

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2401 OF 2003

Smt. Sunanda Nanasaheb Malawade,
Age : 35 years, Occ. : Agriculturist and household,
R/o Arangaon, Tq. And Dist. Ahmednagar. ...Petitioner.

Versus

- 1] Joli P. Dastur,
Age : 70 years, Occu. : Meharabad,
Arangaon, Tq. And Dist. Ahmednagar.
- 2] Firoz Nariman Shipnore,
Since deceased through his
Legal Heirs & Representatives,
- 2-A] Smt. Sofi w/o Firoz Engineer,
Age : 74 Years, Occu. Household,
R/o. 12, Dr. Lentin Building,
Third Floor, Gamadia Colony,
Tardeo, Mumbai - 400 007.
- 2-B] Mehernosh s/o Firoz Engineer,
Age : 45 years, Occu. Business,
R/o. 12, Dr. Lentin Building,
Third Floord, Gamadia Colony,
Tardeo, Mumbai - 400 007.
- 2-C] Reyomand s/o Firoz Engineer,
Age : 39 years, Occu. Business,
R/o. 12, Dr. Lentin Building,
Third Floor, Gamadia Colony,
Tardeo, Mumbai - 400 007.
- 3] Mrs. Mangala Popat Padale,
Age : 35 years, R/o Arangaon,
Tq. & Dist. Ahmednagar.
- 4] Ramesh Laxman Jangale,
Age : 51 years, Occu. Agriculturist,
R/o Arangaon, Tq. and District
Ahmednagar.

- 5] Mrs. Sujata Sharadchandra Agarkar,
Age : 40 years, Occu. Agriculturist
and Household, R/o. Station Road,
Ahmednagar.
 - 6] Kanhu Dhondiba kamble,
Since deceased through his L.rs.
 - 6-A] Ramdas Kanhu Kamble, Age : 50 Years,
 - 6-B] Dhondiba Kanhu Kamble, Age : 53 Years,

Both Occu. Agri., R/o Arangaon (Meharabad),
Ahmednagar.
 - 6-C] Mrs. Tarabai Premchand Pardhe,
Age : 40 years, C/o Balu Premchand Pardhe,
R/o Thergaon, Patryachi Chal,
Near Kalewadi, Pimpri, Pune - 17.
 - 7] Avtar Meharbaba Trust,
Fasali, through its
President.
 - 8] Taluka Inspector of Land Records,
Ahmednagar.
 - 9] Dy. Director of Land Records,
Nashik Region, Nashik.
 - 10] Dy. Settlement Commissioner,
of Land Records and Director,
Office of Land Records,
Maharashtra State, Pune.
 - 11] Settlement Commissioner and
Director of Land Records,
Maharashtra State, Pune.
 - 12] State of Maharashtra,
(Through under Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32).
- ...Respondents.

Advocate for Petitioners : Mr. V. J. Dixit, Senior Counsel, i/b Mr. A. N. Nagargoje

Advocate for Respondent Nos. 1,4,5,6-A,6-B and 7 : Mr. V. P. Latange.

AGP for Respondent Nos.8 to 12 : Mr. A. P. Basarkar.

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**CORAM : S. V. GANGAPURWALA &
A. M. BADAR, JJ.**

DATE : 1st March, 2016.

ORAL JUDGMENT [PER S.V. GANGAPURWALA,J] :-

1] Mr. Dixit, learned Senior Counsel for the petitioner submits that the original scheme under the Consolidation Act was prepared in the year 1967. Thereafter, vide notification dated 18.12.1974, said scheme was modified. Learned Senior Counsel submits that pursuant to the said modified scheme, the petitioner's predecessor in title Sonabai purchased the property Gat No. 515/1 vide registered sale deed dated 9th December, 1975. Learned Senior Counsel submits that abruptly on 28th September, 1998, the order is passed by the State thereby withdrawing the scheme modified on 18.12.1974. Thereafter, subsequently order is passed on 30.11.1998 by the Consolidation Deputy Commissioner, stating that the corrected scheme dated 18.12.1975 is cancelled. According to learned Senior Counsel, the petitioner's predecessor had purchased property Gat No. 515/1 vide registered sale deed dated 9.12.1975 after obtaining permission from the authority as per the modified scheme. The petitioners predecessor nor the petitioner at any point of time were heard when the scheme was withdrawn and cancelled. Nanasahab was already dead when application for modification was made by respondent. After a long gap of 24 years, the said scheme which was corrected in 1974 could not have been cancelled or withdrawn. Learned Senior Counsel submits that the order impugned is not in consonance with the factual position and it tries to unsettle the possession of the parties.

2] Mr. Latange, learned counsel for respondent submits that

Sonabai herself had sold the property Gat No. 515/2 to the present respondent. Same was sold as per the scheme of 1967. Sale deed is of the year 1982. As such, now the petitioner cannot turn around and contend otherwise. According to learned counsel, inspection was made by the authorities, factual position was verified and thereafter the order is passed. The predecessor in title of the petitioner himself has executed sale deed in favour of the respondent in the year 1982 as per the Consolidation Scheme of the year 1967 and not as per the modified scheme. The said order is rightly passed.

3] We have considered the submissions canvassed by the learned counsel for the respective parties. It is trite that authorities are required to take into consideration the time lag, i.e. when the parties have approached for cancellation of the scheme. Same has to be within a reasonable time.

4] We would have certainly considered the said aspect of the matter. However, we have gone through the various sale deeds. There does not appear to be consistency in the sale deeds. Some sale deeds are as per the 1967 scheme, some are as per the modified scheme of the year 1974. The authorities while passing the order in the year 1998, withdrawing/cancelling the modified scheme of 1974, ought to have considered the actual position, acts of the parties so also they were required to consider whether parties have acted upon as per the modified scheme or the parties have proceeded under the original scheme of 1967. All these facts were required to be considered. The impugned order/notification does not depict the same. Moreover, since the year 2003, the said order withdrawing the modified scheme of 1974 has been stayed by this Court. The petitioner certainly was not heard before passing the said order in the year 1998. Notice also does not seem to have been served upon the petitioner or the concerned parties.

5] Considering the aforesaid conspectus of the matter, we pass

the following order :-

[a] The impugned order is quashed and set aside and parties are relegated before the concerned authority for determining the question, about the modification/cancellation of the consolidation scheme of 1974.

[b] Parties shall appear before the Settlement Commissioner, Pune, on 28th March, 2016.

[c] The Settlement Commissioner shall issue notice to those parties who are not represented in the present writ petition.

[d] The Settlement Commissioner shall keep in mind the observations as made above and shall decide the said proceedings, on its own merits, in accordance with law, after hearing all parties concerned, expeditiously and preferably within 9 months. All contentions of the respective parties are kept open.

[e] Rule made absolute in above terms.

6] Writ petition is disposed of. No costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

grt/-