IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9010 OF 2025

Debashish Devnarayan Ghosh .. Petitioner

Vs.

State of Maharashtra, .. Respondents
through the Secretary, Revenue & Ors.

WITH
WRIT PETITION NO.9011 OF 2025

Debashish Devnarayan Ghosh .. Petitioner

Vs.

State of Maharashtra, .. Respondents
through the Secretary, Revenue & Ors.

Mr. Rahul Soman a/w Mr. Ayaz S. Bilawala and Mr. Yogesh A. Gaikwad i/b M/s Bilawala & Co. for Petitioner.
Mr. Vineet Naik, Senior Advocate i/b S. Anchan for Respondent Nos. 5 to 15.
Mr. A.A. Nadkarni, Additional GP a/w Mr. Hamid D. Mulla, AGP for Respondent- State.

CORAM : ARUN R. PEDNEKER, J.

Reserved on : 11th JUNE 2026.
Pronounced on : 09th JULY 2026.

JUDGMENT :

1. By the present Writ Petitions, the Petitioner challenges the order dated 14th October 2024 passed by the Revenue Minister, State of Maharashtra,

whereby RTS Revision No.2724/2828/Pra. Kra. 150/J-4 filed by the Petitioner is dismissed and the order dated 18th April 2024 passed by the Additional Commissioner, Konkan Division, in RTS Appeal No. 122 of 2024 is confirmed. By the impugned orders, the order dated 31st July 1989 passed by the Sub-Divisional Officer ("**S.D.O**."), Thane, in Restoration Case No. 28 of 1989 has been set aside.

2. Both the Writ Petitions are taken together as they arise out of connected proceedings. Writ Petition no. 9010 of 2025 challenges the order of Additional Commissioner, Konkan Division dtd.15th February 2024 condoning the delay by 34 years in filing the Appeal and the same is upheld by order dtd. 14th October 2024 by the Revisional Authority (Minister). In the Writ Petition no. 9011 of 2025 challenge is to the order dated 18th February 2024 of Additional Commissioner, Konkan Division deciding the Revision on merits and upheld by the Revenue Minister by Order dated 14th October 2024.

3. Brief facts giving rise to the Writ Petitions are as follows :

One Mr. Ramchandra Dadaji Naik was the original owner of the subject property situated in Taluka and District Thane, Maharashtra. Devu Ambo Jadhav was a protected agriculturist tenant of the subject property since prior to the year 1955. Babu Nana Jadhav was his sole surviving legal

heir and inherited the tenancy rights in respect of the said property. On 30th October 1980, pursuant to the proceedings under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short, the "MTAL Act"), the purchase price of the land was fixed, and upon payment thereof, a certificate under Section 32M of the MTAL Act was issued by the Agricultural Lands Tribunal in favour of Babu Nana Jadhav. On 10th June 1982, Debnarayan Ghosh, the father of the Petitioner, executed a lease agreement in respect of a portion of the subject property. However, the Revenue Authorities refused to effect the mutation entry on the ground that the transaction amounted to a transfer from a tribal to a non-tribal without prior permission from the competent authority. On 25th July 1981, the Tahsildar submitted a report to the Sub-Divisional Officer regarding an inquiry into agricultural lands belonging to tribal and non-tribal persons that were held or occupied by Debnarayan Ghosh.

4. It is alleged that on 25th October 1986, Babu Jadhav adopted the Petitioner (son of Debnarayan Ghoseh) by a registered Adoption Deed dated 25th October 1986. In the year 1989, the S.D.O., Thane initiated *suo motu* proceedings to determine whether the subject property was covered or affected by the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and Sections 36 and 36-A of the Maharashtra Land Revenue Code,

1966. Babu Nana Jadhav passed away on 18th October 1988. On 17th June 1989, the S.D.O. passed an order in Restoration Case No.28 of 1989 directing the Tahsildar to conduct an enquiry as to whether there was any transfer of the subject property or transfer of occupancy from a tribal to a non-tribal in contravention of Sections 36, 36A of the MLRC. The Tahsildar conducted an enquiry by visiting the site, recording the statements of Ladkibai, wife of Babu, and Janabai, daughter of Babu, and making local enquiries, including the certificate issued by Chitnis, Adiwasi Vikas Seva Mandal, Thane. The Tahsildar observed in his enquiry report that Babu Jadhav belonged to the "Sonkoli" caste, which is not a Scheduled Tribe.

