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wp 4085.23.odt

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

WRIT PETITION NO. 4085 OF 2023

**POPAT GANPATRAO BHOSALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.**

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Mr. N.L Jadhav, Advocate for the petitioners.
Mr. J.M. Murkute, Advocate for respondent Nos. 4.
Mr. K.B. Jadhav, AGP for respondent Nos. 1 to 3.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 12th JUNE, 2024.
PRONOUNCED ON : 21st JUNE, 2024.**

ORDER :-

The petitioner impugns the judgment and order dated 27.2.2023 passed by the Honourable Minister for Revenue, animal Husbandry and Dairy Department, in Appeal No. 2022/Pra.Kra./185/J-7A, by which the order dated 23.7.2019 passed by the District Superintendent of Land Records, Beed has been quashed and set aside.

2. Mr. N.L. Jadhav, learned advocate for the petitioner vehemently submits that the petitioners are owners and possessors of land bearing CTS No. 216 and 218 situated within the limits of Municipal Council, Ashti. However, name of respondent No.4 has been entered in city survey record in pursuance of some inquiry conducted in the year 1983 behind the back of the petitioners. The petitioners got the knowledge of such entry in the year 2018 and immediately approached the Superintendent of Land Records at Beed vide Appeal No. Establish-2-

SR/86/2018 challenging the entry in the name of respondent No.4. The learned Superintendent of Land Records observed that during the implementation of the city survey scheme, the enquiry was caused as regards to the actual ownership and possession of respective persons over the properties, the name of respondent No.4 has been recorded on the basis of information given by third person without verification of the factual aspects and consequently condoned the delay in filing the appeal and also allowed the appeal, thereby cancelling the order of inquiry officer, as regards City Survey No. 216 and directed re-inquiry as regards to the holder.

3. According to Mr. N.L. Jadhav, learned advocate for the petitioner, the entry in the name of respondent No.4 is based on incorrect information given by third person which states about Kabala in her favour. However, till this date, no such document has been surfaced. On the other hand, there is voluminous evidence depicting the possession of the petitioners on the property.

4. Per contra, Mr. J.M. Murkute, learned advocate for respondent No.4 submits that the petitioners' name has been entered in respect of property i.e. City Survey No. 216 on the basis of inquiry conducted by the competent officer in the year 1983 and in the same inquiry, name of petitioners has been recorded. In the year 2018, the petitioners made an attempt to encroach the property in CTS No. 216. Consequently, respondent No.4 filed RCS No. 117 of 2018 seeking removal of encroachment and possession of encroached portion as well as perpetual injunction. The said suit has been instituted on 7.2.2018. Thereafter, the petitioners filed proceeding before the Superintendent of

Land Records, District Beed, in appeal taking exception to mutation in the name of respondent. He would point out that, although the order dated 29.11.1983 passed by Special District Inspector of Land Records has been challenged after 35 years under Section 247 of the Maharashtra Land Revenue Code, independent application seeking delay condonation was not filed. In spite of such defect the District Superintendent of Land Records, entertained the appeal by condoning the delay of 35 years and issued direction to cancel the mutation entry as regards to CTS No. 216 standing in name of respondent no. 4. The order passed by the Superintendent of Land Records, Beed was, therefore, assailed in appeal before the Honourable Minister invoking the provisions of Section 257 of the Maharashtra Land Revenue Code, which has been allowed by the Honourable Minister. As such there is no merit in the petition.

5. Having considered the submissions advanced by learned advocates appearing for respective parties and after going through the record, it is apparent that the name of the respondent No.4 has been entered against CTS No. 216 in pursuance of inquiry conducted by the competent officer i.e. Special Inspector of Land Record. The entry is given effect on 29.11.1983. Record shows that in the year 2003, the petitioner had made some application for amalgamation of CTS No. 216 and 218. As such, petitioners were aware of entries appearing in the city Survey record. The present proceeding is moved in the year 2018 after respondent No.4 instituted proceeding by way of a suit seeking removal of encroachment alleged to have been made by the petitioners. Record indicates that the appeal filed before the Superintendent of Land Records is not accompanied by any separate application seeking condonation of delay and the appeal does not contain specific stipulation explaining the

huge delay of 35 years.

6. It is trite that the challenge to the scheme under the City Survey can be entertained if it is made within a reasonable period. The Supreme Court of India in the matter of *Nandivardhan Jain vs. Chandrakanta Jain, (2002) SCC 471*, observed that merits of the matter can not be considered while deliberating on the issue of delay condonation. Similarly, it is well settled that said challenge cannot be entertained beyond the reasonable period of 3 years. The Honourable Minister has rightly considered the aforesaid aspects while upsetting order passed by Superintendent of Land Records in exercise of revisional jurisdiction under Section 257 of the Maharashtra Land Revenue Code.

No fault can be found in the order passed by the Honourable Minister. Hence, writ petition sans merit, stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-