

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

915 WRIT PETITION NO. 9557 OF 2015

SAKHARAM TUKARAM MANKAR AND ANOTHERS
VERSUS
KHANDU KONDIBA GORE AND OTHERS

...
Advocate for Petitioners : Salunke V.D.
AGP for Respondents 2 to 4 : B.A. Shinde
Advocate for Respondent 1 : P.S. Agrawal
...

CORAM : T.V. NALAWADE, J.
DATED : 15th December, 2016.

ORDER :

1. The petition is filed to challenge the order made by Secretary dealing with the appeals filed under the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as 'the Act' for short). Both the sides are heard.

2. Present respondent had filed application before the Deputy Director of Land Records in January 2011 and he had requested to make correction in the areas shown in the land allotted to him under the scheme. It is his grievance that respondent did not get any land in exchange and respondent had not handed over the possession of any portion of the previous lands. This application was rejected by holding that it

was not filed within thirty days as provided in section 19 (1) of the Act. Then the proceeding was filed before the Government and the decision is given that it is necessary to make enquiry and make correction, if required.

3. The submissions made show that present petitioner was owner of Survey Nos. 6 admeasuring 1 H., 59/1 admeasuring 93 R., 59/2 and 59/3, totally admeasuring 1 H. 50 R. Though present petitioner is purchaser, whatever rights the previous owner Kisan Kadam was having, will be available to the present petitioner. The consolidation took place in the year 1977. The aforesaid survey numbers were amalgamated and Gat No. 7 was formed from these lands in revenue record. The area of Gat No. 7 is shown as 5 H. 29 R.

4. It is the case of other side that on record the area is shown less atleast by 9 Acres if the area which other side was having as owner is considered. It is the case of other side that it was arithmetic error and it needs to be corrected.

5. There is nothing on the record to show that for getting the additional area of 2 H. 86 R. Kisan Kadam had given anything in exchange. On the other hand, the submissions made

show that the possession had not changed the hands and only thing is that new numbers were given to the area which was already in possession. The Government has observed that in view of the provision of section 31-A, arithmetic mistakes can be corrected and for that, there is no period of limitation. The reference of section 27 of the Act is also given which is to the effect that the scheme does not take effect unless and until the possession changes the hands. It appears that some enquiry was made prior to taking the decision and the enquiry revealed that parties were in possession of the same portion which was with them prior to implementation of consolidation scheme. In view of aforesaid circumstances, aforesaid direction is given by the Government to the authority created under the Act. There will be opportunity to the petitioner also to have his say though he was not made party in the proceeding decided by the Government. Only because he was not party to the proceeding, it is not necessary to remand the matter back as the petitioner will have the opportunity to have his say during enquiry. No order as such of changing the record is made against the petitioner. Competent authority could have started such enquiry on the application.

6. The learned counsel for petitioner placed reliance on

the cases reported as **1991 (2) Bom.C.R. 650 [Gunda Tuka Shinde Vs. Pandharinath Ramrao Shinde and Anr.] and 2001 (Supp.) Bom.C.R. 688 [Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhilare & Ors.]**. In these cases, some observations are made with regard to the limitation prescribed to challenge the record prepared during implementation of consolidation scheme. The facts of the cases were totally different. In the first case, there was grievance that during allotment of Gat numbers after consolidation scheme, lesser area was given and the facts were different. The facts of the second case were also different. In view of the facts of the present matter, this Court holds that the observations made in aforesaid two cases cited supra cannot be used in the present matter. Reliance was placed on the cases reported as **2001 AIR SCW 2351 [Ragho Singh Vs. Mohan Singh and Ors.] and 1997 (2) Mh.L.J. 168 [Mathuradas Mohta College of Science, Nagpur Vs. R.T. Borkar and Ors.]**. In these cases some observations are made with regard to the necessity of filing delay condonation application along with the appeal when the delay is caused and the circumstances which can be considered for condonation of delay. For reasons already given, the observations need not be used in the present matter. In the Special Enactment itself in section 22 and 31-A, no such

limitation period is given and so, it was open to the competent authority created under the Act to make enquiry in to the alleged arithmetic error committed. This Court sees no reason to interfere in the order made by the Government. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

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