

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16398 OF 2024.

Pralhad Dattatray Jadhav And Ors

...Petitioners.

Versus

Surendranath Dattatray Jadhav And Ors

...Respondents.

Mr. Rananaware Dhananjayrao D for the Petitioner.

Mr. B. B. Dahiphale AGP for the Respondent-State.

None for the Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : December 12, 2024.

P. C. :

1. Heard.

2. The matter was listed yesterday for hearing and none had appeared for the Contesting Respondent No. 1 and therefore the matter was listed today. Today also none appears for the Respondent. No. 1. The affidavit of private service filed by the Petitioners states that the notice has been duly served through RPAD. The affidavit of service produced on record shows the signature of the Respondent No. 1 on the acknowledgment. The affidavit of service is taken on record. As there is no appearance which is caused on behalf of Respondent No. 1 though served, this Court has proceeded with the hearing of the matter.

3. The present Petition takes exception to the order dated

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25th June 2024, passed by the Respondent No. 3-State of Maharashtra through the Hon'ble Minister for Revenue upholding the order of the Sub Divisional Officer condoning the delay of 37 years caused in preferring the Appeal against the Mutation Entry.

4. Mr. Nanaware, learned Counsel appearing for the Petitioner would submit that firstly the Sub Divisional Officer had no jurisdiction to entertain challenge to the Mutation Entry as the 7/12 extract was closed by virtue of the land being converted into non agricultural land in the year 2013 itself. He would further submit that the names of the Petitioners along with Respondent No. 1 was entered in the Revenue records in the year 1986 and subsequent thereto Application for non agricultural use was filed and granted in the name of four brothers. He submits that the 7/12 extract was closed and the CTS extract was open which also shows the name of all the four brothers. He submits that in the year 2017, a portion of the property was acquired for the purpose of highway and compensation was paid equally to all the brothers. He submits that it is in the year 2020, that the Respondent No. 1 made an Application for challenging the Mutation Entry of the year 1986 which was entertained by the Sub Divisional Officer without any sufficient explanation for the delay of almost 37 years. He submits that the Hon'ble Minister has up held the findings of the Sub Divisional Officer without any discussion or any

reasons into the cause of delay which is tendered by the Respondent No. 1.

5. I have considered the submissions and perused the records.

6. From the record it is evident that the Mutation Entry which was certified in the year 1986 reflects the name of the four brothers and thereafter the NA order which is placed on record is also on an Application filed by all the four brothers in the year 2012. The permission was granted for non agricultural use on 6th May 2013, pursuant to which 7/12 extract was closed and the CTS extract also reflects the name of the four brothers. Notice for the acquisition for the portion of the subject land was issued to all four brothers and it is stated that the compensation has been received by all four brothers. In the year 2020, Respondent No. 1 has challenged the Mutation Entry which at that point of time was non existing as the 7/12 extract itself was closed and the CTS extract was opened in name of all the four brothers. Despite thereof the SDO has entertained the said Application.

7. Perusal of the Application for condonation of delay shows that the reason put forth by the Respondent no. 1 for the delay of about 37 years is that he has only three daughters and no son and therefore being involved in his family issues there is delay in preferring

the Application. Upon a reading of the said explanation in the Application, by no stretch of imagination the same can be construed as an explanation must less a sufficient explanation for the delay of 37 years. The SDO without taking into consideration the reason for delay putforth by the Petitioners has condoned the delay on the solitary ground that by reason of delay the legal rights cannot be prejudiced. It was expected of the SDO to consider the explanation for delay and to arrive at finding that the explanation tendered is sufficient to condone the delay of 37 years. In judicial review of the discretion which was exercised by the SDO, the Hon'ble Minister has merely referred to the various decisions and has not discussed the applicability of the said decisions to the facts of the present case.

8. While exercising the power of revision it was expected of the Hon'ble Minister to consider whether the discretion has been rightly exercised by the SDO and for the said purpose to take into consideration the explanation which was tendered and the finding of the SDO thereon. Perusal of the order of the Revisional Authority indicates that there is no such exercise conducted. It is well settled that each and every day's delay is not required to be explained, however, there must be sufficient explanation for the delay particularly when the delay is of long duration of 37 years.

9. In light of the above, considering that the discretion which

was exercised by the SDO was not exercised judicially as there is no reasons and no discussion into the sufficiency of the explanation and the colossal and unexplained inordinate delay of 37 years is condoned only on the ground that the legal rights cannot be prejudiced, the order of the SDO as well as the Hon'ble Minister suffers from infirmity deserves interference.

10. In light of the discussion above, the impugned order dated 25th June 2024, passed by the Hon'ble Minister and the order dated 13th April 2021, passed by the SDO is hereby quashed and set aside.

11. Petition stands allowed.

[Sharmila U. Deshmukh, J.]