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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13124 OF 2018

Dada Kondiba Misal
Age - 57 years, Occ - Agri & Labour
R/o Kokangaon, Taluka - Shrigonda
District - Ahmednagar

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Minister for Revenue and Forest
Mantralaya, Mumbai
2. The Divisional Commissioner,
Nashik Division, Nashik
3. The Collector,
Ahmednagar, District - Ahmednagar
4. The Sub Divisional Officer
Karjat, Karjat Division,
Karjat, District - Ahmednagar
5. The Tahsildar
Shrigonda, Taluka - Shrigonda
District - Ahmednagar
6. Sakhubai Kondiba Misal
Age - 67 yeas, Occ - Household
7. Kondiba Babu Misal
Age - 80 years, Occ - Agriculture

RESPONDENTS

Respondents No. 6 and 7
R/o Kokangaon, Taluka - Shrigonda
District - Ahmednagar

8. Somnath Bhima Wagle
Age - 35 years, Occ - Agriculture
R/o Kokangaon, Taluka - Shrigonda
District - Ahmednagar

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Mr. Amol K. Gawali, Advocate for the Petitioner
Mrs. Deepali Jape, AGP for Respondent - State
Mr. A. A. Nimbalkar, Advocate for Respondents No. 6 and 7
Mr. D. B. Roade, Advocate for Respondent No. 8
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[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 7th FEBRUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the respective parties.
2. The Petitioner, by way of this Writ petition, has challenged order dated 23rd October, 2018 passed by State Minister for Revenue and Forest in Second RTS Revision No. 3318/1019 Pra. Kra.198/Javak-6 and is also seeking direction that judgment and order dated 26th December, 2016 passed by Divisional Commissioner, Nashik in RTS Revision (Appeal) No. 604 of 2012 along with order dated 10th December, 2012 passed by Additional Collector, Ahmednagar in Second RTS Appeal No. 73 of 2012 be quashed and set aside. By way of amendment, the Petitioner is also seeking direction that, the Gift Deed dated 18th January, 2024 executed by Respondent No. 6 in favour of Respondent No.7 be declared as not binding on the Petitioner and quash and set aside Mutation Entry No. 4119 effected on the basis of Gift Deed and consequential entries in 7/12 extract in

respect of land bearing Gut No. 31 situated at Mauje Kokangaon, Taluka – Shrigonda, District – Ahmednagar.

3. Contention of the Petitioner is that, he is son of Respondents No. 6 and 7, namely Sakhubai Kondiba Misal and Kondiba Babu Misal. Property bearing Gut No. 37 admeasuring 2 Hectare 56 Are, situated at Mauje Kokangaon, Taluka – Shrigonda, District – Ahmednagar is the ancestral property belonging to Petitioner and Respondent No. 7. Whereas, property bearing Gut No. 31 ad measuring 2 Hectare 42 Are, has been purchased by the Petitioner out of individual income while doing labour work and executing contract for digging wells. He has purchased land in Gut No. 31 to the extent of 2 Hectare 42 Are, by registered sale deed executed on 26th April, 1989. It is his contention that due to certain discord in the family, Respondents No.6 and 7 advised him that, since his wife has left him and she may claim maintenance and share in his property, in view of that he should transfer property of his share in favour of Respondents No. 6 and 7. Therefore, in order to avoid the responsibility of paying maintenance and parting with share of his property to his wife, Petitioner made an application on 13th May, 2000 under section 85 of the Maharashtra Land Revenue Code (to be referred as “MLR Code”) thereby requesting to transfer land from Gut No. 37 to the extent of 2 Hectare 56 Are in the name of his father –

Respondent No.7, thereby relinquishing his right in the ancestral property. In the same application, the Petitioner has also requested to transfer land Ad measuring 64 Are + 48 Are from Gut No. 31 in favour of his mother – Respondent No. 6. It is his contention that though said application was in fact not maintainable under section 85 of the MLR Code, since the section can be invoked only for effecting partition between co-holders and it does not empower revenue authorities to make changes in revenue record on the basis of relinquishment of rights. Pursuant to the application made by the Petitioner, Tahsildar Shrigonda, by order dated 24th July, 2000 effected partition amongst co-holders and recorded name of Respondent No.7 in respect of property bearing Gut No. 37, to the extent of 2 Hectare 56 Are. It is further contended that though property in Gut No. 31 to the extent of 2 Hectare 42 Are is his self acquired property and the self acquired property cannot be transferred in favour of any family member, without supporting deed or instrument, or order of Court is beyond the scope of section 85 of the MLR Code. Name of his mother has been entered in revenue record in respect of Gut No. 31, to the extent of 64 Are + 48 Are. Based on the order dated 24th July, 2000, passed by the Tahsildar, Mutation Entry No. 1507 was effected, thereby mutating names of Respondents No.6 and 7 in the respective lands.

4. It is further contended by Shri. Gawali, learned Advocate for the Petitioner that though the transfer of lands was effected only for convenience between the family members, Respondents No.6 and 7 have betrayed him and executed sale deed of land admeasuring 1 Acre out of Gut No. 31 and, therefore, the Petitioner filed Regular Civil Suit No. 96 of 2003 for protecting land bearing Gut No. 31, which was standing in the name of Respondent No.6, since, it was his self acquired property. The Petitioner has filed Regular Civil Suit No. 76 of 2003 on the advice given by his advocate in respect of the ancestral property i.e. Gut No. 37, claiming 1/3rd share in it for partition and separate possession. Though, initially, stay was granted in favour of the Petitioner, whereby Respondents No.6 and 7 were restrained from creating any third party interest in suit property. Regular Civil Suit No. 76 of 2003 was dismissed for default, by order dated 18th May, 2012. After dismissal of the suit for non prosecution, the Petitioner filed RTS Revision No. 10 of 2011 challenging judgment and order passed in Partition Case No. 334 of 2000, before the Sub Divisional Officer, Karjat. It was filed on the ground that order passed by Tahsildar, Shrigonda was nullity, since it was passed without taking into consideration scope of section 85 of the MLR Code and the Tahsildar has recorded relinquishment of right by the Petitioner in the ancestral property

in Gut No. 37 and in absence of any relinquishment deed, transfer of property in Gut No. 31 was made in favour of Respondent No.6.

5. It is the contention of the Petitioner that it was categorically admitted that land bearing Gut No. 31, admeasuring 2 Hectare 48 Are was purchased in the name of the Petitioner on 26th April, 1989 and Mutation Entry No. 1204 was recorded. It is further contended that though name of Respondent No.6 was recorded in respect of land gut No. 31, however, the Petitioner continued to be in possession of the said land.

6. The Sub Divisional Officer, after taking into consideration the scope of section 85 of the MLR Code, has set aside order of Tahsildar, Shrigonda dated 24th July, 2000 in Partition Case No. 334 of 2000 as well as consequential Mutation Entry No. 1507, by order dated 27th March, 2012.

7. Respondents No. 6 and 7, being aggrieved and dissatisfied by the judgment and order dated 27th March, 2012, passed by Sub Divisional Officer, Karjat in Revision No. 10 of 2011, filed RTS Revision No. 73 of 2012 before Additional Collector, Ahmednagar.

8. The Additional Collector, Ahmednagar, allowed RTS Appeal

No. 73 of 2012 by order 10th December, 2012 and set aside the order dated 27th March, 2012 passed by Sub Divisional Officer, Karjat in RTS Appeal No. 10 of 2011, on the ground that order passed by Tahsildar dated 24th July, 2000 was challenged by the Petitioner before the Sub Divisional Officer, after lapse of 11 years, without seeking condonation of delay. It is observed by the Additional Collector that the Sub Divisional Officer has committed an error in passing the order without the Appeal being accompanied by any application for condonation of delay, that too after 11 years. It was also observed that among disputed land, some of the lands have already been sold during pendency of the proceedings and the purchaser has not been made party to the proceedings. The purchaser ought to have been added as necessary party in the proceedings filed before Sub Divisional Officer. Since there was transfer of land in respect of property in dispute and the property has been transferred by way of sale deed, the sale deed in question needs to be challenged in the Civil Court. Therefore, taking into consideration that there was delay of more than 11 years and there was change in the title of the property, the order passed by the Sub Divisional Officer has been set aside by the Additional Collector.

9. The matter was further carried by the Petitioner before the Additional Commissioner, Nashik, in RTS Revision (Appeal) No.

604 of 2012. The Additional Commissioner, by order dated 26th December, 2016, passed in RTS Revision (Appeal) No. 604 of 2012, refused to interfere in the order passed by the Additional Collector and has maintained the order passed by the Additional Collector dated 10th December, 2012 passed in Second RTS Revision No. 73 of 2012.

