



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6114 OF 2017**

Ambaji Khandu Dhangar,
Died through Legal Heirs

1. Janardhan s/o Ambaji Kele,
Age: 71 years, Occu: Agril,
R/o. Kasargaon, Tq. and Dist. Latur
2. Vasant s/o Ambaji Kele,
Age:- 65 years, Occu:- Agril,
R/o as above
3. Shrimant s/o Ambaji Kele,
Age:- 59 years, Occu:- Agril,
R/o as above
4. Prabhanjan s/o Ambaji Kele,
Age:- 51 years, Occu:- Agril,
R/o as above
5. Ayodhyabai Tulshiram Mane,
Age:- 51 years, Occu:- Agril,
R/o. as above
6. Champabai Dnaynoba Kalbande, (died)
Through her LR's.
- 6(A). Tukaram s/o Dnyanoba Kalbande
age-40 years, Occu: Agril,
R/o. Nandgaon, Tq. and Dist. Latur
- 6(B). Wamam s/o Dnyanoba Kalbande
Age-40 years, Occu: Agril,
R/o. Nandgaon, Tq. and Dist. Latur
7. Rajubai Khanu Chincholikar,
Age:- 62 years, Occu:- Agril,
R/o. Harwadi, Tq. Renapur, Dist. Latur
8. Kevalbai Manik Mule,
Age:- 54 years, Occu:- Agril,
R/o. Peth, Tq. & Dist. Latur

Versus

1. Sidramappa Babanappa Samshette
Died through his legal heir
Babu Sidramappa Samshette
Age:- 61 years, Occu:- Agril,
R/o. Khulgapur, Tq. and Dist. Latur
At present Lad galli, Sursawali Road,
Opposite to Bharat Narke, Latur
2. The Divisional Commissioner,
Aurangabad. ..Respondents

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Mr. P. D. Suryawanshi, Advocate for Petitioners.
R. R. Tandale, AGP for Respondent No.2.
Mr. V. D. Gunale, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th AUGUST 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioners impugn order dated 05.01.2017 passed by Divisional Commissioner, Aurangabad in Appeal No.79/2015, thereby condoning delay of three years and three months caused in filing Appeal under the provisions of Hyderabad Abolition of Inams and Cash Grants Act, 1954 (for short 'Act of 1954').
3. Mr. Suryawanshi, learned Advocate appearing for the petitioners submits that District Collector, Latur finally decided proceeding in File No.११/भु-सू/इनाम/कावि-३७ vide judgment and order dated 22.11.2011. The learned Advocate appearing for the respective parties were heard, roznama was recorded that the order passed by the Deputy Collector (Land Reform) dated 20.11.2010 is confirmed and Appeal of respondent no.1 is dismissed. He would invite attention of this Court to the

signatures of District Collector and learned Advocates appearing for the respective parties on the roznama. As such, parties were aware about the final decision taken by the District Collector. On the same day, the learned District Collector separately passed detailed order. However, respondent no.1 assailed order dated 22.11.2011 by filing Appeal dated 25.05.2015 before respondent no.2. The said Appeal was accompanied with application for delay condonation. The application sans sufficient cause to condone the delay of more than three years. However, the Divisional Commissioner making erroneous observations condoned the delay vide impugned order dated 09.02.2017. He would, therefore, urge that impugned order be quashed and set aside.

4. Per contra, Mr. Gunale, learned Advocate appearing for respondent no.1 vehemently submits that District Collector has passed separate order on Appeal, which was preferred alongwith application for condonation of delay. He would further submit that matter pertains to the rights of parties as regards to the agricultural property. The decision on merit would not prejudice any one. The learned Divisional Commissioner has exercised his discretion, which need not be disturbed in Writ jurisdiction of this Court.

5. Having considered submissions advanced, apparently issue before this Court is as to whether respondent no.1 has made out sufficient cause to condone the delay of almost three years and three months in filing the Appeal against the order of District Collector. The record shows that District Collector heard respective parties on 22.11.2011 and recorded roznama of proceeding wherein short reasons for not entertaining Appeal are given and in operative part it is noted that order of the Deputy

Collector (Land Reforms) is confirmed and Appeal is dismissed. The proceeding is signed by the learned Advocates appearing for the respective parties as well as District Collector. On the same day District Collector separately passed two pages order dismissing Appeal.

6. In this background, respondent no.1 approached Divisional Commissioner, Aurangabad assailing order of District Collector in Appeal filed under Section 2A(2)(ii) of the Act of 1954. The Appeal was accompanied with application for condonation of delay. In paragraph no.3 of the said application it is mentioned that the appellant came to know about impugned order on 10.04.2015 and he was not served with any notice or intimation from the Office of the District Collector as regards to the decision dated 22.11.2011. The paragraph no.5 of application states that the dispute pertains to the immovable property and rejection of Appeal on technical ground may defeat valuable right of the parties.

7. Apparently, such reasoning is contrary to the record. As indicated above, roznama/proceeding clearly records that matter was finally heard and Appeal filed by respondent no.1 is rejected. The proceeding is signed by the learned Advocate appearing for the petitioners. There is no other mode of communication of the final orders passed in any proceeding before the District Collector. It was for respondent no.1 to obtain certified copy, when decision was pronounced in open Court and recorded in the proceeding in presence of Advocates, who put their signatures acknowledging communication of decision. In this background, there is absolutely no reason to justify delay of three years and three months in filing Appeal against the order of District Collector dated 22.11.2011.

8. Although it is not expected to delve into the merits of the matter while deciding the issue of delay condonation, it is necessary to observe here that the petitioners are already held to be tenants in possession of the disputed land since 1956. They were held entitled to re-grant of the land and declaration of the occupancy rights under Section 2-A of the Act of 1954. The entitlement of the petitioners has been upheld by this Court as well as Supreme Court of India. Thereafter, respondent no.1 filed fresh proceeding seeking declaration of occupancy rights in terms of Section 2-A(vi) read with Section 6(1)(A) of the Act of 1954 on the ground that withdrawal of SLP with liberty entitles them to freshly raise all issues in Appeal. Such assumption of respondents is fallacious. In that view of the matter, even on merits respondent no.1 could not make out any case.

9. The learned Divisional Commissioner condoned the delay observing that from record of District Collector it cannot be seen that parties were given notice of final decision dated 22.11.2011. However, such observations are contrary to the record. As such, delay is condoned on the basis of erroneous observations. In that view of the matter, impugned order cannot be sustained in law. Therefore, writ petition succeeds and allowed in terms of prayer Clause (C).

10. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE