

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.1936 OF 2015**

1. Vyankat s/o Nagnath Sabde,  
Age: 44 years, Occ : Agri.,
2. Sudhakar s/o Mahadev Sabde,  
Age: 22 years, Occ : Agri.,
3. Balaji s/o Dhondiram Sabde,  
Age: 45 years, Occ : Agri.,
4. Vishnu s/o Dhondiram Sabde,  
Age: 44 years, Occ : Agri.,
5. Muktabai w/o Namdeo Sabde,  
Age: 35 years, Occ : Agri.,
6. Mahadeo s/o Dhondiram Sabde,  
Age: 49 years, Occ : Agri.,

All R/o Ganeshwadi, Tq. Shirur  
Anantpal, Dist. Latur

..PETITIONERS  
(Orig. Appellants)

VERSUS

1. Namdeo s/o Nivruti Gume,  
Age: Major, Occ : Agri.,
2. Baburao s/o Mahadeo Gume,  
Age: Major, Occ : Agri.,
3. Ram s/o Mahadeo Gume,  
Age: Major, Occ : Agri.,
4. Nivas s/o Babu Sabde,  
Age: Major, Occ : Agri.,

All R/o Ganeshwadi, Tq. Shirur  
Anantpal, Dist. Latur

5. The District Superintendent  
of Land Record, Latur,  
Tq. & Dist. Latur
6. The Deputy Director of Land Record,  
Aurangabad Region, Aurangabad

..RESPONDENTS

(2)

Mr V. D. Gunale, Advocate for petitioners;  
Mr H. V. Tungar, Advocate holding for Mr M. S. Deshpande, Advocate for  
respondent Nos. 1 to 4;  
Mr R. V. Dasalkar, Asstt. Govt. Pleader for respondent Nos. 5 & 6

**CORAM : N.W. SAMBRE, J.**

**DATE : 17<sup>th</sup> November, 2015**

**ORAL JUDGMENT :**

Rule. Rule made returnable forthwith and the petition is heard finally with consent of the parties.

2. The claim of the petitioner is that the District Superintendent of Land Records has ordered an inquiry under section 32 (1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter referred to as the "Act", for the sake of brevity), after a period of around thirty years, which according to him, is not permissible, in view of the judgment of the Division Bench of this Court, in the matter of **Gunda Tuka Shinde since by his heir Bajirao Tukaram Shinde vs. Pandharinath Ramrao Shinde & anr.**, reported in **1991 Mh.L.J. 669**.

3. From the order of the District Superintendent of land Records, it appears that the measurement of the disputed land had taken place in 1970, whereas the consolidation scheme thereafter was implemented, some time in 1989-90.

(3)

4. It is upon the objection of the respondents, the Superintendent of Land Records has proceeded to pass an order of inquiry under section 32 (1) of the Act, for carrying out appropriate measurement.

5. Learned Counsel appearing on behalf of respondents no.1 to 4 has tried to bring his case within limitation, by submitting that the consolidation scheme arising out of measurement of 1970 has yet to take final shape, as there is no final approval order of the scheme, till date. According to him, the authority as such, has every right to interfere and cause further inquiry, in accordance with the provisions of section 32 of the Act.

6. Learned Addl. Government Pleader, while supporting the impugned order, would urge that the powers are exercised by the authority in tune with the provisions of the Act.

7. What is noticed in the present case is that for the scheme which was approved in 1989-90, for which measurement took place in 1970, the respondents herein have approached the District Superintendent of Land Records for correction of their holding in the revenue record, that too after a period of thirty years, for which there is no explanation. The authority, though was alive of the same, has proceeded to record that just because there is delay in approaching the authority for correction, the same cannot be a ground for denying correction of holding.

(4)

8. The above referred view of the authority below is contrary to the law laid down by this Court, in the matter of Gunda Tuka Shinde (cited supra). Reliance can be placed on the observations made in para 4 of the said judgment, which read thus :-

"4. Under section 32 of the said Act, if after a scheme has come into force, it appears to the Settlement Commissioner that the scheme is defective on account of "an error (other than that referred to in section 31-A), irregularity or informality", the Settlement Commissioner shall publish a draft of such variation in the prescribed manner. Undoubtedly there is no time limit for amending the scheme under section 32(1). Under section 31A the Settlement Commissioner has power to amend the scheme in order to correct clerical or arithmetical mistakes or error arising on account of any accidental slip or omission, while under section 32 the power to amend relates to an error other than arithmetical or accidental error, as well as any irregularity or "informality". In the present case, there is no question of any arithmetical or accidental error. The division and consolidation of the land in question into two gats is also not affected by any error, irregularity or "informality". In fact, all the concerned parties have themselves agreed to the formation of the gats in question. They were fully aware of the fact that the division which was being made by them was not of equal areas of land, since the writing itself records this fact. They have stated that the division has been made after taking into account the quality of land, availability of water and yield of the land. In these circumstances, when the parties have chosen the gats with open eyes and taken into account various relevant factors pertaining to the land coming to their share, there is no question either of any error or irregularity or informality. The Settlement Commissioner, therefore, was not justified in amending the scheme in exercise of his power under section 32.

(5)

The only ground for amendment, which is set out in the order (Ex.D) is equalisation of areas coming to the shares of the petitioner and the 1st respondent. When the parties themselves divided the land into unequal areas because of differences in the quality and yield of the land, there is no error or irregularity in such a division, which is by mutual consent of the concerned parties. The impugned order of the Settlement Commissioner, Pune dated 13th March, 1981 and the order of the Officer on Special Duty dated 29th June, 1982 (Exh. 'D' to the petition) are therefore without jurisdiction and are set aside.”

9. In view of above, in my opinion, the present petition needs to be allowed, as after about more than twenty years of implementation of consolidation scheme, which was duly acknowledged by the respondents as is reflected at page 57, the same is sought to be amended.

10. Hence, Rule is made absolute in terms of prayer clause (B). In the circumstances, there shall be no order as to costs.

**(N.W. SAMBRE, J.)**

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