10. The Petitioner, after the order was passed by the Additional Commissioner, approached this Court by filing Writ Petition No. 2494 of 2017. However, after realizing that second revision is maintainable, the Petitioner had approached the State Minister for Revenue by filing RTS Revision No. 3318/1010 Pra.Kra.198/Javak-6 under section 257 of the MLR Code. The Minister has observed in order dated 23rd October, 2018 that, the dispute regarding property is between father and son, which was subject matter of Regular Civil Suit No. 76 of 2003 and since the suit has been decided on 18th May, 2012, the Additional Commissioner has rightly refused to interfere with the Mutation Entry No. 1507. According to the Minister, since the orders of the Civil Court are binding on the Revenue Authorities, order passed by the Additional Commissioner does not need any interference and accordingly decision of the Additional Commissioner in RTS Revision No. 604 of 2012 dated 26th December, 2016 has been maintained by the Minister, vide order passed on 23rd October,

2018. Therefore, the Petitioner is before this Court challenging the orders passed by Additional Collector, Additional Commissioner and the Minister in respect of revenue entries.

11. It is the contention of the learned Advocate for the Petitioner that though admittedly, the Petitioner had filed Application before the Tahsildar, however, it was beyond the scope of powers of Tahsildar to entertain his application and to effect entries in revenue record, in exercise of powers under section 85 of the MLR Code. His first contention is that such partition can be made only in respect of co-holders of property by way of application. The property can be partitioned on the basis of a decree of the Civil Court or on application by co-holder in the manner, which is provided under the Statute.

12. On an application made by one of the co-holders, it can be divided after hearing co-holders. The division of holding and apportionment can be made by the Collector in accordance with rules, which are made by the State Government. It is the contention of the Petitioner that his mother is not the co-holder of the property, which is transferred in the name of his mother.

13. His other contention is that the property in Gut No. 31 being his self acquired property, it could not have been transferred in the name of his mother, by invoking Section 85 of

the MLR Code since she was not co-holder and hence it was not permissible to transfer the property in the name of his mother, without support by any decree of court or otherwise, as contemplated under section 85 of the MLR Code. Though it was transferred in the name of his mother, he is still cultivating the said land.

14. It is contended that after the property was transferred in the name of his mother, his mother has created third party interest in the property, by executing sale deed to the extent of 40 Are land in favour of Respondent No.8. Therefore, in order to restrain his mother from disposing of rest of the property, it is necessary to restrain her from alienating or creating third party interest in the property in question. Similarly, so far as property in Gut No. 37 is concerned, he has challenged it on the ground that the application is not filed by Kondiba Misal for effecting partition in spite of that entries have been effected in the same proceedings wherein entries in respect of Gut N0. 31 has been taken in the name of his mother.

15. It is the contention of the Petitioner that the Tahsildar has recorded that on the basis of relinquishment, name of Respondent No. 7 – Kondiba Misal – father of the Petitioner has been recorded. Since he has not executed any relinquishment

deed in favour of his mother, there was no question of taking entry in the name of his mother in the revenue record. Since the property in Gut No. 31 was his self acquired property, it could not have been transferred in the name of his mother under section 85 of the MLR Code.

16. In view of Revenue entry and subsequent developments, he has filed Appeal before the Sub Divisional officer and the Sub Divisional Officer, after taking into consideration the scope of section 85 of the MLR Code, has rightly allowed the Appeal filed by the Petitioner, thereby holding that since the Petitioner and Respondents were not co-holders of the land, exercise of powers by the Tahsildar under section 85 of the MLR Code is totally unwarranted and not at all tenable. Referring to section 85 of the MLR Code and scope of the said section which is limited only to the extent of an application by co-holder or by a decree of the Court the Sub Divisional Officer has given a finding that order passed by the Tahsildar, taking entries of the names of Respondents No.6 and 7 in the revenue record vide Mutation Entry No. 1507, is not appropriate and it has been quashed and set aside, along with the order passed by the Tahsildar dated 24th July, 2000.

17. Learned Advocate for the Petitioner submits that the Sub

Divisional Officer has taken a right approach and has accordingly passed appropriate order, however, order passed by the Additional Collector, whereby order of the Sub Divisional Officer has been set aside, is unjust and unreasonable. It is his contention that though for the convenience of the family, it was an internal arrangement between family member, Respondents No. 6 and 7 have taken disadvantage of the Mutation Entries, which were recorded only for the convenience. Hence, he is constrained to challenge the Mutation Entries. Though he himself had made an application for effecting the Mutation Entries, however, the Tahsildar should have exercised powers, within the four corners of the law, but the Tahsildar has invoked powers, which are not vested in him.

