

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12037 OF 2022

Rakhamabai Vithoba Memane & Ors ... Petitioners
V/s.
State of Maharashtra
Revenue Department & Ors ... Respondents

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Mr. Rahul S. Kadam, for Petitioners.

Mr. S. G. Deshmukh a/w Mr. Pritam Nigade a/w
Mr. Rushikesh G. Patil, for Respondent Nos.5 to 16.

Mrs. V. S. Nimbalkar, AGP for State/Respondent Nos.1
to 4.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- By the impugned order, respondent No.1 has exercised power under Section 35 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 thereby setting aside orders dated 4 October 1966, 26 December 2002 and consequential mutation entry dated 10 February 2005.
- Learned Advocate for the petitioner *inter alia* contended that the impugned order is passed without considering the application

for condonation of delay and without giving an opportunity of hearing to the petitioner on the point of condonation of delay.

4. On perusal of the application filed before respondent No.1, it appears that respondents challenged the orders dated 4 October 2005, 26 December 2002 and 10 February 2005 by filing proceedings in the year 2022.

5. It is, therefore, necessary for respondent No.1 to consider whether the respondents have explained by giving explanation of sufficient cause in challenging order dated 4 December 1966m 10 February 2005 and 26 December 2002. Without giving opportunity of hearing to the petitioner, the impugned order could not have been passed the order. Hence, following order:

(i) The impugned order dated 25 February 2022 is set aside.

(ii) The proceedings are remanded back to respondent No.1 for consideration of application for condonation of delay filed by respondents.

(iii) Respondent No.1 after giving an opportunity of hearing to the petitioner shall pass reasoned order deciding application for condonation of delay. If respondent No.1 is satisfied that, the cause furnished is sufficient cause, then he shall pass order on merits after giving an opportunity of hearing to the parties.

6. Rule made absolute in above terms.

7. With this, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)