5. The report of the Tahsildar was submitted to the S.D.O. and accordingly on 31st July 1989, the S.D.O., Thane passed an order in Restoration Case No. 28 of 1989 holding that Babu Nana Jadhav belongs to "Sonkoli" community, which is not a Scheduled tribe.

6. The order of the S.D.O. dated 31st July1989 is challenged by the legal heirs in R.T.S. Appeal No. 293 of 2023 i.e. after 34 years of the order. By the impugned order dated 15th February 2024, the delay in filing said RTS Appeal was condoned and the same is confirmed by the Revisional Authority against which the present Petition No. 9010 of 2025 is filed. The Additional Commissioner also passed order on merits setting aside the order

dated 31st July 1988 passed by the S.D.O. and the same is also upheld by the Hon'ble Minister against which Writ Petition No. 9011 of 2025 is filed. Challenging the above order, learned Counsel for the Petitioner submits as under.

7. Learned Counsel for the Petitioner submits that the delay of 34 years is unexplained and ought not to have been condoned by the Authorities. He relies upon the judgment of the Supreme Court in the case of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others**[1]. Relying upon the above judgment, he submits that there is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation. He also relies upon the judgment of the Supreme Court in the case of **Pathapati Subba Reddy and Ors. V. Special Deputy Collector**.[2] to contend that the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time; Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised

1 2013 (12) SCC 694

2 (2024) 12 SCC 336

even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence, therefore, the delay should not be condoned. He further submits that the Authority, i.e. the Divisional Commissioner, as well as the Revenue Minister, were swayed by the merits of the matter while condoning the delay. He submits that the merits of the matter cannot be a factor in considering whether the delay should be condoned, where the delay is inordinate. It is further submitted that the Respondents have contended that they became aware of the order dated 31st July 1989 only in the year 2010, and have sought to explain the delay by stating that they were engaged in other litigation during the intervening period. The said explanation has been put-forth as constituting sufficient cause for condonation of an inordinate delay of approximately 13 years in challenging the order dated 31st July 1989. It is submitted that such an explanation is wholly untenable and cannot be accepted as sufficient cause for condonation of the extraordinary delay. He further submits that, while considering an application for condonation of delay, the Court must strike an equitable balance between both sides, keeping in view the principles of justice, equity, and public policy. He further submits that the delay does not deserve to be condoned on the ground that the order was passed against a dead person. Babu had passed away in the year 1988. His

wife and daughter had given statements before the Tahsildar, who conducted the enquiry. It is further submitted that the order dated 31st July 1988 was passed in *suo motu* proceedings wherein the subject property was brought within the ambit of Section 36A of the Maharashtra Land Revenue Code. The said proceedings were not initiated pursuant to any application made by any party and were not in the nature of adversarial litigation. The proceedings were commenced by the competent authority on its own motion in the exercise of its statutory powers. The wife and daughter of Babu Jadhav specifically stated that they belong to the "Sonkoli" caste, which is not a Scheduled Tribe. This clearly indicates that they were aware of the proceedings initiated by the Sub-Divisional Officer (S.D.O.). Accordingly, the S.D.O. recorded a finding that there is no transfer of land from tribal to non-tribal.

Submissions on merits :-

8. It is submitted that by order dated 18th April 2024, the Additional Divisional Commissioner has allowed the RTS appeal filed by Respondent Nos. 5 to 15 herein on merits and has set aside the order dated 31st July 1989 passed by the SDO in *Suo Motu* Restoration Case No. 28 of 1989.

9. It is further submitted that the order dated 31st July 1989 has been passed after due enquiry being conducted and recording the evidence of the

wife and daughter (mother of Respondents 5 to 15) of Babu Nana Jadhav, who have categorically admitted the demise of Babu Nana Jadhav and have also admitted that their family does not belong to the Warli tribe but belongs to the Sonkoli caste, which is not a scheduled tribe. It is also submitted that the School Leaving Certificates of Jaibai Burkhud and Venubai Jadhav (daughters of Babu Nana Jadhav) (Page Nos. 100-105 of WP No. 9011 of 2025) also show that they belong to the Sonkoli community.

10. The Additional Commissioner erred in holding that the impugned order passed by the S.D.O. was against a dead person and was void. In doing so, the Additional Commissioner has failed to appreciate the provisions of Section 13(4) of the Maharashtra Land Revenue Code, 1966 ("MLRC"), which clearly empower the S.D.O. to exercise all the powers and perform all the duties of the Collector, subject to the provisions of Chapter XIII of the Code. Further, Section 36A of the MLRC expressly vests jurisdiction in the Collector to conduct an inquiry, either *suo motu* or on an application made by any person, to determine whether any transfer of land has been effected in contravention of the provisions of Section 36A. The statutory scheme therefore does not restrict the exercise of such jurisdiction merely on hyper-technical objections, particularly where substantive compliance with the revenue law is in question.

11. Accordingly, the conclusion that the order was void on the ground that it was allegedly passed against a deceased person is legally untenable, as it fails to appreciate the statutory competence of the Sub-Divisional Officer (S.D.O.) and the wider inquisitorial powers vested in the Collector under the Maharashtra Land Revenue Code (MLRC). It is submitted that the S.D.O. was duty-bound to determine, upon conducting an inquiry, whether Babu Jadhav belonged to a Scheduled Tribe. Since this issue squarely fell within the jurisdiction and authority of the S.D.O., no jurisdictional infirmity can be attributed to the decision-making process. The order dated 31 July 1988 was passed pursuant to a duly conducted inquiry and on the basis of the material and evidence available on record. Consequently, the validity of the order of S.D.O. cannot be impeached merely on the ground that it was rendered after the death of Babu Jadhav, particularly when the inquiry concerned the determination of a status issue falling within the statutory mandate of the competent authority.

12. *Per contra*, learned Counsel for the Respondents submits the delay as under :

(a) The Commissioner, by order dated 15th February 2024, condoned the delay (computed at 33 years 7 months and 8 days from the date of the order and actual delay of about 13 years from the date of knowledge) in

challenging the Section 36A Order, and the Minister affirmed the same. The discretion was exercised on sound and judicially recognised grounds:

(b) Knowledge : The Respondents, illiterate, rural tribal heirs, learnt of the Section 36A Order only in 2010, when the Petitioner challenged the proceedings concerning Mutation Entry No. 595 and Respondent Nos. 5 to 15 were made parties to it. Limitation for challenging an order passed behind one's back can run only from the date of knowledge.

(c) Continuous *bona fide* prosecution : from 2010 onwards Respondents have been continuously engaged in RTS proceedings, appeals, revisions, remands by this Hon'ble Court.

(d) Nature of the order under challenged : the order under challenge is a nullity and passed against a dead person, without jurisdiction, in breach of natural justice. Where an order is *non est*, a justice-oriented approach to condonation is all the more compelling, for refusing condonation would perpetuate an order which in law never existed.

(e) Settled principles: a sufficient cause must receive a liberal, justice-oriented construction; substantial justice is to be preferred over technical considerations, and no party gains by lodging an appeal late. This approach applies with added force to marginalised tribal litigants to protect them from social injustice and all forms of exploitation.

13. The Respondents belong to rural tribal areas and became aware of the order passed under Section 36A only in the year 2010, when the Petitioner relied upon and produced the said order in proceedings relating to Mutation Entry No.595 created on direction of the State. From the date of such knowledge, there is a delay of approximately 13 years in filing the appeal. However, during the intervening period, the Respondents were continuously pursuing remedies under the Revenue/Tenancy laws by way of RTS appeals and revision proceedings. It is further submitted that the impugned order was passed against a deceased person and is therefore without jurisdiction, a nullity, *non est* in the eyes of law, and incapable of creating any legal rights or obligations. In such circumstances, a justice-oriented approach requires that the delay in filing the appeal be condoned. Refusal to condone the delay would result in perpetuation of an illegal and void order, which would be contrary to the interests of justice.

