



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5116 OF 2023

Ankush Kisanrao Shelke and others

.. Petitioners

Versus

The State of Maharashtra
Through Secretary and others

.. Respondents

Mr. Nilkanth P. Bangar, Advocate for the Petitioners.

Mr. P. D. Patil, AGP for Respondent Nos. 1 to 3.

Mr. Kalyan D. Bade Patil, Advocate for Respondent No. 4.

CORAM : KISHORE C. SANT, J.

DATED : 08th JANUARY, 2025.

P C. :-

. Heard the parties. Taken up for final disposal by consent of the parties.

2. The order under challenge is the order passed by the District Superintendent Land Record (for short "D.S.L.R."), Beed dated 12.10.2022 thereby condoning the delay and registering the appeal for decision on merits. The petitioners are the respondents in the said appeal whereas, the respondent No. 4 is the appellant. The respondent Nos. 5 to 12 are the respondents like petitioners in the appeal.

3. It is the case of the petitioners that, the appeal itself was preferred after 45 years. The learned advocate for the petitioners relies upon the judgment in the case of Suresh Babu Sankanna and others Vs.

State of Maharashtra and others¹. He thus submits that, the learned D.S.L.R. had no authority to condone the delay while dealing under the powers under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. The respondent No. 4 has filed an appeal for correction and modification in the scheme under Section 32. He ultimately submits that the order itself is without any authority. The learned advocate further submits that, though there is alternative remedy available, this Court has still entertained the petition as the question involved is only about the power of the authority to condone the delay. In view of the settled position he submits that, no such delay can be condoned after three years. He prays for quashing and setting aside the impugned order.

4. The learned advocate Mr. Bade Patil for respondent No. 4 vehemently opposes the writ petition. He submits that, the learned authority has rightly applied its mind. There is clear observation that though there is delay, the appeal needs to be heard on merits and passed the order. No interference is required. He produced on record order passed by this Court in Writ Petition No. 10221/2022 dated 17.10.2022 in the case of **Laila Sayyad Gulab Vs. The State of Maharashtra and others**.

5. The learned A.G.P. also opposes the petition stating that there is

¹ 2018 (4) Mh.L.J. 331

alternative remedy available to the petitioners of filing an appeal before the Deputy Director of Land Record. He relies upon the order passed by this Court in Writ Petition No. 2313/2020 dated 03.01.2024 in the case of **Raghu Gangaram Kale and others Vs. The State of Maharashtra and others.**

6. After hearing the parties this Court has to only consider the question as to whether the learned D.S.L.R. is justified in condoning the delay of 44 years and to entertain the application for modification of the consolidation scheme.

7. In the case of **Suresh Bapu Sankanna and others** (*supra*), the Division Bench of this Court has dealt with the aspect of limitation for filing an application for modification of correction in the scheme under Section 32. This Court also dealt with the aspect of the availability of alternative remedy. In the said judgment the Division Bench of this Court has held that the law of limitation is a matter of public policy. The parties cannot be allowed to agitate their grievances after a long delay. The parties are expected to approach within reasonable period i.e. of three years. This Court also held that though alternative remedy is available, that is not an absolute bar especially when the authorities have acted wholly without jurisdiction and exercise jurisdiction without any authority or power. The facts of the said case are squarely

applicable to the present case.

8. So far as the order passed in Writ Petition No. 10221/2022 is concerned, this Court in the facts of that case directed the authority to decide the appeal on merits by giving liberty to the petitioner therein to challenge the order in appeal as well as the order impugned in the said petition. So far as the order passed in Writ Petition No. 2313/2020 is concerned, this Court has disposed of the writ petition in view of availability of alternative remedy and granted liberty to the petitioner therein to prefer revision under Section 252 of the Maharashtra Land Revenue Code. This Court has gone through these orders.

9. In view of the judgment in the case of **Suresh Bapu Sankanna and others** (*supra*), this Court finds that the said judgment is squarely applicable to the facts of this case. Therefore, this Court is passing the following order :

ORDER

. The writ petition is allowed in terms of prayer clause (B). No order as to costs.

(KISHORE C. SANT, J.)

PS.B.