18. It is also necessary to be appreciated that whenever there is relinquishment, it is required to be supported by a document, which is necessarily registered. Learned Advocate for the Petitioner has relied on section 17 of the Registration Act which requires a deed of relinquishment to be compulsorily registered. However, the Tahsildar has not taken into consideration any of the provisions of law and has straightway taken Mutation Entry No. 1507.

19. Though the Petitioner has filed Appeal before the

Additional Commissioner, Nahsik, challenging the Order passed by the Additional Collector, however, the Additional Commissioner also has observed that the Petitioner has filed Appeal before the Sub Divisional Officer, Karjat after 11 years and the Sub Divisional Officer, after scrutiny of the record, has found that the appeal was neither accompanied with any application for condonation of delay nor was there any reference about the delay in filing appeal.

20. Though Regular Civil Suit No. 76 of 2003 filed by the Petitioner seeking 1/3rd share in the ancestral property has been dismissed on 18th May, 2012, the Petitioner has not filed any Appeal against the said decision.

21. Learned Advocate for the Petitioner submits that the Additional Commissioner as well as the Minster have not taken into consideration the core issue, which he has raised in the writ petition, about maintainability of order, which is passed by the Tahsildar, which according to him, is nullity and, therefore, even the subsequent orders are of no consequence, when the initial order itself is a nullity. Limitation does not apply to the orders which are null and void.

22. So far as, objection about the application, which was filed before the Tahsildar by the Petitioner himself, pursuant to which

order has been passed by the Tahsildar, it is contended that it cannot operate as estoppel against the petitioner, since his application cannot confer powers on the authority which are not vested in him by law. Therefore, though he himself had filed an application, he is not estopped from challenging the order passed granting his application, since the order is passed against the provisions of law. Hence, according to him, there cannot be estoppel against law.

23. It is his contention that, there is no bar to his challenge on the ground that he himself has approached the Tahsildar requesting for effecting entries in the revenue record. Learned Advocate for the Petitioner has relied on the judgment in the case of ***“Sulochana Devi Through LRs V/s DDA and Another” 2013 SCC Online Del 6581***, wherein it is observed by the Delhi High Court that, the fundamental principle of law is that there is no estoppel against law meaning thereby even if a statement in this regard was made by the respondent / DDA still it would be the duty of the court to have seen as to whether the requirement of section 53B of the DDA Act was complied or not. Hence, according to him, it is the duty of the authority or the Court to look into the application or proceedings filed before it and exercise powers those are vested in the authority in accordance with law.

24. Learned Advocate for the Petitioner also relies on judgment of the Supreme Court in the case of ***“Yellapu Uma Maheswari and Another V/s Buddha Jagadheeswararao and Ors” 2015 AIR SCW 6184***, in support of his contention that any document which has effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document as provided under section 17 (1) (b) of the Registration Act. Therefore, according to him, this citation supports his contention that unless there is relinquishment deed, which is registered, property could not have been mutated in the name of his mother.

25. In support of his contention that, where decree is nullity, it does not create bar and operate as *res judicata*, the Petitioner has relied on the judgments in the cases of ***“Sushil Kumar Mehta V/s Gobind Ram Bohra” (1990) 1 SCC 193*** and ***“Kiran Singh and Others V/s Chaman Paswan and Others” (1954) 1 SCC 710***. The learned Advocate for the Petitioner has relied on the observations of the Supreme Court to the effect that, the defect of jurisdiction strikes at the authority or the court to pass a decree which cannot be cured by consent or waiver of the party. If the Court has jurisdiction but there is defect in its

exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. But where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the Court inherently lacks jurisdiction. It is further observed that question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of *res judicata* does not apply to a case of decree of nullity. Therefore, according to the learned Advocate, exercise of powers by Tahsildar being nullity, it did not preclude him to challenge it subsequently.