14. It is submitted that the concurrent findings of fact recorded by the two authorities ought not to be interfered with by this Court. Any such interference may result in the validation of an order that is illegal and void ab initio. It is further submitted that the order dated 31st July 1999 is a nullity in law, having been passed against a deceased person. Such an order is *non est* and unenforceable. It is also submitted that the Sub-Divisional Officer

(S.D.O.) lacked jurisdiction under the Maharashtra Land Revenue Code (M.L.R.C.) to exercise powers under Section 36A. The said power is vested exclusively in the Collector and is not capable of delegation. Further, the powers under Section 36A(1A) cannot be invoked in respect of a person who is not a Scheduled Tribe. The revenue authorities have no jurisdiction to adjudicate upon or determine the caste status of the respondent. It is further submitted that the order dated 31st July 1989 is vitiated by fraud and by the fabrication/manipulation of records, for the following reasons:-

> "3.5.1. The Tehsildar's report dated 25th July 1989 relies upon a certificate of the Adivasi Vikas Seva Mandal dated 26th July 1989, which is a document of a date subsequent to the report itself.
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> 3.5.2. The purported statements of Ladkibai and Jaibai are both dated 24th July 1985 and record that Babu Jadhav had died 9-10 months ago. Babu Jadhav was alive on 24th July 1985 and in fact died on 18th October 1988.
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> 3.5.3. The entire order is typewritten in English, whereas the word "Sonkoli" is interpolated in manuscript in Devanagari at every place it occurs. The interpolation does not bring out the true nature of the proceedings, as the Commissioner rightly held and confirmed by the Revenue Minister.
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> 3.5.4 The caption of the Tehsildar's report states "enquiry regarding agricultural land of tribal / non-tribal Shri D.A. Ghosh", highlights that the proceeding was set in motion in the interest of the Petitioner's father, a stranger to the title, within

> months of Babu Jadhav's death. Fraud vitiates every act and an order obtained by fraud is a nullity which can be questioned at any time, in any proceeding, including collaterally.

15. Upon consideration of the rival submissions advanced by the parties, the first question that falls for determination is whether the authorities were justified in condoning the delay and entertaining the revision petition.

16. The material facts necessary for the present Petition are that- on 10 June 1982, the father of the Petitioner, Shri Devnarayan Ghosh executed a lease in respect of a portion of the subject property and had applied for mutation of the subject property in the revenue records. However, the revenue authorities refused to effect the mutation entry on the ground that the transaction involved a transfer from a tribal to a non-tribal without obtaining the requisite permission from the competent authority. It is pertinent to note that the son of Shri Devnarayan Ghosh was allegedly adopted by Shri Babu Nana Jadhav pursuant to an Adoption Deed dated 25 October 1986. Thereafter, in the year 1989, the Sub-Divisional Officer ("S.D.O.") initiated *suo motu* proceedings to determine whether the subject property was governed by, or attracted the provisions of, Sections 36 and 36A of the Maharashtra Land Revenue Code, 1966. For the sake of convenience and ready reference, Sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 are reproduced hereinbelow: :

"36. Occupancy to be transferable and heritable subject to certain restrictions.— (1) An occupancy shall, subject to the provisions contained in section 72 and to any conditions lawfully annexed to the tenure, and save as otherwise provided by law, be deemed an heritable and transferable property

[(2) Notwithstanding anything contained in the foregoing sub-section occupancies of persons belonging to the Schedule Tribes (hereinafter referred to as the 'Tribals') (being occupancies wherever situated in the State), shall not be transferred except with the previous sanction of the Collector :

Provided that, nothing in this sub-section shall apply to transfer of occupancies made in favour of persons other than the Tribals (hereinafter referred to as the 'non-Tribals') on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974).]

(3) Where an occupant belonging to a Schedule Tribe in contravention of sub-section (2) transfers possession of his occupancy, the transferors or any person who if he survives the occupant without nearer heirs would inherit the holdings, may, 31[within thirty years from the 6th July 2014], apply to the Collector to be placed in possession subject so far as the Collector may, in accordance with the rules made by the State Government in this behalf, determine to his acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, 32[and, notwithstanding anything contained in any law for the time being in force, the Collector shall] dispose of such application in accordance with procedure which may be prescribed :

37[(3A) Where any Tribal (or his successor-in-interest) to whom the possession of the occupancy is directed to be restored under the first proviso to sub-section (3) expresses his unwillingness to accept the same, the Collector shall, after holding such inquiry as he thinks fit, by order in writing, declare that the occupancy together with the standing crops therein, if any, shall with effect from the date of the order, without further assurance, be deemed to have been acquired and vest in the State Government.

[36A. ***Restrictions on transfer of occupancies by Tribals.— (1) Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974), be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction—***

(a) in the case of a lease or mortgage for a period not exceeding 5 years, of the Collector ;
and (b) in all other cases, of the Collector with the previous approval of the State Government :

Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five kilometres thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

[Provided further that, in villages in Scheduled Areas of the State of Maharashtra, no such sanction allowing transfer of occupancy from tribal person to non-tribal person shall be accorded by the Collector unless the previous sanction of the Gram Sabha under the jurisdiction of which the tribal transferor resides has been obtained.] [Provided also that, in villages in Scheduled Areas of the State of Maharashtra, no sanction for purchase of land by mutual agreement, shall be necessary, if,—

(i) such land is required in respect of implementation of the vital Government projects; and

(ii) the amount of compensation to be paid for such purchase is arrived at in a fair and transparent manner.

(2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed

(3) On the expiry of the period of the lease or, as the case may be,

of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force; or any decree or order of any court or award or order of any tribunal, or authority, either suo motu or on application made by the tribal in that behalf, restore possession of the occupancy to the Tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974), it is noticed that any occupancy has been transferred in contravention of sub-section (1) 48[the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on the application made by any person interested in such occupancy,] 49[or on a resolution of the Gram Sabha in Scheduled Areas] [within thirty years form the 6th July 2004] hold an inquiry in the prescribed manner and decide the matter.

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to time direct.

(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the Tribal-transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal-transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally ; so however that the total land held by such Tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding."

16. From the above referred Sections, it is to be noted that to initiate enquiry under Section 36 / 36A of the Maharashtra Land Revenue Code, there has to be a transfer of land and *prima facie* the authority must be of the

view that the transfer is from tribal to non-tribal for an enquiry proceeding to be initiated. There has to be some evidence before the authorities to initiate the enquiry that the transfer is from tribal to non tribal and the enquiry is to ascertain the whether the transfer is hit by Section 36 and 36-A of the Maharashtra Land Revenue Code. There was no transfer document at the relevant time before the S.D.O. and the *suo motu* enquiry apparently was without any basis. It is also pertinent to note that in the year 1988, Babu Nana Jadhav had passed away. Sections 36 and 36-A is for the protection of the tribals and although Babu Jadhav had passed, the proceedings were initiated and continued against him. It is stated that the wife and the daughter had given statements to the authorities that they belong to Sonkoli community and therefore there is a declaration that there is no transfer or the subject lands are not affected by Sections 36 and 36-A of the Maharashtra Land Revenue Code.

17. This Court has held that the castes/tribe status has to be determined only by Caste Scrutiny Committee and not by the S.D.O. in an enquiry. This Court in the case of **Shri Shivram Namdeo Kathoke Vs. Shri. Bhalchandra Ablu Koli & Ors**. (Writ Petition No.8485 of 2024) has observed as under :-

> 9. Having considered the rival submissions the issue that arises for consideration is as to whether the Respondent No. 1 and 2 i.e. original Applicants belongs to Scheduled Tribes

category and that they have established before the authorities that they belongs to Scheduled Tribe. The issue has been covered in various judgments of this Court. The manner in which the castes or the tribe has to be established has been discussed by this Court in the case of Ulhas Nimba Choudhari & Anr. V. Sardar Khandu Tadvi B/H & Ors. This Court has observed that the Tahsildar should refer the caste claim of the Respondents / Original Applicants and their legal heirs, to the Caste Scrutiny Committee for verification of the Castes and that the Additional Commissioner cannot render a findings as regards the castes of the original Applicants as belonging to ST category. Similar is the view taken by this Court in the case of **Smt. Kaushalyabai Kisand Dhande V. Fakira Daula Tadvi** which is as under :

> *9. Therefore, it follows from the discussion hereinabove that, before taking any decision in the present cases, the Tahsildar should have referred the tribe/caste certificate of the respondents for scrutiny/verification to the appropriate forum,"*

18. The Supreme Court has while considering the restoration of land under the Act of 1974 has observed that the scheduled tribe status has to be scrutinised before the Caste Scrutiny Committee. Unless the claim is validated by the Caste Scrutiny Committee, a person cannot be treated as belonging to Scheduled Tribe category. The Supreme Court in the case of **Terraform Magnum Limited (Formerly known as Everest Buildcon Ltd.) V. State of Maharashtra & Ors**. at para 12 has observed as under:

> *"12. However, the enactment is for the benefit of those tribals who really belong to the Scheduled Tribe. By the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category*

> *(Regulation of Issuance and Verification of) Caste Certificate Act, 2000, a mechanism has been provided to consider the genuineness of the claim of the persons claiming to belong to the Scheduled Tribe. Such a claim is required to be scrutinized by the Caste Scrutiny Committee. Unless the claim is validated by the Caste Scrutiny Committee, a person cannot be treated to be put into the Scheduled Tribe."*

19. The submission of the Petitioner that in the *suo motu* enquiry, the S.D.O. has the jurisdiction to determine the tribal status of the party is contrary to settle legal principle. The declaration of the title/tribe status of Babu Jadhav would have a drastic consequences on the entire family of Babu Jadhav. They would lose the protection given to them under Section 36/ 36-A of Land Revenue Code. It is also to be noted that the State had made independent mutation entries as the lands in the region since they fall within the tribal areas. Those mutation entries are independently challenged by the Petitioner and the same is pending before this Court. In the course of the challenge to the State making mutation entries, the Respondents were also made parties by the Petitioners and in the said proceedings initiated in the year 2010, the Petitioner became aware of the order passed by S.D.O. that the Petitioners belongs to 'Sonkoli' community and dropping the suo motu inquiry. In the proceedings initiated against the mutation entry made by the State, the Respondents were contesting the matter at various places and finally in addition also filed an appeal to the Additional Commissioner to set aside the Order dated 31st July 1988 passed by the S.D.O.

20. This Court hold that the order passed by the S.D.O. suffers from jurisdictional illegality and is a nullity and can be set up in defence whenever the order is produced, for the reasons that it is passed against a dead person and there was no occasion to the S.D.O. to initiate the *suo motu* enquiry. The proceedings initiated by the S.D.O. was without jurisdiction and a nullity. If there is a challenge to an order which is a nullity by filing statutory Appeal, the Court should be liberal in condoning delay for the reason that the void the order if kept unchallenged would remain in force and affect the rights of the Appellant. Authorities below has condoned the delay and correctly adjudicated on merits. Even if it is assumed that the delay is enormous and should not have been condoned, this Court would not exercise powers under Articles 226 and 227 of the Constitution of India to perpetuate an illegal order as held by the Supreme Court in the case of **AL-CAN Export Pvt. Ltd. Vs. Prestige H.M. Polycontainers Ltd. and Ors**[3]. as under :

> 74. It is well settled principle in law that issuance of a writ or quashing/setting aside of an order if revives another pernicious or wrong or illegal order then in that eventuality the writ court should not interfere in the matter and should refuse to exercise its discretionary power conferred upon it Under Article 226 of the Constitution of India. The writ court should not quash the order if it revives a wrong or illegal order.Vide: Gadde Venkateswara Rao v. Government of Andhra Pradesh, MANU/SC/0020/1965: 1965:INSC:211

3 (2024) 9 SCC 94

AIR 1966 SC 828; Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar, MANU/SC/0643/1999 1999:INSC:464: (1999) 8 SCC 16: AIR 1999 S(3609: 1999 AIR SCW 3623; M.C. Mehta v. Union of India, MANU/SC/0982/1999 1999: INSC:292 (1999) 6 SCC 237: AIR 1999 SC 2583; Mallikarjuna Mudhaga Nagappa v. State of Karnataka, MANU/SC/0557/2000: 2000: INSC: 428: (2000) 7 SCC 238: AIR 2000 SC 2976: 2000 AIR SCW 3289; and Chandra Singh v. State of Rajasthan, MANU/SC/0479/2003: 2003:INSC: 326: (2003) 6 SCC 545: AIR 2003 SC 2889: 200 AIR SCW 3518 and Raj Kumar Soni v. State of U.P., MANU/SC/7271/2007 2007:INSC:366: (2007) 10 SCC 635.

21. The Supreme court in the case of **Ashok Transport Agency Vs. Awadhesh Kumar and Ors.**[4] has observed that the order passed against a dead person is a nullity. This Court thus would not exercise jurisdiction under Articles 226 and 227 to disturb concurrent findings of the courts below condoning the delay and setting aside an purely illegal order passed by the S.D.O. on 31st July 1988.

22. Considering the above, Writ Petitions are dismissed.

[ARUN R. PEDNEKER, J.]

4 (1998) 5 SCC 567