



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

WRIT PETITION NO. 12218 OF 2021

Namdeo s/o. Changdeo Baraskar and Anr.

VERSUS

Ankush Sampati Garad & Anr.

Mr. Abhijit S. More, Advocate for the petitioners.

Mr. Mahesh S.Deshmukh h/f. Mr. Sushant B. Choudhari, Advocate for respondent No.1.

Mr.K.N. Lokhande, AGP for respondent No.2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 19.11.2024
PRONOUNCED ON : 11.12.2024

ORDER :-

01. This petition arises out of judgment and order passed by the District Superintendent of Land Record, Osmanabad – respondent No.2 dated 26.08.2021. By the said order, the learned DSLR allowed the delay condonation application, filed by the respondent caused in filing appeal before the said Authority. Present petitioners are respondent Nos. 2 and 3 in the said appeal, whereas present respondent No.1 is appellant and respondent No.2 is the Authority who passed the order.

02. The appeal was filed by respondent No.1 for correction in the entry in respect of land Survey No.56, village Takli,Tal. Paranda, Dist. Osmanabad. It was a case before the Appellate Authority that the father

of the respondent purchased land admeasuring 4 Acre 36 Gunthas from Survey No.56. Pursuant to sale-deed dated 12.03.1967, entry was taken in 7/12 extract. However, later-on, consolidation scheme was implemented in the village. While taking entry after consolidation, 75 Gunthas area is shown less in the record. On this, the appeal was filed seeking correction. The scheme was implemented in 1971. Since there was delay in filing appeal, an application was filed for condonation of delay.

03. The petitioners appeared and filed their say. It is stated that for filing of appeal under the Maharashtra Land Revenue Code [for short "MLRC"], the limitation is 60 days. The appeal is filed after 45 years. The deceased father of respondent during his lifetime did not file any appeal. He died on 27.03.2003. There are no sufficient reasons shown for delay. In any case, the delay of 45 years cannot be condoned. They prayed for rejection of the application for condonation of delay.

04. The learned DSLR by impugned order dated 26.08.2021 allowed the application and condoned delay. It is observed that there appears to be variation in the acerage while taking entries. Further it is held that instead of going to the aspect of condonation of delay, the

matter needs to be considered on merits. The petitioners, thus, are before this Court aggrieved by the order passed by respondent No.2 thereby condoning the delay.

05. Heard the parties. The petitioners mainly relied upon judgment in the case of **Santoshkumar Shivgonda Patil and Others. Vs. Balasaheb Tukaram Shevale, reported in AIR 2009 SC (Supp) 2471**. The Hon'ble Apex Court in the said judgment after considering various judgments and provisions of the Limitation Act, held that where no limitation is prescribed for filing appeal, in such cases reasonable time would be three years. In that case the revisional power was exercised after 17 years. It was held that certainly said period cannot be said to be a reasonable time and the appeal was allowed by the Hon'ble Apex Court. Said case was in respect of section 257 – revisional power under MLRC. In this case, limitation is prescribed of 60 days for entertaining the appeal under section 247 of the MLRC. From the application of the respondent before the DSLR, it is seen that there is no sufficient reason shown in the application for condonation of delay. What is stated is only that since the father of the respondent was illiterate agriculturist, he could not notice the mistake. After noticing the mistake, the appeal could not be filed in time as the respondent was having financial difficulties and

he also happened to be an illiterate person and thus, there is delay of 45 years.

06. This Court finds that under such circumstances, no case is made out to condone the delay that too of 45 years, caused in filing the appeal under section 247 of the MLRC. The learned Authority has also not assigned any reasons as to how it came to a conclusion that delay appears to be properly explained. Without discussing that only by stating that the case deserves to be considered on merit, the delay is condoned. Certainly this exercise is beyond the scope of the authority. Allowing further proceeding to continue would certainly be an abuse of process of law. It is for this reason, this Court comes to a conclusion that the impugned order deserves to be quashed and set aside. Thus, accordingly the petition stands allowed with no order as to costs.

[KISHORE C. SANT, J.]