2024:BHC-AUG:16807

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5484 OF 2015

1 Shivshankar Lachamandas Rathod (**Died**)

Since deceased through his legal representatives -

1-a) Sanjay Shivshankar Rathod,
Age 62 yrs., Occ. Business,

1-b) Mahendra Shivshankar Rathod,
Age 60 yrs., Occ. Business,

1-c) Narendra Shivshankar Rathod,
Age 62 yrs., Occ. Business,

1-d) Aparna w/o Jayant Rathod,
Age 56 yrs., Occ. Housewife,

All are r/o 2993-94, Mathura Land,
Ganj Bazar, Ahmednagar,
Tq. & Dist. Ahmednagar.

2 Raghuveer Lachamandas Rathod,
Age 75 yrs., Occ. Retired State Government
servant, original R/o as above,
At present R/o Building No.103, 3555,
Nehru Nagar, Kurla (East), Mumbai – 400 024.

3 Ramesh Lachamandas Rathod (**Died**)

Since deceased through his legal representatives -

3-1) Pushpa w/o Ramesh Rathod,
Age 70 yrs., Occ. Household,
R/o C/o Dr. Satish P. Rathod,
33/03, Gulmohar Colony,
N-5, CIDCO, Near Jijamata School,
Aurangabad, Tq. & Dist. Aurangabad.

3-2) Dr. Jitendra Ramesh Rathod,
Age 45 yrs., Occ. Medical Practitioner,
R/o Mathura Land, 2993/94, Ganj Bazar,
Ahmednagar, Tq. & Dist. Ahmednagar.

3-3) Atul Ramesh Rathod,
Age 40 yrs., Occ.
R/o as above.

3-4) Swati w/o Satish Rathod,
Age 38 yrs., Occ. Household,
R/o C/o Dr. Satish P. Rathod,
33/03, Gulmohar Colony,
N-5, CIDCO, Near Jijamata School,
Aurangabad, Tq. & Dist. Aurangabad.

… **Petitioners**

… **Versus** …

1 The State of Maharashtra
Through the Principal Secretary,
Department of Revenue, M.S.,
Mantralaya, Mumbai – 32.

2 The Hon'ble Minister of State,
Department of Revenue, M.S.,
Mantralaya, Mumbai – 32.

3 The Divisional Commissioner,
Nashik Region, Nashik.

4 The Collector,
Ahmednagar.

5 The Sub Divisional Officer,
Ahmednagar Division,
Ahmednagar.

6 The Talathi,
Savedi, Ahmednagar,

Tq. & Dist. Ahmednagar.

7 Bashir Ahmad Va Nana (alias Sultan Ahmad) Tambatkar (**Died**)

Since deceased through his legal representative -

Khalil Ahmad Bashir Ahmad Tambatkar (**Died**)

Since deceased through his legal representatives -

7-A) Shaheda w/o Khalil Ahmad Tambatkar,
Age 54 yrs., Occ. Household,
R/o Diamond Kadba Kutti,
Jadhav Mala, Ahmednagar,
Tq. & Dist. Ahmednagar.

7-B) Akram Khalil Ahmad Tambatkar,
Age 33 yrs., Occ. Business,
r/o as above.

7-C) Basit Khalil Ahmad Tambatkar,
Age 30 yrs., Occ. Business,
R/o as above.

7-D) Ayan Khalil Ahmad Tambatkar,
Age 18 yrs., Occ. Business,
R/o as above.

… **Respondents**

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Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for petitioners

Mr. K.B. Jadhavar, AGP for respondent Nos.1 to 6

Mr. V.D. Salunke, Advocate for respondent Nos.7-A to 7-D

Mr. S.S. Kazi, Advocate for applicants in CA/2155/2023

Mr. V.S. Bedre, Advocate for applicants in CA/15748/2022

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WITH

CIVIL APPLICATION NO.2155 OF 2023 in WP/5484/2015

WITH

CIVIL APPLICATION NO.8653 OF 2022 in WP/5484/2015

WITH

CIVIL APPLICATION NO.15748 OF 2022 in WP/5484/2015

WITH

CONTEMPT PETITION NO.356 OF 2022 in CA/6644/2020 in WP/5484/2015

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 30th JULY, 2024

PRONOUNCED ON : 02nd AUGUST, 2024

JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Petitioners impugn order dated 09.09.2014 passed by Hon'ble Minister of State, Department of Revenue in Appeal No.3314/Pra.Kra./Ja-6, thereby setting aside Judgment and order of Additional Divisional Commissioner, Nashik dated 17.03.1988.

