



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12968 OF 2024

Madhukar Ballal Joshi

Since deceased Thr. LR.s. and Others.

...Petitioners.

Versus

Sub Divisional Officer and Others.

...Respondents.

*Mr. A. A. Kumbhakoni, Senior Advocate along with Mr. Manish Kelkar for the
Petitioner.*

Ms. A. A. Nadkarni, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : November 21, 2024.

P. C. :

1. Heard.

2. By this petition, the challenge is to the order of Hon'ble Minister (Revenue), dated 22nd February, 2024 dismissing the Revision Application No.2814/PK95/J-4A on the ground of delay as well as on merits and while doing so, directs the Revision Applicants to file an appropriate application for seeking compensation in respect of the subject land.

3. Briefly stated, facts of the case are that the Petitioners are the owners of the subject land which are *Inam* lands and the name of the Petitioners' ancestors were recorded in the revenue records. On 1st

June, 1957, Mutation Entry No. 2 was effected and all the agricultural lands owned by the forefathers of the Petitioners were shown as '*Aakari Pad*' by removing *Kabjedars*. After acquiring the knowledge of the same, the Petitioners preferred an Appeal No. 88 of 2011 before the Sub-Divisional Officer [for short, "SDO"] challenging the '*Aakari Pad*' entry which came to be rejected by the SDO by an order dated 31st December, 2011 on the ground of delay. As against this, RTS Appeal No. 55 of 2012 filed before the Additional Collector came to be dismissed. The Divisional Commissioner in Revision Application No. 645 of 2012 preferred against the order of Additional Collector rejected the revision. The proceedings landed before the Hon'ble Minister (Revenue) in Revision Application No. 2814 of 2014. The Hon'ble Minister by an order dated 22nd February, 2024 rejected the Revision Application No. 2814 of 2024, which is impugned in the present petition.

4. Mr. Kumbhakoni, learned Senior Advocate appearing for the Petitioners would submit that the limited issue which arose for consideration before the Hon'ble Minister was the rejection on the ground of delay. He submits that while adjudicating the said application, the Hon'ble Minister has delved into the merits of the matter and has gone further and issued directions for seeking compensation for the subject land. He submits that the proceedings

were initiated for the purpose of recovery of land and for deletion of the entry of '*Aakari Pad*', however, the Hon'ble Minister without considering said issue has rejected the revision application on the ground of delay as well as on merits, which is impermissible. He would further submit that in this proceedings an interim application was filed for bringing on record the legal heirs of deceased Revision Applicant Nos. 1, 3 and 5 and Respondent No. 4/1, and without deciding the said application the impugned order has been passed which amounts to an order against dead persons and on this ground alone the order is required to be quashed and set aside. In support of the submission that the issue of delay and merits cannot be considered together and without condonation of delay, merits of the matter cannot be gone into, he relies upon the decision of this Court in ***Lakadya Dharma Vartha v. Shaikhali Shaikh Mohamed Varekar***¹.

5. Learned AGP, on the other hand, supports the impugned order and would submit that the challenge was preferred after a period of almost 53 years and 9 months and, therefore, the authorities had rightly rejected the application on the ground of delay. She would further submit that the Hon'ble Minister while considering the aspect of delay has gone into the merits of the matter for the purpose of ensuring that meritorious matter is not thrown out on ground of delay.

¹ WP No. 3753 of 2024 dated 14.10.2024.

She submits that all the parties were heard before the impugned order was passed.

6. Considered the submissions and perused the record.

7. The Authorities under the Maharashtra Land Revenue Code, 1966 have rejected the challenge preferred by the Petitioner against the 'Aakari Pad' entry on the ground of delay as the entry is said to have been effected on 1st June, 1957 and the challenge came to be preferred in the year 2011. As against the order passed by the Revenue Authorities, the revision was preferred before the Hon'ble Minister. Perusal of the order of Hon'ble Minister would indicate that after going into the issue of delay, the Hon'ble Minister held that said entry cannot be canceled and has thereafter dealt extensively with the merits of the matter and has dismissed the revision on the ground of merits also. The Hon'ble Minister has thereafter gone one step ahead and issued directions to the Petitioners for filing appropriate application for seeking compensation in respect of subject lands which was clearly not within the scope of enquiry before the Hon'ble Minister.

8. This Court in ***Lakadya Dharma Vartha v. Shaikhali Shaikh Mohamed Varekar*** (supra) after considering various decisions had held that while deciding an application for condonation of delay, the consideration of merits of the matter is impermissible and what was required to be done by the Authorities was to examine whether

sufficient cause has been made for condoning the delay. It is only after the delay is condoned, that the merits of the matter can be examined.

9. The said decision is clearly applicable to the facts of the present case as the SDO had rejected the challenge on the ground of delay only. The Hon'ble Minister was, therefore, enjoined to consider the aspect of delay and if the delay could have been condoned, the matter was required to be remitted to the SDO for enquiry on merits. Instead of adopting that course, the Hon'ble Minister, against an order refusing to condone the delay, has while rejecting the Revision dealt with the merits of the matter and given findings on the merits, which is unsustainable. In addition, it is not disputed that the interim application for bringing on record the legal heirs of deceased party was pending and without allowing the said application, the impugned order came to be passed and would therefore amount to an order passed against dead persons.

10. In light of the discussion above, the impugned order dated 22nd February, 2024 is liable to be quashed and set aside and is hereby quashed and set aside. The Revision Application No. 2814/PK95/J-4A is remitted to the file of Hon'ble Minister, to be considered afresh. Before doing so, the application for taking on record the legal heirs of deceased parties to be considered. As the matter is being remitted, the Hon'ble Minister is requested to decide the same expeditiously. Liberty

to the parties to place additional material on record before the Hon'ble Minister.

11. Petition stands allowed in the above terms.

12. In view of the disposal of Writ Petition, nothing survives for consideration in the pending civil/interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]