IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1900 OF 2020

1. Gorakh s/o Shankar Mali,
Age: 45 years, Occu. Agri,

2. Machindra s/o Shankar Mali,
Age: Major, Occu. Agri,

3. Harishchandra S/o Shankar Mali,
(since deceased through L.R's.)

3-A. Anusaya Wd/o. Harishchandra Mali,
Age: 75 years, Occu. Agri,

3-B. Sanjay S/o. Harishchandra Mali,
Age: 50 years, Occ. Agri.,

3-C. Rukhmini W/o. Sahadeo Kale
Age : 48 years, Occu. Agri.,

3-D. Santosh S/o. Harishchandra Mali,
Age: 38 years, Occu. Agri.,
All R/o. Tamalwadi, Taluka- Tuljapur,
Dist. Osmanabad. ...PETITIONERS
[Orig. Respondents]

VERSUS

1. The State of Maharashtra
Through its Secretary,
Revenue Department
Mantralaya, Mumbai-32.

2. Settlement Officer/Deputy Director,
Land Records, Aurangabad region,
Aurangabad.

3. District Superintendent
Land Records, Dist. Osmanabad.

4. Deputy Superintendent
Land Records, Dist. Osmanabad.

5. Rajendra s/o Jalindhar Mali,
Age: Major, Occ. Agri,

6. Sunil S/o Jalindhar Mali,
Age: Major, Occu. Agri.,

7. Madhukar S/o Jalindhar Mali,
Age: Major, Occu. Agri.,

8. Jagannath Manohar Mali
Age: Major, Occu. Agri,

9. Prakash S/o Shankar Mali,
Age: Major, Occu: Agri,
All R/o. Tamalwadi, Tq. Tuljapur,
Dist. Osmanabad. ...**RESPONDENTS**
[Resp. No. 4 to 7 Orig. Applicants
and No. 8 Orig. Respondent]

Mr. H.D. Deshmukh, Advocate for petitioners
Mr. R.V. Naiknaware, Advocate for respondents No. 5 to 8
Mr. V.B. Deshmukh, Advocate for respondent No. 9
Mrs. M.L. Sangit, AGP for State

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CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 10th JANUARY, 2025
PRONOUNCED ON: 16th JANUARY, 2025

JUDGMENT :

. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this writ petition, petitioners are challenging the legality and validity of order passed by State Minister (Revenue)

Maharashtra State in Appeal No. 183/J-7A/2015 dated 04.06.2019.

3. It is the contention of petitioners that State authorities have implemented and executed fragmentation scheme in respect of survey nos. 7, 8 and 15 in the year 1976 to 1979 in village Tamalwadi, Tq. Tuljapur, Dist. Osmanabad, which has further resulted into forming of Gut Nos. 53, 56, 58, 60, 61, 113 and 114. According to petitioners, said scheme was implemented and executed without any discrepancy to the possession and distribution in respect of area of holdings of each of the land owner. It is the specific contention of petitioners that respondents No. 5 to 9 had accepted the evenness of the area of holdings of each of the land holder on affidavit and respondent nos. 1 to 4 had correctly without any error fragmented and consolidated the scheme converting survey nos. 7, 8 and 15 into gut Nos. 53, 56, 58, 60, 61, 113 and 114. Hence, there is no challenge to the scheme implemented and executed in the year 1976 to 1979 till the application filed by respondent No. 5 to 8 in the year 2014.

4. It is stated that respondents No. 5 to 8 filed appeal bearing No. Sr/5260/2014 before Settlement Officer/Deputy

Director of Land Records, Aurangabad Region, Aurangabad on 22.08.2014 for correction of the error in the scheme in view of Section 31 A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Accordingly, inquiry was directed by the Deputy Director in the said proceeding. The record disclosed that there was no error in implementation of scheme since it was implemented by metes and bounds. As a result, application filed by respondents No. 5 to 8 has been rejected by Deputy Director by order dated 07.10.2014. Aggrieved by the order passed by Deputy Director of Land Records, respondent No. 5 to 8 have preferred Revision application with an application for condonation of delay before State Minister (Revenue) bearing No. 183/J-7A/2015, wherein notices were issued to the petitioners on application for condonation of delay.

5. The petitioners appeared in the Revision Application and filed their say to the application for condonation of delay opposing the same. It was the stand of petitioners that without there being any substantial ground the appeal has been filed by respondents No. 5 to 8. The delay caused in filing revision is deliberate, hence does not deserve to be condoned.

6. The learned Advocate for petitioners categorically contends that though notices were issued on application for condonation of delay and reply has been filed by present petitioners, without passing any orders in respect of application for condonation of delay, without affording any opportunity to petitioners to oppose the appeal on merits, State Minister (Revenue) has been pleased to dispose of the Appeal itself without condoning the delay, directing reinquiry by the District Superintendent of Land Records, Osmanabad and if found necessary to correct the consolidation scheme by completing procedure within a period of three months from the date of order i.e. 04.06.2009. It is on this ground, petitioners have approached this Court.

7. It is the contention of petitioners that without recording finding in respect of condonation of delay, State Minister (Revenue), has decided the appeal on merits. When in fact it was incumbent upon the State Minister (Revenue) to decide the application for condonation of delay by recording a finding and thereafter pass order on the substantive appeal. Though, notices have been issued there is no finding as regards condonation of delay recorded by the State Minister (Revenue).

