

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3765 OF 2022

Mallhari Bhiva Ingale & Anr ... Petitioners
V/s.
Sunderabai K Narke (Deceased)
Through Legal Heirs & Ors ... Respondents

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Mr. Amit Sale, for Petitioners.

Mr. Manoj A. Patil a/w Mr. Akash M. Murudkar, for
Respondent Nos.1A & 1B.

Mr. J. P. Patil, AGP for State/Respondent Nos.7 to 9.

CORAM : AMIT BORKAR, J.

DATED : APRIL 30, 2024

PC.:

1. **Rule.** Rule is made returnable forthwith.
2. Challenge in this writ petition, is to the order passed by respondent No.7, setting aside the order passed by respondent No.8 refusing to entertain the proceedings on behalf of respondent Nos.1A and 1B under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 after period of 39 years.
3. It is not in dispute that the consolidation scheme was finalized in the year 1973-1974. However, respondent No.1A and 1B initiated proceedings in the year 2011 challenging mutation

entry effected in furtherance of consolidation scheme. The Appellate Authority refused to condone the delay of 39 years. However, after adopting statutory remedies finally, respondent No.7 by the impugned order condoned the delay of 39 years.

4. Mr. Sale, learned Advocate for the petitioner relying on celebrated judgment of this Court in the case of **Suresh Bapu Sankanna & Ors Vs. State of Maharashtra & Ors**, reported in 2018(4) Mh.L.J. 331, he submitted that the aggrieved person was himself approach statutory authority within reasonable time to correct errors in completion of consolidation scheme.

5. Per contra, Mr. Patil, learned Advocate for the respondent Nos.1A and 1B supported the order by submitting that the order is in the interest of justice, by the effect of the impugned order is to correct the error committed by the Authorities under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and, therefore, no interference is called for.

6. Having heard learned Advocate for the parties and while scrutinizing the material on record, it appears that the consolidation scheme was finalized in the year 1973-1974. The remedy adopted by respondent Nos.1A and 1B appears to be under Section 247 of the Maharashtra Land Revenue Code, 1966 (“**CODE**”). The Appeal under Section 247 of the Code is provided against the exercise of power under Section 149 and 150 of the Code. The substantive proceedings raising challenge to the exercise of power by the Consolidation Authority is provided under Section 32(A) of the Bombay Prevention of Fragmentation and

Consolidation of Holdings Act, 1947. However, exercise of such power is held to be performed within reasonable time. Depending on the facts of each case, the reasonable period can be extended up to three years. However, in the facts of the case, it appears that respondent Nos.1A to 1B adopted proceedings under Section 247 of the Code and respondent No.7 by the impugned order has condoned the delay of 39 years in challenging the mutation entry.

7. On perusal of the impugned order, I am satisfied with the respondent Nos.1A and 1B, they have failed to make out a sufficient cause for condoning the delay of 39 years. Therefore, respondent No.7 has committed error of law by condoning the delay without they were being sufficient cause. Therefore, this is a fit case to exercise extraordinary constitutional power of this Court under Article 226 of the Constitution of India. Hence, in view of judgment of this Court in the case of **Suresh Babu Sankanna** (Supra), Rule made absolute in terms of prayer clause (b).

8. It is made clear that the substantive proceedings pending between the parties shall be decided in accordance with law.

9. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)