



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1591 OF 2019

1. Madan s/o Narayan Pawar,
Died through his LR's.
- 1-A. Dattatraya Madan Pawar,
Age; 51 years, Occ; Agril,
2. Vishnu Narayan Pawar,
Age; 67 years, Occ; Agri,
3. Manisha Dhanraj Pawar,
Age; 32 years, Occ; Agri,
4. Avinash Satish Giri,
Age; 27 years, Occ; Agri,
5. Sunil Bhagwat Pawar,
Age; 38 years, Occ; Agri,

All R/o Wadgaon (Shi.) Tq. Kalam,
District Osmanabad.

...PETITIONERS

VERSUS

1. The Minister,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. Satish Ramrao pawar,
Age; 52 years, Occ; Agri,
3. Sukhdeo Ramrao Pawar,
Age; 47 years, Occ; Agri,
Resp. No. 2 & 3 R/o; Wadgaon (Shi.)
Tq. Kalam, Dist. Osmanabad.

4. The Deputy Director of Land Records
Aurangabad , Region, Aurangabad. ...**RESPONDENTS.**

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Advocate for the Petitioners : Mr. Shinde Manoj D.
AGP for Respondents/State : Mr. P.D. Patil
Advocate for Respondent Nos. 2 and 3 : Mr. Barde Parag Vijay

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CORAM : KISHORE C. SANT, J.

DATE : 3rd SEPTEMBER, 2024.

JUDGMENT :

1. Heard the parties.
2. By consent of the parties, rule made returnable forthwith.
3. By way of this petition the petitioners have raised challenge to the judgment and order passed by the learned Minister (Revenue) dated 10.10.2018 in Appeal No. 2016/Pra.Kra.66/J-7A filed by the present respondent Nos. 2 & 3.
4. The learned Minister by way of impugned order has

quashed and set aside the order passed by the Ld. Dy. Director of Land Record, Aurangabad, Division Aurangabad confirming order dated 02.01.2016 passed by the Ld. Superintendent of Land Record, Osmanabad Dt. 14.09.2015.

5. The proceedings is started by respondents by filing appeal to DSLR alleging that the Consolidation Scheme that was implemented in the village Wadgaon (Shi.) Tq. Kalam, District Osmanabad in the year 1973, the area in their possession is reduced. Since there was delay of 41 years, he filed an application for condonation of the same. The DSLR, Osmanabad, by order dated 14.09.2015 held that the delay cannot be condoned as the respondents have approached after 41 years. He considered even the reasons stated for condonation of delay while passing the order.

6. This order came to be challenged before the Deputy Director of Lands Record. It is the case of the petitioners that even before the Deputy Director of Land Records it is shown that no area in possession of respondents is reduced. He has given the sale instances, whereby the respondents have sold

their land to other persons by three different sale deeds. There was also acquisition of his land to the extent of 1H 3R for percolation tank. He also relied upon the judgments in the case of **Dattu Appa Patil since deceased by Lrs. Ananda Dattu Patil and Others Vs. State of Maharashtra and others – 2007 (1) Mh.L.J. 393.**

7. Considering the legal position and the arguments of the parties, the learned Dy. Director of Land Records dismissed the appeal holding that the learned DSLR has rightly passed an order. The respondents thereafter, approached the learned Minister. The learned Minister considering the merits of the matter held that an opportunity needs to be given to the respondent. He therefore, condoned the delay and remanded the matter back to the authority for consideration of the matter on merits.

8. It is this order, which is under challenge in this Writ Petition. The learned Advocate for the petitioners vehemently argued that there is no sufficient cause given for condoning the delay. He further submitted that there is no power to condone delay vested with the authorities. The order passed by the

learned Minister is against the settled position of law. He pointed out that the petitioners had raised objection by filing reply. He submits that during the pendency of this Writ Petition, though, there was stay granted by this Court to the impugned judgment and order, still the DDLR decided the matter on merits. He further submits that the respondents have even approached the Civil Court wherein the application Exh. 5 came to be rejected.

9. The petitioners in view of that subsequently added a prayer to the petition, seeking quashment of order passed by the learned DDLR dated 29.06.2022. So far as, the decision of DDLR dated 29.06.2022 is concerned, he submits that though there was stay granted by this Court, however, the DDLR considered the matter on merits. The learned DDLR decided the matter considering judgment of the Hon'ble Apex Court in **Asian Resurfacing of Road Agency Pvt. Ltd. And Anr. Vs. Central Bureau of Investigation in Misc. Application No. 1577 of 2020 in Cri. Appeal Nos. 1375-1376 of 2013 (SC) dtd. 15.2020.**

10. Learned Advocate Mr. Barde, for respondent Nos. 2 &

3 justified the order stating that the learned Minister has rightly considered the merit of the matter. When it is pointed out that while implementing the scheme a fraud is committed, the entire action stands vitiated. When there is fraud revealed, the length of delay will not matter. The Limitation Act is not applicable and therefore, the learned Minister has rightly considered that the merit in the matter needs to be considered. He submits that the Minister was convinced with the fact that the scheme is not properly implemented and therefore it requires re-consideration. He prays for rejection of the Writ Petition.

11. Learned AGP for Respondent No. 4 adopted the argument of learned Advocate Mr. Barde for Respondent Nos. 1 & 2. He supports the order passed by the learned Minister.

12. Learned Advocate Mr. Shinde for the petitioners has relied upon the following judgments :

(a) Gunda Tuka Shinde Since deceased by his heir Bajirao Tukaram Shinde Vs. Pandharinath Ramrao Shinde and another – 1991 Mh.L.J. 669

(b) Dattu Appa Patil Since deceased by Lrs Ananda Dattu Patil and others Vs. State of

Maharashtra and Others – 2007 (1) Mh.L.J. 393,

(c) Santoshkumar Shivgonda Patil and Others Vs. Balasaheb Tukaram Shevale and Others – 2010 (2) Mh.L.J. 150,

(d) Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhilare and Others – 2001 (4) Mh. L.J. 31.

13. **Gunda Tuka Shinde** Since by his Heir **Bajirao Tukaram Shinde** (supra), the Division Bench of this Court has held that delay cannot be condoned. The said judgment is given in proceedings arising under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

14. **Dattu Appa Patil** (Supra), the Division Bench of this Court decided writ petition also arising under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

15. The Hon'ble Apex Court in **Santoshkumar** (supra) dealing with the provisions of MLRC Code and Section 257 of the said Code, clearly held that when no limitation is provided to

exercise the revisional powers, the powers should be exercised within reasonable time. Entertaining the proceedings after much delay would amount to be unsettling the settled position.

16. **Gulabrao** (supra) the Division Bench of this Court held that when there is no limitation provided, proceeding cannot be exercised at any time but must be exercised within a reasonable time.

17. This Court considered the submissions and judgments relied upon by the petitioners. Now the law is well settled that the authorities have no authority to condone delay if appeal is not filed within a reasonable time, which is taken to be 3 years.

18. Considering all these judgments and reasons stated therein, the order passed by the learned Minister needs to be quashed and set aside. Consequently the order passed by the DDLR dated 29.06.2022 also deserves to be quashed and set aside since this order is passed pursuant to the order passed by the learned Minister.

19. In view of the same, the Writ Petition stands allowed in terms of prayer Clause (C) & (CC). No order as to the costs.

20. The Writ Petition stands disposed off.

**(KISHORE C. SANT)
JUDGE**

mahajansb/