

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

WRIT PETITION NO.4581 OF 2013

1. Shahaji s/o Vitthal Gate,
Age: 71 years, Occ: Agri.,
2. Vilas s/o Nivruti Gate,
Age: 40 years, Occ: Agri.,
3. Kaka s/o Shahuraj Gate,
Age: 35 years, Occ: Agri.,
4. Ramesh s/o Shahuraj Gate,
Age: 32 years, Occ: Agri.,
5. Bharat s/o Kashinath Gund,
Age: 40 years, Occ: Agri.,
6. Venkat s/o Bhakaji Gate,
Age: 40 years, Occ: Agri.,
7. Balaji s/o Bhikaji Gate,
Age: 35 years, Occ: Agri.,
8. Tanaji s/o Bhikaji Gate,
Age: 32 years, Occ: Agri.,
9. Sow. Tejab w/o Babruwan Bochare,
Age: 60 years, Occ: Agri.,

All R/o. Padoli (A),
Tq. & Dist. Osmanabad.
10. Sow. Asha w/o Ashok Pawar,
Age: Major, Occ: Agri.,
R/o. Opp. Sherkhane Petrol Pump,
Sai Nagar, Osmanabad.

...Petitioners

versus

1. The State of Maharashtra,
Through the Secretary,
Revenue Department,
Mantralaya, Mumbai.
2. The Superintendent of Land Record,
Osmanabad District,

Osmanabad.

3. Maroti Shankar Gate,
Age: Major, Occ: Agri.,
4. Manik s/o Shankar Gate,
Age: Major, Occ: Agri.,

Both R/o. Padoli (A),
Tq. & Dist. Osmanabad.

...Respondents

.....
Mr. S.S. Shinde, Advocate for petitioners
Mr. A.P. Basarkar, A.G.P. for respondent Nos. 1 and 2
Mr. A.S. Kadam, Advocate for respondent Nos. 3 and 4
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CORAM : N.W. SAMBRE, J.

DATE : 7th DECEMBER, 2015

ORAL ORDER :

Heard Mr. Shinde, learned Counsel for the petitioners
and Mr. Kadam, learned Counsel for respondent Nos. 3 and 4.

2. The order passed the District Superintendent of Land
Records, Osmanabad on 20/06/2012 in relation to Survey No. 165 of
village Padoli, Taluka and District Osmanabad is questioned in the
present petition.

3. Learned Counsel for the respondents raised preliminary
objection as regards tenability of the petition, as according to him,
there is an alternate remedy available to the petitioners.

4. The said objection was opposed by learned Counsel for the petitioners on the ground that the order impugned is passed without giving an opportunity of hearing to the petitioners. He also submits that without consent of lawyer, the order passed by the authority, is incorrect order.

5. In view of above, I have proceeded to decide this petition finally.

6. It is the case of petitioners that in 1970, the land bearing Survey No. 165 was held by the petitioners and respondents into proportionate share 15 Acres 22 Guntha and 13 Acres 26 Guntha. In relation to same, mutation was effected on 01/04/1970 vide Mutation Entry No.302.

7. Learned Counsel for the petitioner submits that in 1986 the consolidation scheme was implemented, in which share of the petitioners was shown to be 6 Hectar 30 Are and that of respondents 5 Hectors 52 Are. After implementation of the consolidation scheme, objection is raised by petitioners before District Superintendent of Land Records, Osmanabad in the matter of reduction of their holdings and same is allowed by the said authority by order dated 28/06/2012, which is impugned in the present petition.

8. Learned Counsel for the petitioners, while trying to make out to make out case, made two-fold submissions; (a) that the order impugned is passed without considering the merits of the matter, as the petitioners were not granted fair opportunity of hearing and (b) Mutation Entry No. 302 effected in 1970 is not dealt with and impact thereof, is on the consolidation scheme. He would then urge that the application which is allowed at the behest of the respondents is at belated stage without considering the effect of limitation and judgment of this Court in the matter of ***Dattu Appa Patil since deceased by L.Rs. Ananda Dattu Patil and others vs. State of Maharashtra and others*** reported in ***2007(1) Mh.L.J. 393***, wherein this Court has observed that the corrections, if any, after implementation of consolidation scheme has to be carried out within reasonable period.

9. Learned Counsel for the respondents, while opposing submissions, would urge that when the consolidation scheme was implemented and correction of the record was carried out, the respondents were not put to the notice, which has prompted them to move application. Learned Counsel for respondents would then urge that the application was moved under the provisions of Section 31(A) of the Bombay Prevention of Fragmentation and Consolidation of

Holdings Act, 1947, as the same correction is of clerical and arithmetical mistake and same can be carried out at any stage of the proceedings, without adhering to limitation, in absence of specific provision to that effect. According to him, in view of holdings as is mentioned in extract 14 Acres 24 Guntha, the reduction of holdings in *phalni* and thereafter during consolidation scheme is not explained. As such, correction order appears to be correct. According to him, the petition is devoid of merit and is liable to be rejected.

10. At the outset, it is required to be noted that for carrying out corrections in the holdings at the behest of respondents, the authority should deal with the source of power, as to under which provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the order impugned is passed. It is required to be noted that the correction though is permissible particularly in the light of Section 31(A) of the Act, however, it is required to be taken note of the fact that there has to be application of mind for requirements of that Section under the order impugned. What is noticed in the present case is, learned authority pursuant to oral consent of parties i.e. petitioners who were present before the Court and their lawyers, has ordered corrections. Apart from above, even if powers are exercised under Section 32(1) of the Act as is mentioned by the authority, limitation prescribed thereto after scheme

was implemented in 1986 ought to have been taken into account by the authority and should have been dealt with the said issue in the light of judgment cited above in the matter of Dattu Appa Patil (supra).

11. In my opinion, the order impugned is passed without taking into account the above referred facts of the matter. As such, I propose to quash and set aside the order impugned dated 28/06/2012 and is accordingly quashed and set aside, by remitting the matter back to the District Superintendent of Land Records, Osmanabad, who shall first give observations in the matter of applicability of limitation to the proceedings, entries taken pursuant to M.E. No. 302 as on 01/04/1970 and the change in holdings after consolidation and compliance of the scheme after giving notice to the respondents herein.

12. With above observations, the writ petition stands partly allowed. The authority, with whom, the matter is remitted back, is also directed to take into account other law as is cited by the parties including that of ***Mallappa Guruppa Chaugule vs. Padmanna Omanna Sajane and others*** reported in ***1980 Mh.L.J. 377***.

[N.W. SAMBRE, J.]