

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1131 OF 2024

Shahanaz Mahammadgaus Zari ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

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Mr. M. L. Patil for the petitioner.

Mr. P. G. Sawant, AGP for the State/respondent Nos.1
to 5.

Mr. Shantanu Kalekar with Mr. Yogesh Morbale for
respondent Nos.6 to 8.

CORAM : AMIT BORKAR, J.

DATED : MARCH 11, 2024

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. Challenge in this writ petition is to the order dated 31st October 2023 passed by respondent No.2 allowing the revision application filed by respondent Nos.6, 7 and 8 having effect of condoning delay of more than 32 years in challenging order passed by the District Superintendent of Land Records.
3. The writ petition arises out of city survey inquiry in relation to area of 34225 sq.ft. (3077.6 sq.mtrs) which was given final plot No.46/3. Survey was conducted by the City Survey Officer.

According to the petitioner, her area was reduced in the survey. According to the petitioner, respondent Nos.6 to 8 were present through their power of attorney at the time of carrying out survey.

4. In 2014, respondent Nos.6 to 8 executed various sale deeds in relation to final plot No.46/3. The predecessors tried to disturb petitioner's possession over final plot No.46/3. Therefore, the petitioner filed Regular Civil Suit No.173 of 2018 seeking injunction and challenging sale deeds dated 8th October 2014 and 26th September 2017. The Trial Court rejected the application for temporary injunction, however, the District Court granted temporary injunction application.

5. Respondent Nos.6 to 8, on 5th October 2019, filed RTS/Appeal/446 of 2019 challenging mutation entry dated 29th January 1960 made on the basis of sale deed dated 6th August 1956. On 7th July 2020, the Sub-Divisional Officer dismissed the appeal against which respondent Nos.6 to 8 filed appeal before the Additional Collector which came to be dismissed by order dated 23rd June 2023.

6. Respondent No.6 filed City Survey Appeal on 6th July 2019 challenging decision in city survey inquiry dated 13th October 1987, thereby allowed the final plot number and fixing the area along with application for condonation of delay. The District Superintendent of Land Records, by order dated 31st May 2021, condoned delay of 32 years in filing appeal which was set aside by the Deputy Director of Land Records by order dated 21st November 2022.

7. Respondent Nos.6 to 8 challenged order dated 21st November 2022 by revision application. Respondent No.2, by the impugned order, condoned the delay of 32 years holding that the delay deserves to be condoned in the interest of justice.

8. Having heard learned advocates for the parties, it appears that power of attorney of predecessors of respondent Nos.6 to 8, B. K. Patil was present at the time of carrying out survey in the year 1987. If that be so, it is no longer open for the petitioner to seek condonation of delay in challenging such order of completion of survey on the ground that the petitioner was minor at the time when the survey was carried out. The rights and liabilities of the petitioner would be similar to the rights and liabilities available to her predecessor-in-title. Once the predecessor-in-title of respondent Nos.6 to 8 were present at the time of carrying out survey in the year 1987, filing of appeal challenging survey of the year 1987, on 6th July 2019, the Sub-Divisional Officer could not have been condoned the delay unless sufficient cause under section 5 of the Limitation Act, 1963 was made out. The reason furnished by respondent Nos.6 to 8 that they were minor at the time of carrying out survey cannot be accepted as sufficient cause as predecessors of respondent Nos.6 to 8 were having knowledge of survey.

9. Hence, relying on liberal principle of condonation of delay, such delay of more than 32 years could not have been condoned. It is well settled that the quantum of delay is not important, the cause furnished to explain the delay caused in filing proceeding need to be considered. Therefore, in my opinion, respondent No.2

could not have condoned such delay. Hence, the impugned order passed by respondent No.2 dated 31st October 2023 suffers from legal infirmity. Hence, following order:

10. The rule is made absolute in terms of prayer clause (b).

11. No costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 14th March 2024. The corrections in paragraph No.3 are shown in italicize.