MADHAVRAO RATHOD & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.D.Khati, Advocate for Petitioner.
Shri Sachin Narale, A.G.P. for Respondent Nos.3 to 6.
None for Respondent Nos. 1 and 2.

CORAM : ANIL S. KILOR, J.
DATED : NOVEMBER 06, 2023.

1. Heard learned counsel for the petitioner and learned A.G.P. for respondent Nos. 3 to 6. None for the respondent Nos. 1 and 2, though served.

2. The petitioner in this petition has raised a grievance against the order dated 27/11/2019 passed by the Collector dismissing the appeal preferred by the petitioner challenging the order passed by the Sub-Divisional Officer dated 18/06/2019, thereby the mutation entry of the year 1988 has been declared as illegal.

3. It is the case of the petitioner that he purchased the field in dispute bearing Survey No. 29/1, however, though it was purchased by the petitioner along with the respondent No.1, the Sale Deed was executed in favour of the respondent No.1. It is further the case of the petitioner

that the land was divided into three portions i.e. 1.40 HR mutated in the name of the petitioner, 1.66 H.R. mutated in the name of the respondent No.1 and 1.65 H.R. mutated in the name of the respondent No.2. However, in 2019 the respondent No.1 instituted the proceedings under Section 247 of the Maharashtra Land Revenue Code, 1966 read with the provisions of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

4. Since the said proceeding was filed at a belated stage after lapse of limitation, the application for condonation of delay was filed along with the same seeking condonation of delay of 31 years and 6 months.

5. The Sub-Divisional Officer decided the appeal without touching to the issue of limitation or without deciding the application for condonation of delay. The Sub-Divisional Officer set aside the mutation entry recorded in the name of the petitioner vide order dated 18/06/2019, which was the subject matter of the challenge before the Collector at the instance of the petitioner in appeal.

6. In the appeal, though the petitioner raised a specific ground that the Sub-Divisional Officer, without deciding the application for condonation of delay and without touching the issue of limitation, decided the

appeal preferred before the Sub-Divisional Officer, the Collector committed the said error as committed by the Sub-Divisional Officer and ignored the fact of limitation and the delay in filing the proceedings before the Sub-Divisional Officer and thereby dismissed the appeal vide impugned order dated 27/11/2019. Hence, this petition.

7. On last occasion, when the matter was heard, the learned A.G.P. was directed to obtain instructions whether any order was passed by the Sub-Divisional Officer independently on the application for condonation of delay.

8. The learned A.G.P., on instructions, makes a statement that no order was passed independently on the application for condonation of delay.

9. There is a delay of 31 years and 6 months in filing the proceedings under Section 247 of the MLR Code before the Sub-Divisional Officer and despite the fact that a separate application was moved along with appeal memo, the Sub-Divisional Officer did not decide the said application or while deciding the appeal he has not dealt with the issue of limitation and the said mistake was repeated by the Collector by ignoring the issue of limitation which goes to the root of the matter and which decides the jurisdiction.

10. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the Sub-Divisional Officer for deciding the issue of limitation.

11. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 27/11/2019 passed by the District Collector, Yavatmal in Appeal No.2 of 2019 and the impugned order dated 18/06/2019 passed by the Sub-Divisional Officer, Kelapur in Case No.3 of 2019, are hereby quashed and set aside.
- iii) The matter is remanded back to the Sub-Divisional Officer, Kelapur to decide the same afresh after considering the point of limitation and after hearing the parties.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE