

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.9352 OF 2018

Ganpat Gunga Gaikwad & Ors.

... Petitioners

Versus

The State of Maharashtra & Anr.

... Respondents

Mr Pradeep S. Gole for the Petitioner.

Mr. Aditya R. Deolekar, AGP for the State.

**CORAM : M.S. Sonak &
Jitendra Jain, JJ.**

DATED : 10 July 2025

PC:-

1. Heard Mr. Gole, learned counsel for the petitioners and Mr. Deolekar, learned AGP for the State.
2. The petitioners are aggrieved by a Scheme formulated in 1973 under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.
3. After a delay of almost 25 years since the formulation of this scheme, the petitioners made a representation seeking an alteration of the scheme to the extent it affected the interests of the petitioners. This was even though no such representation could have been made after a lapse of almost 25 years.
4. The petitioners have pleaded that their application was rejected by an order dated 30 June 2005. However, they were

unaware of this rejection until 2016, and became aware only when neighbouring property owners initiated a boundary dispute. Consequently, after approximately 12 years, the petitioners have filed this petition mainly to contest the 2005 order, although the prayer clause remains deliberately vague.

5. Mr. Gole admitted that the bar of limitation would set in and further stated that the authorities had no power to condone the delay. However, he submits that when substantial justice is pitted against technical considerations like limitation, substantial justice ought to be allowed to prevail. He submitted that under Article 226 of the Constitution, this Court has plenary jurisdiction and wide powers which should be exercised so that substantial justice prevails.

6. Mr. Gole pointed out how the impugned scheme and the petitioners were prejudicing the petitioners, and therefore, must have an opportunity to seek its alteration.

7. Mr. Deolekar submits that this petition is barred by unexplained delay and laches. He further submits that even the parties who have raised the boundary disputes have not been impleaded as respondents. He submitted that limitation provisions have been made keeping in mind the public interests and as a matter of public policy. Therefore, no relief should be granted to the petitioners in this petition.

8. The rival contentions now fall for our determination.

9. Ex facie, the petitioners' claim for alteration is barred by inordinate delay and laches, not to mention the bar of limitation. No provision is shown to us under which the scheme formulated in 1973 could have been challenged in 1998. No provision is shown to us empowering any authority to condone such inordinate delay.

10. In any event, the petitioners' 1998 representation was rejected in 2005. This petition was instituted in 2017, claiming ignorance about the 2005 order and stating that the petitioners became aware of this order only after the neighbours started disputing the boundaries.

11. Significantly, even the 2005 order is not challenged in this petition. Simply stating that the petitioners were unaware of the 2005 order constitutes no explanation or reasonable explanation for this inordinate delay.

12. Though the jurisdiction of this Court under Article 226 of the Constitution is wide, it is well settled that such jurisdiction should not be exercised to undermine the statutory regime, which would include adherence to the period of limitation prescribed and the maximum condonable period. Here, even the explanation for the inordinate delay between 1973 and 1998 or between 2005 and 2017 when this petition was instituted is hardly acceptable. Such an explanation does not even amount to a sufficient cause.

13. Grant of any relief to the petitioners at this stage would amount to unsettling the position formulated in 1973.

Necessary parties who are bound to be affected by such unsettling are also not before us. Even the prayer clauses are left deliberately vague. Therefore, although indeed technical considerations should never be allowed to prevail over substantial justice, in the facts of the present case, this inordinate and unexplained delay does not amount to a mere technical consideration.

14. Substantial justice must be to all parties, and if at this stage, the 1973 position is unsettled, then the same would amount to substantial injustice to several parties who these petitioners have not even impleaded in this petition.

15. On a cumulative consideration of all the above facts and circumstances, we decline to entertain this petition.

16. This petition is dismissed without any order for costs.

(Jitendra Jain, J)

(M.S. Sonak, J.)