



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

58 WRIT PETITION NO. 14183 OF 2023

Gangubai Radhakisan Padul

VERSUS

The State Of Maharashtra Through Its Secretary And Others

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Advocate for the Petitioner : Mr. D.A. Mane

AGP for Respondents: Mr. V S Badakh

Advocate for Respondent 6 : Mr. V.S. Palsikar

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 08, 2024

ORDER :-

1. Petitioner impugns the judgment and order dated 22.9.2023 passed by the Hon'ble Minister in Appeal No.2020/Case No.32/J-7 and the order dated 14.3.2019 passed by the Commissioner, Aurangabad in ROR Revision no.300 of 2018 and order dated 19.7.2018 passed by the Additional Collector, Jalna in Appeal No.91 of 2017.

2. Mr. Mane, learned advocate appearing for petitioner submits that mutation entry no.1173 was certified in favour of the petitioner on 1.3.2009 on the basis of a partition deed. Respondent no.6 filed appeal assailing the mutation entry before the Sub Divisional Officer, Bhokardan in the year 2015. Appeal was not accompanied with application for delay condonation. Appeal was patently barred by the limitation. In spite of several opportunities granted to respondent no.6 to file an application for delay condonation, he failed to take any

steps in that direction. Consequently, Sub Divisional Officer passed order dated 16.1.2017 and dismissed appeal on the ground of delay. The order of Sub Divisional Officer was assailed by respondent no.6 in appeal before the Additional District Collector, Jalna. Surprisingly, such appeal is allowed not only in respect of delay, but, mutation entry which was subject matter of challenge was also quashed and set aside. Said order is confirmed by the Additional Divisional Commissioner as well as Hon'ble Minister.

3. Mr. Mane would submit that unless delay is condoned, authorities could not get jurisdiction to entertain appeal, however, ignoring these basic requirements, impugned orders are passed.

4. Learned advocate appearing for respondent no.6, however supports the order contending that the very mutation entry was based on document which do not confer title. Such mutation entry could not have been effected. There was inherent defect in the mutation entry and that has been rightly upset by the authorities under the impugned orders.

5. Having considered the submissions advanced, apparently, mutation entry no.1173 dated 1.3.2009 was subjected to appeal before the Sub Divisional Officer. Appeal was filed in the year 2015. There was delay of about six years. Admittedly, no application for delay condonation was filed. Consequently, S.D.O was pleased to dismiss the appeal vide his order dated 16.1.2017. However, in appeal filed under section 247 of the Maharashtra Land Revenue Code, Additional

Collector passed order ignoring point of delay and set aside the mutation entry itself. Second appellate authority, Additional Divisional Commissioner as well as Minister confirmed the order ignoring fact that Additional Collector had no jurisdiction to directly allow the appeal against order passed by the Sub-Divisional Officer, who had not dealt with merits of the matter and dismissed the same on the point of limitation.

6. It is trite that remedy of appeal is provided under Maharashtra Land Revenue Code. Specific period of limitation is given for filing the appeals unless delay is condoned, the Authority does not get jurisdiction to entertain appeal. Reference can be made to judgment of the Supreme Court in case of **Ragho Sing Vs. Mohan Singh and others reported in 2001 AIR SCW 2351 : (2001) 9 SCC 717**, wherein the Supreme Court in paragraph no.6 to 8 observed thus :-

“6. We have heard learned Counsel for the parties. Since it is not disputed that the appeal filed before the Additional Collector was beyond time by 10 days and an application u/s 5 of the Limitation Act was not filed for condonation of delay, there was no jurisdiction in the Additional Collector to allow that appeal.

7. The appeal was liable to be dismissed on the ground of limitation. The Board of Revenue before which the question of limitation was agitated was of the view that though an application for condonation of delay was not filed, the delay shall be deemed to have been condoned. This is patently erroneous.

8. In this situation, the High Court was right in setting aside the judgment of the Additional Collector as also of the Board of Revenue. We find no infirmity in the impugned judgment.”

7. The Sub Divisional Officer was, therefore, right in rejecting challenge to mutation entry dated 1.3.2009 in appeal filed after six years. Consequently, impugned orders cannot be sustained in law. At this stage, learned advocate appearing for respondent no.6 makes request to remit the matter back to the Sub Divisional Officer, with liberty to file application seeking to condone the delay. Such request deserves to be accepted to make complete justice.

8. In view of that, Writ Petition stands **partly allowed**. The impugned orders are quashed and set aside. Matter is remitted back to the Deputy Collector with liberty to respondent no.6 to file application for delay condonation in appeal against mutation entry. The Deputy Collector shall first decide the delay application within a period of three (3) months from the date of this order and pass further orders in accordance with law. Writ Petition stands disposed off. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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aaa/-