

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

WRIT PETITION NO. 4436 OF 2012

1. Shri. Pandurang s/o Narayan Jadhav,
Age: 98 years, Occ: Agri.,
R/o. Jawale (Dumala),
Tq. & Dist. Osmanabad.

2. Shri. Shrirang s/o Narayan Jadhav,
Died through his L.Rs.

2(i) Smt. Parvati w/o Shrirang Jadhav,
Age: 70 years, Occ: Agri.,
R/o. Jawale (Dumala),
Tq. & Dist. Osmanabad.

2(ii) Shri. Bhanudas s/o Shrirang Jadhav,
Age: 50 years, Occ: Agri.,
R/o. Jawale (Dumala),
Tq. & Dist. Osmanabad.

2(iii) Shri. Ashok s/o Shrirang Jadhav,
Age: 48 years, Occ: Agri.,
R/o. Jawale (Dumala),
Tq. & Dist. Osmanabad.

2(iv) Shri. Arvind s/o Shrirang Jadhav,
Age: 45 years, Occ: Agri.,
R/o. Jawale (Dumala),
Tq. & Dist. Osmanabad.

2(v) Smt. Sangeeta w/o Ramling Desai,
Age: 42 years, Occ: Household,
R/o. Kari, Tq. Barshi,
Dist. Osmanabad.

...Petitioners

versus

1. Shri. Ganpat s/o Pralhad Jadhav,
Died through his L.Rs.
Anant s/o Pralhad Jadhav,
Age: 52 years, Occ: Nil,
R/o. Indrayani Kuti, Kaivalya Ashram,
Alandi, Tq. Haveli, Dist. Pune.

2. Smt. Ahilyavaibai w/o Namdeo Gambhire,
Age: 80 years, Occ: Agri.,

R/o. Javale (Lomte), Tq.Kallam,
Dist. Osmanabad.

3. The State of Maharashtra,
Revenue and Forest Department,
Through its Secretary.
4. The Deputy Director of Land Record,
Aurangabad.
5. The Superintendent of Land Records,
Osmanabad, Dist. Osmanabad.
6. Taluka Inspector of Land Records (TILR),
Osmanabad.
7. Tahsildar,
Osmanabad, Dist. Osmanabad. ...Respondents

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Mr. Milind M. Patil (Beedkar), Advocate for petitioners.
Mr. Swapnil Deshmukh, Advocate for respondent No.1.
Mr. R.P. Phatke, A.G.P. for respondent Nos. 3 to 7.
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CORAM : N.W. SAMBRE, J.

DATE : 18TH MARCH, 2015

ORAL ORDER :

. The order passed by the State Government, in exercise of powers under Section 35 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter shall be referred to 'the Act'), is the subject matter of present petition.

2. The land in question bearing Survey Nos. 17, 21 and 63 was given Gat Nos. 161 and 184, after the scheme for consolidation executed in 1971. The area of above referred Gat Number was 02

Hector 24 Are and 38 Are.

3. The original owner of the said land Dropadabai transferred the property in question by registered sale deed dated 01/09/1944 in favour of the respondent. As such, Mutation Entry No. 49 was taken in the revenue record on 16/11/1980.

4. The present petitioner, claiming to be son of brother of husband of Dropadabai (heir) sought mutation of his property and got his name mutated, was the subject matter before the State Government. The State Government, having noticed that the petitioner has no title to the property in question and that he has applied for change in the mutation after 25 years, has passed the order impugned.

5. Learned Counsel for the petitioner has strenuously urged that for carrying out mutation in the name of the petitioner, there is no time limit prescribed and according to him, he has approached the authority i.e. Deputy Director of Land Records/Superintendent of Land Records within reasonable period i.e. as soon as he came to know about the procedure to be adopted. He would further urge that he has better title with that of respondent being son of brother of husband of Dropadabai. According to him, mutation ordered in his

name by Superintendent of Land Records is just and proper and ought not to have been upset by the State Government in exercise of powers under Section 35 of the Act.

6. While countering the above referred submissions, Mr. Swapnil Deshmukh, learned Counsel for the respondent No. 1 would urge that the order passed by the State Government is upon an application moved by the respondent as the mutation ordered in favour of the petitioner was without any notice to the respondent. He would further urge that in view of title deed dated 01/09/1944, the M.E.No. 49 was recorded in favour of respondent on 16/11/1980. Least that was expected of revenue authorities was, to issue notice and hear their objections before mutating the name of petitioner in the property in question. He would further urge that change in the mutation sought by the petitioner was almost after period of 25 years and there is no reasonable explanation. According to him, all these aspects are rightly taken by the State Government in the order impugned and as such, prayed for dismissal of the petition.

7. Upon carefully analyzing the submissions of the respective Counsel, it is required to be noted that the predecessor-in-title of both the claimants is one Dropadabai, who married to Dattu. Dattu happens to be brother of father of the petitioner through whom

the petitioner is claiming title to the property as legal heir.

8. Whereas, the respondents herein are claiming their title to the property by virtue of sale deed dated 01/09/1944 against which, upon an inquiry, M.E. No. 49 was recorded on 16/11/1980.

9. The said mutation entry was sought to be upset by the present petitioner by moving an application for the first time on 26/05/1995 at Annexure-B to the petition, which was granted by the Superintendent of Land Records, Osmanabad. The said change in the mutation entry, *prima facie*, appears to be without following due procedure and to that effect, the State Government has rightly recorded findings upon exercising the jurisdiction vested under Section 35 of the Act.

10. One more aspect of which the State Government in its impugned order, has taken note of the belated stage, at which the petitioner has sought mutation of the property.

11. Perusal of the order passed by the State Government reflects all the considerations. No illegality is noticed. As such, the writ petition fails, same stands rejected.

[N.W. SAMBRE, J.]