



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

947 WRIT PETITION NO. 7914 OF 2022

Shaikh Bashir Shaikh Madar And Others

VERSUS

The Maharashtra State Through Secretary And Others

...

Advocate for the Petitioner : Mr. A.P. Bhandari

AGP for Respondents: Mr. A V Lavate

Advocate for Respondents : Mr. A.S. Deshmukh

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 19, 2024

PER COURT :-

1. The petitioners impugn the order dated 21.6.2022 passed by the Additional Divisional Commissioner, Aurangabad in File No.2021/ ROR/ Inam/ Virasat – Delay/322, thereby condoning the delay of almost 13 years caused in filing the proposal.

2. Mr. Anand Bhandari, learned advocate appearing for the petitioners submits that land bearing survey no.291 admeasuring 15 Acres 16 Gunthas situated at Parbhani is subject matter of the dispute. Petitioners claims that property in question is used for burial purpose i.e. Kabrasthan and notified in Wakf Gazette of District Parbhani dated 2.5.1974. Respondent nos.5 to 8/ predecessors filed application dated 22.7.1983 for grant of

succession in their favour. However, on 26.6.1985 the Deputy Collector, Selu took over possession of the land under Government Supervision.

3. Respondent nos.5 to 8 were insisting for grant of succession. Accordingly, the Sub-Divisional Officer, Parbhani prepared a proposal. However, on 6.12.2008 noting certain deficiencies, Additional Divisional Commissioner, Aurangabad directed to submit fresh proposal. Finally, Additional Divisional Commissioner, Aurangabad by order dated 21.6.2022 condoned the delay of 13 years 1 month and 18 days.

4. Mr. Bhandari learned advocate appearing for petitioners submits that Hyderabad Atiyat Inquiries Rules, 1952 (for short said Rules) provides that Court may for sufficient cause condone the delay. The Rule 12(2)(c) empowers “Nizam Atiyat” to condone the delay up-to two years. Additional Divisional Commissioner is notified to be equivalent with “Nizam Atiyat”. Therefore, Additional Divisional Commissioner had no jurisdiction to condone the delay beyond two years.

5. In the alternative, he submits that even it is assumed that Additional Divisional Commissioner is empowered to condone the delay, impugned order nowhere considered sufficiency of the reasons for inordinate delay of more than 13 years and the order is

passed as if the Additional Divisional Commissioner is vested with unfettered power to condone the delay.

6. It is settled position of law that even if the limitation is not provided under statute, proceeding needs to be filed within reasonable period i.e. time limit of three years. He would therefore urge to quash and set aside the impugned order.

7. Per contra, Mr. Deshmukh, learned advocate appearing for respondents no.5 to 8 invites attention of this Court to the Gazette notification dated 30.10.1985 thereby amending Hyderabad Atiyat Inquiry Rules, 1954. Clause No.2 of the amendment states as under :-

2. *In Rule 12 of the Hyderabad Atiyat Enquiries Rules, 1954 in sub-Rule (2) -*

(i) *for clause (c), the following clause shall be substituted, namely -*

“(c). The Commissioner, Aurangabad Division, beyond one year”.

(ii) *The clause (d) shall be deleted.*

8. He would further place his reliance on a judgment of this Court in case of ***Ahmed Shah s/o Mehboob Shah and others Vs. Mohammed Ismail s/o Gulam Hussain*** in Writ Petition No. 3420 of 2011 to contend that Additional Divisional Commissioner is empowered to condone the delay beyond one year.

Accordingly, he has exercised jurisdiction in the present case.

9. Having considered the submissions advanced, it is apparent that, in view of the amendment of 1985, the Additional Divisional Commissioner is empowered to condone the delay beyond one year. As such, contention of the petitioner that Additional Divisional Commissioner has no jurisdiction to condone the delay cannot be countenanced. However, Rule 12 empowers the Additional Divisional Commissioner to condone the delay for sufficient cause in submission of proposal. It is, therefore, clear that, the powers conferred with the Additional Divisional Commissioner are guarded with prefix of “sufficient cause.”

10. In the present case, it is stated that there is delay of 13 years 1 month and 18 days. However, perusal of the impugned order depict that learned Additional Divisional Commissioner has acceded to reference proposal of the Sub-Divisional Officer and his recommendation to condone the delay. From reading of the order, it is not discernible that learned Additional Divisional Commissioner had delve into sufficiency of the reasons to constitute sufficient case. In this background, it would be appropriate to relegate the matter to Additional Divisional Commissioner to re-consider the issue of delay

in submission of proposal and pass appropriate, speaking and reasoned order. In that view of the matter, following order is passed.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned order dated 21.6.2022 passed by the Additional Divisional Commissioner, Aurangabad in File No.2021/ROR/ Inam/ Virasat-Delay/322 is hereby quashed and set aside.
- iii. Matter is relegated back to the Additional Divisional Commissioner, Aurangabad to consider and decide the issue as regards to delay condonation in submission of the proposal seeking grant of 'Virasat' for passing the reasoned order in tune with the provisions of Rule 12 of the Hyderabad Atiyat Enquiries Rules, 1954.
- iv. Parties shall appear before the learned Additional Divisional Commissioner, Aurangabad on **8th August, 2024**.
- v. On appearance of the parties, the learned Additional Divisional Commissioner, Aurangabad shall grant opportunity of

hearing to all the concerned and take decision afresh on the point of delay condonation within a period of Six (6) months from the date of appearance of the parties.

- vi. Writ Petition stands disposed off in aforesaid terms. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa-