

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION (ST) NO. 4600 OF 2025

IN

WRIT PETITION NO. 4244 OF 2018

~~Dattu Nana Suryawanshi~~

Deceased through Legal Heirs

Tarabai Dattu Suryawanshi and Ors.

.. Petitioners

Versus

Dipti Rithe, Tahsildar, Palus and Ors.

.. Respondents.

WITH

WRIT PETITION NO. 4244 OF 2018

Dattu Nana Suryawanshi

Through his PoA holder

Sarjerao Dattu Suryawanshi

.. Petitioner

Versus

The State of Maharashtra and Ors.

.. Respondents.

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- Mr. J.P. Kharge, Advocate for Petitioners.
- Ms. Sulbha Chipade, AGP for Respondent – State in Writ Petition No.4244 of 2018.
- Mr. Nilesh Wabale a/w. Ms. Nikita Pawar, Advocates i/by Mr. Umesh Mankapure for private Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 26, 2025

P. C.:

1. This is a group of two Petitions. Principal Petition is Writ Petition No.4244 of 2018. In this Writ Petition, interim relief was granted by order dated 05.07.2019. According to Petitioners, private Respondents have violated the said order by creating third party rights

in the subject property and third party purchaser is taking steps to further deal with the subject property. Hence, Petitioner has filed Contempt Petition (Stamp) No.4600 of 2025 against private Respondents for committing contempt of order dated 05.07.2019.

2. By consent of Petitioners and private Respondents, principal Writ Petition No.4244 of 2018 is taken up for hearing and disposal alongwith the Contempt Petition No. 4600 of 2025 by this common order.

3. Challenge in Writ Petition No.4244 of 2018 is to two concurrent orders passed by the Deputy Director of Land Records (for short '**DDL**R') dated 06.01.2016 and Revenue Minister dated 27.06.2017 in RTS proceedings under the Maharashtra Land Revenue Code, 1966 (for short '**ML**R**C**') read with the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short '**MPFCH** Act').

4. To decide the dispute between the parties the following relevant facts deserve consideration:-

(i) Petitioner No.1 (Deceased through Legal Heirs) and Respondent No.7 are the real brothers they both are descendents and sons of one Mr. Suryawanshi who was entitled to old (original) Survey No. 214 i.e. the suit property.

- (ii) In the year 1975, pursuant to Application of MPFCH Act the said Survey No.214 was divided into two parts i.e. Hissa No. 1 admeasuring 49 R and Hissa No.2 admeasuring 1 H and 5 R by Mutation Entry No.19245 dated 03.04.1975. Hissa No.1 was allotted to original Petitioner whereas Hissa No.2 was allotted to Respondent No.7. Original Petitioner expired during the pendency of the present Writ Petition and is represented by Petitioner Nos.1(a) to 1(f). Petitioner No.1(a) holds Power of Attorney on behalf of other Petitioners to represent them. Respondent Nos.8 to 13 are other relatives of Petitioner whom the Petitioner has impleaded.
- (iii) Dispute raised by Petitioner is qua unequal distribution of the subject land i.e. Survey No.214 between the two brothers by virtue of Mutation Entry No.19245 dated 03.04.1975, pursuant to fragmentation.
- (iv) According to Petitioner, Survey No.214 is distributed evenly and equally between Petitioner and Respondent No.7 and they are so using the same.
- (v) Petitioners' case is that Respondent No.7 assured the Petitioner that he will agree to modification of Mutation Entry No.19245

so as to show equal holding of both brothers but did not keep his word.

5. In the above background, Petitioner filed Application before Respondent No.5 - DDLR seeking correction of Mutation Entry No.19245 dated 03.04.1975 for the first time on 11.02.2013. Respondent No.4 informed the Petitioner to file Statutory Appeal under Section 247 of the MLRC before the Competent Authority instead of Application for seeking correction of Mutation Entry. Petitioner accordingly filed Statutory Appeal No.05 of 2013 before Respondent No.4 alongwith Application for condonation of delay of 38 years in filing the Appeal. By common order dated 26.02.2014 the delay was condoned and Respondent No.3 was directed to conduct inquiry regarding the Mutation Entry No.19245 dated 03.04.1975 and take further steps in accordance with law.

6. Being aggrieved by the said order, Respondent Nos.7 and 8 filed Statutory Appeal No.2791 of 2014 and Appeal No.2792 of 2014 before Respondent No.5 – Appellate Authority alongwith Stay Application. Since there was no stay granted by Respondent No.5, Respondent No.3 proceeded with conducting the enquiry and prepared an amended proposal in respect of Mutation Entry No.19245.

7. By order 06.01.2016, both Appeals were allowed and order passed by Respondent No.4 dated 26.02.2014 was quashed and set aside on merits as well as on delay.

8. Petitioner being aggrieved with the order of Respondent No.5 filed two Revision Application Nos.2460 of 2016 and 2461 of 2016 alongwith stay Application before Respondent No.6 – State. By order dated 27.06.2017, Respondent No.6 – State dismissed the Revision Applications and upheld the order dated 06.01.2016.

9. Petitioner being aggrieved with the aforesaid concurrent orders dated 06.01.2016 and 27.06.2017 has filed the present Writ Petition.

10. Mr. Kharge, learned Advocate appearing for Petitioner would submit that Mutation Entry No.19245 dated 03.04.1975 was incorrectly recorded giving unequal land holding to Petitioner and Respondent No.7. He would submit that Petitioner deserves equal share in the said suit property and therefore Mutation Entry No.19245 require correction. He would submit that Petitioner relied upon the word of his brother i.e. Respondent No.7, that Mutation Entry would be corrected but since it did not happen, Petitioner had to invoke the present proceedings.

10.1. According to Petitioner, he is already in possession of 75 R and is cultivating the same. Despite Mutation Entry No.19245 dated 03.04.1975. Hence, the said Mutation Entry deserves correction. He would submit that in this background the order passed by Respondent No.4 dated 26.02.2014 deserves to be upheld and the two impugned orders be quashed and set aside.

11. *PER CONTRA*, Mr. Wabale, learned Advocate for private Respondent Nos.7 to 13 would submit that case of Petitioner seeking to claim challenge to the Mutation Entry has been filed after a humongous delay of more than 38 years and this in itself dis-entitles Petitioners to get any relief. Mr. Wabale would draw my attention to the order passed by Respondent No.4 dated 26.02.2014 to contend that when the said order is read, it is evident that the humongous delay of 38 years was not condoned by the Court, infact no order for condoning the delay was passed on the delay condonation Application to enable the Court to get jurisdiction to decide the RTS Appeal against the Mutation Entry.

11.1. He would submit that order dated 26.02.2014 passed by Respondent No.4 assumed jurisdiction without condoning delay of 38 years, which in law would be a nullity. He would draw my attention to the twin impugned orders dated 06.01.2016 and 27.06.2017 to contend that if the said impugned orders are seen, they consider the

aforesaid aspect of delay not having been condoned and that apart also deal with the case on merits.

11.2. He would submit that Petitioners in the Petition have pleaded that they are in possession of 75 R of the subject land and if that is correct then Petitioners ought to have approached the Civil Court of appropriate jurisdiction to protect their alleged long standing possession rather than having filed RTS proceedings after a humongous delay of 38 years which was not condoned at the threshold. Hence, he would persuade the Court to uphold the concurrent orders passed by Respondent Nos.5 and 6 and dismiss the Petition with appropriate directions.

12. I have heard , Mr. Kharge, learned Advocate appearing for Petitioners, Mr. Wabule, learned Advocate appearing for private Respondents No.7 to 13 and Ms. Chipade, learned AGP for Respondent – State and its Statutory Officers.

13. It is seen that there is dispute with the fact that Petitioner filed RTS Appeal No.05 of 2013 seeking challenge to the Mutation Entry No.19245 dated 03.04.1975 after a delay of almost 38 years. According to Petitioners, Respondent No.7 had assured the original Petitioner i.e. his brother that he will agree to correction in the Mutation Entry all along. However this alleged agreement is merely

stated on paper in order to overcome the humongous delay of 38 years. Admittedly no steps were taken by the original Petitioner to file the RTS Appeal within limitation or a reasonable period, despite having specific knowledge of Mutation Entry No.19245 dated 03.04.1975 which is borne out from Petitioners' pleadings and which is not denied.

14. That apart, pleadings of the Petitioners in the Petition clearly admit that Respondent Nos.8 to 13 who are other relatives of Petitioner and Respondent No.7 are also having their substantive rights in original Survey No.214. If this admission is correct then Petitioners have not given any details of the said land holdings. Most importantly Petitioners have not answered the issue of delay at all.

15. Though original Petitioner filed delay condonation Application before Respondent No.4 along with RTS Appeal No.05 of 2013, the said delay was not condoned rather RTS Appeal No.05 of 2013 was determined on merits without condoning the delay.

16. It is trite law that unless the delay is condoned the Statutory Authority does not assume jurisdiction to deal with the quasi-judicial proceedings. This position of law is supported by the decision of this Court in the case of ***Balkrishna Sadashiv Thakur and Ors. Vs. Prabhakar Sadashiv Thakur and Ors***¹.

¹ Writ Petition No.2658.2018, decided on 10.02.2021.

17. If the twin concurrent orders are seen it is *prima facie* evident that Respondent No.5 has considered the aforesaid aspect of delay, as also merits of the case of Petitioners while determining RTS Appeal Nos.2791 of 2014 and 2792 of 2014. Order passed by Respondent No.5 dated 06.01.2016 is appended at page No.57 to 64 of the Petition. If the same is seen it clearly records that order dated 26.02.2014 passed by Respondent No.4 does not deal with the delay condonation Application, neither mentions it in his order while deciding RTS Appeal No.05 of 2013.

18. The order dated 06.01.2016 further records that original Survey No.214 has now been divided into several Gat numbers and third party rights have now been created and such third parties are not impleaded in the proceedings. Thus, apart from the delay not having been condoned, even otherwise on merits the case of original Petitioner does not stand to test on the ground of joinder of parties. That apart, disputed questions of facts cannot be decided in writ jurisdiction.

19. Hence both the twin concurrent orders deserve to be upheld. Both the orders dated 06.01.2026 and 27.06.2017 impugned in the Writ Petition are confirmed. Resultantly, Writ Petition fails.

20. All contentions of the Petitioners to agitate their entitlement in the appropriate Civil Court are kept open strictly in accordance with law.

21. Writ Petition No.4244 of 2018 is dismissed.

22. In view of dismissal of the Writ Petition, nothing survives in the Contempt Petition (ST) No.4600 of 2025 and the same is also disposed.

[MILIND N. JADHAV, J.]

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