26. Per contra, learned Advocate appearing on behalf of Respondents No. 6 and 7 contended that the property in Gut No. 31 *ad measuring* 2 Hectare 42 Are, is not at all purchased by the Petitioner, as claimed by him. The Petitioner has suppressed material facts from this Court, by claiming that he has purchased the property by digging bore wells as well as by doing labour work etc. The Property in Gut No. 31 was in fact purchased by Respondent No.7, in the name of the Petitioner, since the Petitioner is his son and considering the future of the Petitioner,

it was purchased in his name. In fact, Respondent No.7 has received ancestral landed property in Gut No. 182/A and 182/B at village Kokangaon, in partition, in the year 1968. Since the Petitioner is son, land in the said Gut number was transferred in the name of the Petitioner and the Petitioner sold the said land to one Dnyandev Rangnath Jamadhar by registered sale deed dated 24th January, 2007.

27. It is the contention of the learned Advocate for Respondents No.6 and 7 that, in fact, the Petitioner has already received share in the ancestral property owned by Respondent No.7. Therefore, he had made an application to Tahsildar to transfer remaining land in Gut No. 37, ad measuring 2 Hectare 56 Are, in the name of Respondent No.7 and land Gut No. 31 to the extent of 2 Hectare 42 Are, in the name of his mother - Respondent No.6. Statement of the Petitioner was recorded by the Tahsildar, Shrigonda in Partition Case No. 334 of 2000. According to him, since the Petitioner had already received his share of property and he was enjoying his share, including the property purchased in the name of the Petitioner's wife, it cannot be said that he had relinquished his share and became landless.

28. It is submitted by learned Advocate for the Petitioner that, Regular Civil Suit No. 76 of 2003 was filed by the Petitioner

claiming 1/3rd share, was only for the purpose of determining and getting shares confirmed from the Court. Even the said suit is dismissed for default, which the Petitioner has failed to restore.

29. According to the learned Advocate, the Sub Divisional Officer, without taking into consideration the facts of the case, has passed an order, canceling Mutation Entries. However, the Additional Collector, Ahmednagar has rightly allowed the Revision filed by Respondents No.6 and 7 and has confirmed the order passed by the Tahsildar, Shrigonda. Even the Divisional Commissioner as well as the Minister have rightly passed orders. Therefore, the orders impugned do not deserve any interference.

30. It is the contention of Respondents No.6 and 7 that, there was no relinquishment of shares of the property by the Petitioner. In fact, the property in question was purchased by Respondent No.7, in the name of the Petitioner and the Petitioner has already sold the land, which he has received in his share in the ancestral property and has purchased the land in the name of his wife from the proceeds of the sale of ancestral property.

31. Learned Advocate for Respondents No.6 and 7 has drawn my attention to the pleadings in the plaint in Regular Civil Suit No. 76 of 2003, wherein the Petitioner has admitted that the properties described in the plaint are joint Hindu Family

properties, which include Gut No. 31 and 37, which are subject matter of present proceedings. He, further submits that the Mutation Entry No. 1507 is recorded, however, a categorical statement is made by the Petitioner that though Mutation Entry No. 1507 has been recorded, however, he continued in cultivation of the said land.

32. So far as application of section 85 of the MLR Code to the proceedings under exercise of which the Tahsildar has passed the order, is concerned, learned Advocate for Respondents No.6 and 7 has drawn my attention to the observations made by the Sub Divisional Officer, Karjat in his findings. According to the Sub Divisional Officer, upon going through the orders passed by the Tahsildar, it appears that the applicant and Respondents were not co-holders in the said land. Therefore, section 85 of the MLR Code will not be applicable to the present case. Hence, the order passed by the Tahsildar, invoking powers under section 85 of the MLR Code, is not passed in accordance with law. Learned Advocate for Respondents No. 6 and 7 relies on the definition of "holding" in section 2 sub section (13) of the MLR Code, which reads thus:

"2 (13) "holding" means a portion of land held by a holder."

33. Therefore, according to him, word "holder" used in section

35 of the MLR Code does not contemplate that the land should be held only by coparceners or the partition can be effected only in respect of coparceners. According to him, holding can be joint holding between any of the relations in the family. It is his contention that since application was filed by the Petitioner himself for recording names of Respondents No.6 and 7 in the revenue record, the Petitioner is now estopped from challenging the order, which is passed at his behest. According to him, if the Petitioner is aggrieved by the order passed by the Tahsildar, the Petitioner should have approached the Court seeking declaration that the order passed is inoperative and is not binding on him. He relies on judgment of the Supreme Court, in the case of ***“State of Punjab and Others V/s Gurdev Singh Ashok Kumar” AIR 1991 SC 2219***, wherein it is observed that, if a party is aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.

34. The same view has been reiterated by this Court in a judgment in the case of ***“Pandharinath Rambhau Kavitke V/s Shaikh Hamaja Shaikh Husen” 2000 (4) ALL MR 749***.

35. According to the learned Advocate for Respondents No.6 and 7, the order has been passed by the Additional Collector allowing the Appeal filed by Respondents No.6 and 7 on the ground that the Petitioner has approached the Sub Divisional Officer after a period of 11 years and the Application was not accompanied by any application for condonation of delay, no explanation for delay caused in approaching the authority has not been given in the Appeal. He relies on the judgment of this Court in the case of ***“Balkrishna Sadashiv Thakur and Others V/s Prabhakar Sadashiv Thakur and Others” 2021 (6) ABR 658***, where the appeal was filed after 10 years and was not accompanied by any formal application for condonation of delay, no such prayer was made even in the memo of appeal. On this background, this Court has taken a view that, an order passed by the Court or authority without condoning the delay would be without jurisdiction and nullity. Neither Appellate authorities nor the Revisional Authorities have examined the question of delay though it has been consistently raised by the petitioners. Therefore, in other words the appellate authorities and the revisional authorities have acted without jurisdiction in deciding the proceedings on merits without condoning the delay. Unless delay is condoned, appellate authorities and the revisional authorities have no jurisdiction to entertain the appeal

in law.

36. According to learned Advocate for Respondents No. 6 and 7, the case of the Petitioner is squarely covered by this judgment. Since the application was filed beyond the period of limitation prescribed under the Statute, without accompanying any application for condonation of delay, therefore, the order passed by the Sub Divisional Officer is nullity, as the Sub Divisional Officer did not have jurisdiction to pass an order unless there was an application for condonation of delay and the delay is condoned.

37. After having heard learned advocates for the respective parties and after going through the impugned order, in my opinion, two questions arise for my consideration; (I) whether the order passed by the Additional Collector, setting aside the order of the Sub Divisional Officer on the ground of delay is appropriate? In case the order of the Sub Divisional is found to be valid, it would be required to decide (II) whether the order passed by the Tahsildar is in accordance with section 85 of the MLR Code?

38. Undisputed facts are that the Petitioner had filed an application before the Tahsildar for Mutating names of Respondent No.6 in respect of land Gut No. 37 to the extent of 2

Hectare 42 Are and in the name of Respondent No.7 in respect of land Gut No. 31 to the extent of 2 Hectare 56 Are. The Tahsildar, after granting opportunity to the Petitioner as well as after taking appropriate steps of declaration in Chawadi and calling upon objections, has passed an order in compliance with the procedure pursuant to the application made by the Petitioner. Though the Petitioner had filed civil suit in the year 2003, since he did not pursue the cause, it was dismissed in default. On one fine day, the Petitioner has filed an Appeal before the Sub Divisional officer, claiming that for the convenience of his family, he had transferred the property which was purchased by him, in the name of his mother and the some part of that property has been transferred by his mother, hence, in order to restrain her from further alienating the rest of the property, he has challenged the Mutation Entry before the Sub Divisional Officer. In the application, it is his contention that, the Mutation Entry has been wrongly recorded. He has taken summersault and has stated that he did not make any application for transfer of his share in the name of his father and in spite of that transfer has been recorded. According to him, his father was neither an applicant nor respondent. Therefore, said transfer is not appropriate.

39. It is his further contention that, since mother is not co-

holder, transfer, which is effected in the name of his mother is also not tenable. In view of the objections raised by him in respect of Respondents No.6 and 7, he has requested to cancel Mutation Entry No. 1507. It is his specific contention that the order is passed by the Tahsildar, in exercise of powers under section 85 of the MLR Code, it does not contemplate transfer to his mother, who is not coholder and the property which is self acquired property cannot be transferred in the proceedings under section 85 of the MLR Code.

40. Though the application has been allowed by the Sub Divisional Officer, however, the Additional Collector has set aside the order on the ground that the Sub Divisional Officer has entertained the revision after 11 years and after going through the record before the Sub Divisional Officer, it does not appear that there is any application for condonation of delay accompanied with the revision application. There is no reason given in the revision for approaching the Sub Divisional Officer after huge gap of 11 years. Referring to the Supreme Court judgment in the case of ***“Santoshkumar Shivgonda Patil and Others V/s Balasaheb Tukaram Shewale and Others” 2009 (6) ALL MR (SC)*** the Additional Collector has observed that, in the judgment it is observed that, though no limitation is prescribed under section 257 of the MLR Code, however, it is to

be filed within reasonable period and such reasonable period would be not beyond 3 years. Therefore, in the present case, considering that the Revision Application was filed after 11 years, the application could not have been entertained by the Sub Divisional Officer and on that count the appeal has been allowed.

41. The view taken by the Additional Collector has been affirmed by the Additional Commissioner as well as the Minister. In a decision of this Court in case of ***"Balkrishna Sadashiv Thakur"*** (supra), wherein this Court has held that order passed by the court or authority, without an application for condonation of delay along with statutory appeal to challenge Mutation Entry would be without jurisdiction and nullity. In the present case, though order has been passed by the Tahsildar on 24th July, 2000 and Mutation Entry had been effected on 25th August, 2000, the Petitioner had approached the Sub Divisional Officer in 2011 i.e. after 11 years, without there being any application for condonation of delay. The Sub Divisional Officer has also not taken into consideration that the order has been passed by the Tahsildar in the year 2000 and the Petitioner has approached by filing Revision before the Sub Divisional Officer in the year 2011.

42. Section 250 of the MLR Code provides for limitation i.e. period within which appeals are required to be preferred. Section

250 of the MLR Code provides that, no appeal shall be brought after expiration of sixty days, if the decision or order complained of has been passed by an officer inferior in rank to the Collector or a Superintendent of Land Records in their respective departments; nor after the expiration of ninety days in any other case.

43. Section 250 of the MLR Code reads thus:

“250. Periods within which appeals must be brought.

No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Land Records in their respective departments; nor after the expiration of ninety days in any other case. The period of sixty and ninety days shall be counted from the date on which the decision or order is received by the appellant.

In computing the above periods, the time required to obtain a copy of the decision or order appealed against shall be excluded.

44. In the present case, the Petitioner has challenged the order passed by the Tahsildar on 24th July, 2000 by approaching the Sub Divisional Officer in the year 2011, by filing Revision No. 10 of 2011, which was decided on 27th March, 2012. The order, which was challenged before the Sub Divisional Officer was passed by the officer below the Rank of the Collector. Therefore, the period of limitation as prescribed under section 250 of the

MLR Code would be applicable. The Revision has been filed without there being any application for condonation of delay. Therefore, it was incumbent upon the Petitioner to file an application for condonation of delay accompanied by the Revision. However, the Petitioner had not filed any application for condonation of delay, as has been observed by the Additional Collector in order dated 10th December, 2012.

45. In the conspectus of the matter, the Sub Divisional Officer, Karjat has committed an error in setting aside the order dated 24th July, 2000, passed by the Tahsildar, Shrigonda, vide his order dated 27th March, 2012, without condoning the delay of 11 years, that has occurred in approaching the Sub Divisional Officer. The Sub Divisional Officer has clearly failed to follow the mandate of section 250 of the MLR Code, 1966, while entertaining the Appeal of the Petitioner. Hence, the order passed by the Sub Divisional Officer is without jurisdiction, and null and void. In view of the findings recorded on the validity of order passed by the Sub Divisional Officer, Karjat, the question about determination of scope of section 85 of the MLR Code and its invocation by Tahsildar does not need consideration.

46. Therefore, the order passed by the Sub Divisional Officer dated 27th March, 2012 setting aside the order of Tahsildar dated

24th July, 2000 is without without any authority of law, since it was passed, without condoning the delay of 11 years which has occurred in filing the Appeal. In view of the findings recorded by me on the validity of the order passed by the Sub Divisional Officer, the further question whether the order passed by Tahsildar is in accordance with Section 85 of the MLR Code, does not need consideration. Hence, the orders passed by the Additional Collector, Ahmednagar in RTS Appeal No. 73 of 2012 dated 10th December, 2012 as well as by the Additional Commissioner, Nashik in RTS (Revision) No. 604 of 2012 dated 26th December, 2016 and the Minister in Second RTS Revision NO. 3318/1019/Pra.Kra. 198/Javak-6 dated 23rd October, 2018 do not deserve any interference. Writ Petition is, therefore, dismissed. Rule stands discharged.

47. In view of disposal of the Writ Petition, pending Civil Application No. 9864 of 2019 does not survive and hence disposed of.

[MANJUSHA DESHPANDE]
JUDGE