



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10951 OF 2019**

1. Dilip s/o Shankar Aher,
Age: 58 years, Occu. Agril,
2. Balasaheb Shankar Aher,
Age: 50 years, Occu. Agril,
3. Suresh s/o Dattatray Aher,
Age: 50 years, Occu. Agril,
4. Sunil s/o Dattatray Aher,
Age: 47 years, Occu. Agril,
All R/o. Ghargaon, Tq. Sangamner,
Dist. Ahmednagar. ..Petitioners

Versus

1. Shantaram s/o Ganpat Aher,
Age: 80 years, Occu. Agril,
R/o. Ghargaon, Tq. Sangamner,
Dist. Ahmednagar.
2. The Sub Divisional Officer,
Sub Division, Sangamner,
Dist. Ahmednagar.
3. The Dy Collector (Land Acquisition No.14),
Wadia Park, Tilak road,
Ahmednagar-414001. ..Respondents

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Mr. S. T. Shelke, Advocate for Petitioners.

Mr. S. B. Jadhav, AGP for Respondent Nos.2 and 3.

Mr. S. S. Dixit, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 26th JUNE 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioners impugn the order dated 10.04.2018 passed by the Sub Divisional Officer, Sangamner in RTS Appeal No.144/2017, thereby condoning the delay in Appeal filed against Mutation Entry No.308, dated 08.10.1987 certified in favour of the petitioners, pertaining to lands bearing Gut Nos.118, 119, 129, 328 and 472.

3. Mr. Shelke, learned Advocate appearing for the petitioners submits that the Mutation Entry was certified in favour of the petitioner on 08.10.1987. The respondent no.1 raised challenge to the said Mutation Entry by filing RTS Appeal No.144/2017. Such challenge is sought to be entertained after the period of 30 years by the Sub Divisional Officer, Sangamner. He would submit that there is absolutely no explanation for such inordinate delay. Mr. Shelke would further point out that the petitioners approached Additional Collector by filing Appeal against the order dated 10.04.2018 passed by the Sub Divisional Officer, Sangamner. However, appeal filed by petitioners has been rejected. Even Review Petition against the appellate order is also dismissed. Mr. Shelke would submit that there are no justifiable reason for entertaining the challenge to the Mutation Entry after 30 years.

4. Per contra, Mr. Dixit, learned Advocate appearing for respondent no.1 submits that inconsistent Mutation Entries were recorded as against actual partition of the property amongst the brothers. He submits that the particulars of the partition were reduced into writing, however, the excess land is shown in the name of the petitioners, whereas share of respondent no.1 has been reduced. The respondent no.1 had no knowledge of the defect in the Mutation Entry. However, after the receipt of notice dated 03.08.2015 from Competent Authority, National Highways Act

towards acquisition certain land, discrepancy in record of rights came to knowledge of respondent no.1 making him to approach the Appellate Authority for correction of the Mutation Entry.

5. Having considered submissions advanced, it is apparent that the Mutation Entry, which is subjected to challenge by the respondent is certified in the year 1987 on the basis of the joint request of all the shareholders of land. Then Tahsildar certified such entry vide his order dated 23.03.1987. Consequently, it is made record w.e.f. 08.10.1987. Admittedly, there was no challenge to Mutation Entry till filing of the Appeal before the Sub Division Officer, Sangamner in the year 2018.

6. It is apparent from record that some part of the land, which is subject matter of Mutation Entry has been acquired for National Highway and notices were issued to land holders under the provisions of National Highways Act, 1956. The respondent no.1 has raised challenge to the Mutation Entry, when he noticed that the compensation is offered in favour of the petitioners.

7. Perusal of contentions raised in application seeking delay condonation show that only reason given for delay is ignorance of the particulars of Mutation Entry No.308. It is difficult to accept such explanation for inordinate delay of more than 30 years. The impugned order passed by the Sub Divisional Officer, Sangamner casually accepted such an explanation, stating that respondent needs to be given an opportunity looking to principles of natural justice. However, the order nowhere depicts that how such principles were not observed while sanctioning mutation entry. This Court as well as the Supreme Court of India consistently held that law of limitation is founded on public policy and known as

“statutes of peace”. It has been brought into statute book, so that there can be end to the litigation. However, in present case, the exponential delay of more than 30 years is condoned in absence of slightest explanation.

8. Resultantly, order impugned cannot be sustained in law and requires to be quashed and set aside in exercise of Writ jurisdiction of this Court. However, respondent shall be at liberty to avail civil remedy, if any, as available under law to establish his title in respect of disputed portion of land, without impeded by this order. Hence, the following order:-

ORDER

- a. Writ Petition is allowed in terms of prayer Clause (B), maintaining liberty as indicated above in favour of respondent No.1.
- b. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE