



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

955 WRIT PETITION NO. 13900 OF 2023

The State Of Maharashtra Through Collector, Ahmednagar
VERSUS

Arvind Narayan Lakare Since Deceased Through L.rs

...

AGP for the Petitioner-State : Mr. K. N. Lokhande

Advocate for Respondent No.9: Mr. G. B. Chate

Advocate for Respondent No.8 : Mr. S. S. Deve

Advocate for Respondent No.1b to 1d and 2 to 6, 7a to 7d : Mr. N. C.
Garud

...

AND

993 WRIT PETITION NO. 351 OF 2024

The District Collector Ahmednagar

VERSUS

Padmakar Ramesh Harba

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AGP for the Petitioner : Mrs. Kavita R. Jamdhade

Advocate for Respondents No.1 and 2 : Mr. G. B. Chate

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CORAM : ARUN R. PEDNEKER, J.

Dated : August 27, 2024

PER COURT :-

1. In WP/13900/2023, Regular Civil Suit No. 273/2015 was filed for a declaration that Survey No. 318, admeasuring 11 Acres and 32 Gunthas in the village of Bhingar, on which different government departments are established, is the original property of Freedom Fighter late Narayan Krishnaji Lakare and thereafter his heirs, and that the defendants/respondents should give vacant possession to the plaintiffs.

2. Defendant No. 3 - The Executive Engineer, Irrigation Department, Sinchan Bhavan, Aurangabad Road, Ahmednagar, Tq. and Dist. Ahmednagar, was unable to file a written statement in the matter. As a result, a 'no written statement' order was passed on 06/10/2015.

Thereafter, on 25/04/2023, defendant No. 3 filed an application to set aside the 'no written statement' order. Defendant No.3 submitted that the State needs to search very old records. Defendant No. 3 contends that the part of suit property is in possession of the Irrigation Department belongs to the Irrigation Department.

3. He submits that the written statement could not be filed due to difficulties in obtaining old records. The petitioner/ defendant No.3 filed application at Exhibit 75 for recall of 'no written statement' order, and allowing defendant No. 3 to file a written statement. However, the Trial Court has rejected this application.

4. The learned Counsel for the petitioner submits that he should be permitted to file the written statement, as there were genuine reasons for the delay. He argues that no prejudice would be caused to the plaintiff and that, if necessary, compensation can be granted for the late filing of written statement.

5. The learned Counsel for the original plaintiff, per contra, submits that although a sufficient explanation for the delay in filing the written statement has been provided, some costs should be imposed on Defendant No. 3 for the eight-year delay in filing.

6. In WP/351/2024, Regular Civil Suit No. 323/2017 was filed by the plaintiffs concerning the same property. Defendant No. 4 - Executive

Engineer, Irrigation Department, Ahmednagar, filed an application to set aside 'no written statement' order and to permit the defendant No.4 to file a written statement. There was a delay of four years in filing this application.

7. The learned AGP for the petitioners submits that the delay was due to the search for old records and the COVID-19 pandemic. She argues that public property is involved and that they have a strong case on merit. If the petitioner is not permitted to file a written statement, their rights concerning the state property will be adversely affected.

8. The learned Counsel for the respondent/original plaintiff submits that there is a significant delay in moving the application, which is not properly explained. They argue that if the delay is condoned, a substantial cost should be imposed.

9. In view of the submissions made, the writ petitions are allowed.

10. The petitioners are directed to pay costs of Rs.25,000/- in each of the writ petitions (Rupees Twenty-Five Thousand only) to be deposited before the Trial Court within four weeks. Upon depositing the costs, the petitioners are permitted to file the written statement within four weeks.

11. In the event that the petitioner fails to deposit the amount or fails to file the written statement as directed, the impugned order will stand

confirmed.

12. The amount deposited may be withdrawn by the plaintiffs in both matters.

13. Office objections are to be ignored as the legal heirs of respondent No. 1A are already on record as respondents No. 1B to 1D.

(ARUN R. PEDNEKER, J.)

vj gawade/-.