

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

36 WRIT PETITION NO. 4486 OF 2016

RAMKISHAN BHAUSAHEB DARADE AND OTHERS
VERSUS
JAGANNATH MUKUNDRAO DARADE AND OTHERS

Shri. V.D. Salunke, Advocate, for petitioners.
Shri. S.S. Thombre, Advocate, for respondent Nos.1 to 3.
Shri. A.P. Basarkar, Assistant Government Pleader, for
respondent No.6.

CORAM: T.V. NALAWADE, J.

DATE : 16th AUGUST 2016

ORDER:

1) The petition is filed to challenge the judgment and order dated 30-1-2016 passed by the Principal Secretary and Special Duty Officer (Appeal and Revision), Revenue and Forests Department, Mantralaya, Mumbai in file No. Appeal-2014/CR 134/J-7A/CR 891(08)/2014/Avapu. Heard both the sides.

2) The petitioners and the respondents were owners of some portions of Survey Nos.237 and 238. During implementation of consolidation scheme from these two surveys, in all five Gat numbers were formed. Gat Nos.646 and 650 were allotted to Mukund, the

predecessor-in-title of present respondent Nos.1 to 5 and Gat Nos.647, 648 and 649 were allotted to present petitioners. Under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the scheme was implemented prior to 1975. In the year 1997 the proceeding was filed by present petitioners before the Superintendent of Land Records to challenge the allotment made in favour of present respondents. This revision was rejected and the appeal filed before the Deputy Director of Land Records was also rejected and these orders are confirmed in the revision by the last authority appointed to consider the challenge of that nature.

3) It is the case of the petitioners that some of the area of land Gat No.237 is wrongly shown in the name of the respondent during implementation of the aforesaid scheme and maps of Gat numbers are also not correctly prepared. The petitioner had given the description of portions held by Bhausahab, their predecessor and Mukund, the predecessor-in-title of the respondents, from the aforesaid two surveys prior to the implementation of

the consolidation scheme and they had contended that in view of some transactions of purchase of some portion from Survey No.237 their predecessor was owner of portion in Survey No.237. It is contended that portion of 2 acres 7 guntas which was owned by Bhausahab is shown to be owned by Mukund and so correction needs to be made in that regard. The authorities have considered the record of *pot hissas* of survey numbers, the actual possession and the conversion of the survey into gat numbers and have held that no mistake is committed in allotment of aforesaid gat in favour of the respondent. The final authority, the Government, has held that in view of the ratio of the case reported as **2001 (Suppl) Bom.C.R. 688 (Gulabrao B. Kakade v. Nivrutti K. Bhilare)**; and, **2009 (6) Bom.C.R. 664 (SC) (Santoshkumar S. Patil v. Balasaheb T. Shevale)** correction cannot be made by the authority after 3 years of the approval of the scheme. In the present matter the application for correction was made after about 35 years, in 1997, as per the observations made by the authority and it is observed that the challenge is to the entire scheme and so the challenge cannot be entertained.

4) The Deputy Director of Land Records has given particulars of the previous holding and the holdings after implementation of the consolidation scheme in the order. As per those particulars there is not much change in the area which was held prior to the implementation of the scheme by Mukund. Learned counsel for the petitioners submitted that the map prepared after implementation of the consolidation does not tally with the map which was in existence prior to the implementation of the scheme and so the record created by the authority which implemented the scheme, is not as per the actual possession. In view of the particulars of holdings mentioned in the order made by the Deputy Director of Land Records, there is no force in these submissions made by the learned counsel for the petitioner. Further the record was challenged after more than 30 years. Even if it is presumed that there is dispute about title in respect of some portion, the authority under the aforesaid Act could not have considered such challenge. In the result, the petition stands dismissed.

Sd/-

(T.V. NALAWADE, J.)

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