3 Mr. R.S. Deshmukh, learned Senior Counsel appearing for petitioners submits that petitioners had challenged mutation entry by filing appeal before Sub Divisional Officer, Ahmednagar in respect of suit land which is part and parcel of Sy.No.4/1, 4/A and 4/2 (now Gat Nos.4, 5 and 6

respectively) situated at Savedi, Tq. and Dist. Ahmednagar. The Sub Divisional Officer, Ahmednagar allowed RTS Appeal No.05/1984 and set aside Mutation Entry No.7226 vide his order dated 04.08.1984. Respondent No.7 challenged decision of Sub Divisional Officer, Ahmednagar before Collector, Ahmednagar in RTS Appeal No.11/1984. Said appeal came to be dismissed. Aggrieved by aforesaid decision, respondent No.7 had filed Revision Application No.63/1985 before Divisional Commissioner at Nashik. Said revision application came to be dismissed. Thereafter, there was civil litigation between parties.

4 Mr. R.S. Deshmukh, learned Senior Counsel would submit that Hon'ble Minister entertained revision application against order dated 17.03.1988 passed by Divisional Commissioner, after 26 years and 05 months, without issuing notice of such proceeding to petitioners and allowed revision application vide order dated 09.09.2014. He would point out that revision application was filed on 27.08.2014 and same has been allowed within a period of two weeks without issuing notice to petitioners. Mr. R.S. Deshmukh would further point out that there is no whisper as regards to delay of 26 years and 05 months in order of Hon'ble Minister. He would, therefore, urge to quash and set aside the impugned order and remit matter back to Hon'ble Minister for consideration on merits after hearing all

concerned.

5 Mr. V.D. Salunke, learned Advocate appearing for respondent Nos.7-A to 7-D as well as learned AGP appearing for respondent Nos.1 to 6 support the impugned order. They would submit that Section 257 of Maharashtra Land Revenue Code does not prescribe limitation for entertaining revision application by State Government. Therefore, delay of 26 years and 05 months is not relevant, when State has exercised its powers of revision.

6 Having considered submissions advanced, it is apparent that Hon'ble Minister entertained revision against order dated 17.03.1988 passed in Revision Application No.63/1985. The revision filed on 27.08.2014 appears to have been decided with jet speed on 09.09.2014. It is apparent that order passed by Hon'ble Minister is without issuing notices to contesting party. The order records that respondents have not made oral or written submissions. Perusal of proceeding nowhere depicts that respondents were ever served with notice of proceeding. The order is apparently *ex parte*. Pertinently, there is no whisper as regards to huge delay in filing revision application. It is true that Section 257 of M.L.R. Code empowers State Government to entertain revision application against orders of Revenue or Survey Officer, however, such powers can be exercised in reasonable period.

Now, it is well settled that reasonable period shall be of three years even when statutory scheme providing revisional powers do not prescribe limitation. Reference can be given to Judgment of this Court, passed relying upon the Judgment of Hon'ble Supreme Court in case of **Shri Santoshkumar Shivgonda Patil and others vs. Shri Balasaheb Tukaram Shevale and others** [(2009) 9 SCC 352].

7 Consequently, impugned order is not sustainable for two reasons; firstly, it is in gross violation of principles of natural justice and secondly, it does not consider the issue of delay and laches. Consequently, the writ petition deserves to be partly allowed. Hence, following order.

ORDER

1 Writ Petition is partly allowed.

2 The impugned order dated 09.09.2014 passed by respondent No.2 - Hon'ble Minister of State, Department of Revenue in Appeal (Revision) No.3314/Pra.Kra.216/Ja-6 is hereby quashed and set aside.

3 The matter is remitted back to Hon'ble Minister of State for decision afresh after granting opportunity of hearing to all concerned.

4 All points are kept open.

5 Parties to appear before Hon’ble Minister on 19.08.2024.

6 Parties shall be at liberty to file written notes of argument as well as advance oral submissions.

7 Hon’ble Minister may thereafter proceed to decide Revision Application on its own merits, within a period of six months from the date of appearance of parties and communicate decision to all concerned, within a period of 15 days thereafter.

8 Rule is made absolute in above terms.

9 Pending Civil Applications and Contempt Petition stand disposed of.

(S.G. CHAPALGAONKAR)
JUDGE

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