8. As against this, learned advocate for respondents No. 5 to 8 submits that in the report of Deputy Superintendent of Land Records, it is specifically admitted that possession of the petitioners as well as respondents is not according to the actual block number given at the time of consolidation scheme. As a matter of fact land is acquired for four lane national highway No. 211. At the time of joint measurement, panchnama was carried out and possession of respondents No. 5 to 8 has been admitted. Even, Tahsildar has conducted panchnama on 13.03.2015 in which it is admitted that the present respondents No. 5 to 8 are in actual possession. Since possession of the present answering respondents is affected due to acquisition by the National Highway, they have made inquiry with the office of Land Record and collected the necessary documents with regard to Land Survey No. 7, 8 and 15 wherein it is found that while preparing the consolidation scheme, the area has been consolidated and given the block numbers 113 and 52. But while allotting block numbers to the survey numbers the consolidation officer had committed mistake and not considered the actual possession. The mistake committed by consolidation officer while allotting block numbers needs to be corrected, therefore, application for correction was filed before the Deputy Director of Land Records,

Aurangabad Region, Aurangabad.

9. It is further contended that, in accordance with directions given by State Minister (Revenue), inquiry is conducted by the Superintendent of Land Record through Deputy Superintendent of Land Record, Tuljapur. The Superintendent of Land Record prepared a report of inquiry on 08.12.2021 and submitted to the District Superintendent of Land Record for necessary action. Though it is the contention of petitioners that no opportunity of hearing was given to them, fact remains that before passing the impugned order dated 04.06.2016 notice was issued to the petitioners and they have been served and hearing was given to them. Therefore, only after considering their 'say' and hearing arguments, final order on merit was passed. Hence, according to learned advocate for the respondents there is no substance in the challenge raised in the writ petition, hence, writ petition deserves to be dismissed.

10. The learned AGP appearing for respondents No. 2 to 4 submitted that consolidation scheme was implemented and executed evenly without any discrepancies in possession and distribution of respective areas of holdings and as such said scheme is not challenged till the application is filed by

respondents No. 5 to 8 on 22.08.2014. The application filed by respondents No. 5 to 8 is after a long delay of 35 years. After the impugned order has been passed by State Minister (Revenue) on 04.06.2019, inquiry was conducted by respondent No. 4 pursuant to said order. During which notices were issued to the concerned party and re-measurement was done on 25.06.2021 along with spot panchnama and report was forwarded to respondent No. 3 on 08.12.2021 to take further steps. Hence, order passed by State Minister (Revenue) is already implemented by the concerned authorities.

11. After hearing respective parties and going through the impugned order, it reveals that in the order passed by State Minister (Revenue) there is preliminary observation recorded that the notices were issued in the appeal and the matter was closed for orders on 28.01.2019. On going through the order passed by the State Minister (Revenue) it does not disclose that, any finding is recorded by the State Minister (Revenue) in respect of delay occurred in filing Revision Application before him. All the findings and submission which are recorded by the State Minister (Revenue) are regarding merits of the matter and there is no finding about delay occurred in filing Revision

application before him.

12. Learned advocate for the petitioners has drawn my attention to the application for condonation of delay filed by respondents No. 5 to 8 while preferring Revision Application before State Minister (Revenue). More specifically in para 16 it is contended that Deputy Director of Land Record, Aurangabad after hearing the matter on 07.10.2014 had closed the matter, however, this decision was not communicated to the petitioners. Therefore, he could not file Revision Application before the State Minister (Revenue), Maharashtra State, within limitation. Therefore, the application for condonation of delay has been filed, hence, delay deserves to be condoned. The application is filed on 14.06.2015. The present petitioners have also filed their 'say' to the application on 28.01.2019, opposing the application for condonation of delay.

13. Hence, admittedly, there was an application for condonation of delay filed by present respondents No. 5 to 8 to which 'say' was filed by present petitioners. However, State Minister (Revenue) while passing the order impugned dated 04.06.2019 has failed to decide the Application for condonation of delay and without deciding said application has proceeded to

pass order in revision itself. Considering that there was delay in filing Revision Application, for which Application for condonation of delay was filed by Revision Applicant and upon notices being issued, it was incumbent upon the State Minister (Revenue) to decide the Application for condonation of delay initially and thereafter after hearing the parties on merit, pass order on the Revision Application and decide the same. However, without deciding the application for condonation of delay, the State Minister (Revenue) has passed order in the Revision Application itself which is against the settled position of law. Hence, order passed by State Minister (Revenue) becomes unsustainable.

14. It is settled position of law that if there is an application for condonation of delay, unless said application is decided, substantive proceeding cannot be decided.

15. Learned advocate for the petitioners has placed reliance on the order passed by this Court in Writ Petition No. 9332 of 2022 along with Writ Petition Stamp No. 23513 of 2021 (Babu Ranu Kushare vs. The State of Maharashtra & Others), wherein in identical circumstances, this Court has observed that, if there is a delay of 40 years in filing Appeal before the District Superintendent of Land Records and, if order of condonation of

delay is not found, then it is to be presumed that no order on condonation of delay was passed by the Appellate Authority. Hence the Appellate Authority needs to consider application for condonation of delay, resultantly the matter was remanded back to the District Superintendent of Land Record for consideration of application for condonation of delay.

16. In the present case also, though there is an Application for condonation of delay and 'say' filed by respondents, there is no finding recorded by the State Minister (Revenue) on the application for condonation of delay. Hence, in view of the fact that State Minister (Revenue) has failed to decide application for condonation of delay, on this ground alone the order passed by State Minister (Revenue) is required to be set aside. Hence, the following order:

ORDER

(i) Writ Petition is allowed.

(ii) Order passed by State Minister (Revenue) Maharashtra State in appeal No. 183/J-7A/2015 dated 04.06.2019 is hereby quashed and set aside.

(iii) The State Minister (Revenue) Maharashtra State shall decide application for condonation of delay and thereafter decide Revision Application on its own merits by giving opportunity of hearing to the respective parties afresh.

(iv) Rule is made absolute in above terms. Writ Petition stands disposed of.

(MANJUSHA DESHPANDE, J.)