

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1487 OF 2016

Shri. Dattu Chandra Patil
and Ors.

.....Petitioners

V/s.

1(i) Shri. Maruti Jayram Patil
and Ors., since deceased
through his heirs.

.....Respondents

* * * * *

Mr. Ashutosh M. Kulkarni, Advocate for the petitioners.

Mr. V.S. Talkute, Advocate for respondents no.1 to 8.

Ms. M.S. Bane, 'B' Panel Counsel for respondents no.9 and 10.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 8TH AUGUST, 2016.

P.C. :-

1). This petition challenges the order dated 26th October, 2015 passed by respondent no.10, the Secretary-Officer on Special Duty (Appeals), Revenue and Forest Department, Mantralaya dismissing the Revision Application filed by the petitioners.

2). The brief factual background of the petition is that on 22nd October, 1969 the Consolidation Scheme under the provisions

of the Bombay Prevention of the Fragmentation and Consolidation Act, 1947 was implemented in the Village Jaygavhan as there were certain errors in the original scheme, 34 Khatedars including the petitioners and respondents no.1 to 8 made an application before the Competent Authority for varying the scheme. Taking cognizance of the application, the Consolidation Officer issued notices to all the concerned persons and passed the order of correction on 29th April, 1971. After due publication of the variation in the Gazette, there was correction of the revenue records on 7th March, 1974 which was certified on 11th March, 1974. Under the variation, the petitioner's land at Block No.388 was shown to have excess land admeasuring 15 gunthas and the land at Gat No.588 of the respondents shown to have excess land of 11 gunthas. The petitioner claims under the variation, 26 gunthas of land having come to him under the Consolidation Scheme. The Consolidation Officer issued a certificate of transfer under Section 24(1) of the Consolidation Act for 26 gunthas in favour of the petitioner and there were consequent possession receipts issued to Khatedars.

3). Respondent no.1 filed a civil suit being Regular Civil Suit No. 24 of 1971 against the petitioners in the Court of Civil Judge Junior Division and Regular Civil Suit No. 25 of 1971 against respondent no.2 in the same Court seeking permanent injunction to restrain them from disturbing the possession of respondents no.1 to 10. The trial Court dismissed the suits. Respondents no.1 to 8 then preferred Appeal to the District Court. By the judgment and order dated 5th March, 1974 the District Court allowed the appeal with a finding that respondents no.1 to 8 are in possession of the property

in question and that the entries under the Consolidation Scheme in respect of the land at 26 acres was null and void as no procedure whatsoever was followed while applying the scheme. The petitioner, then carried the order to this Court by filing Second Appeal No. 459 of 1974. By the judgment and order dated 12th January, 1999 this Court dismissed the Second Appeal and confirmed the finding of the District Court that the order of variation was a nullity. Infact, it was admitted before this Court by the learned Advocate appearing for the petitioners in the Second Appeal, that necessary procedure required for variation of the schemes was not followed or observed by the Settlement Commissioner before ordering variation of the scheme. It was hence held that variation was patently illegal, it was null and void and therefore no declaration to that effect was required to be sought by respondents no.1 to 8.

4). On 22nd February, 2010 respondents no.1 to 8 applied for correction in the revenue records of the variations. Their application was rejected on 14th June, 2011. The respondent, then preferred a Revision Application which was allowed on 15th March, 2012. Thereafter, the petitioners approached this Court.

5). Mr. Kulkarni, the learned Advocate appearing for the petitioners submits that, the respondents could not have challenged the scheme of consolidation finalised in the year 1971 after a gap of 39 years. He submits, by drawing support from the decision of the Apex Court in **Santoshkumar Shivgonda Patil and Ors. Versus. Balasaheb Tukaram Shevale and Others, reported in (2009) 9 SCC page 352** that, though there is no time limit prescribed for exercise of power, it should be exercised in reasonable period. He

refers in particular to paras-11 and 12 of the decision, wherein it is observed that, if a statute does not prescribe time limit for exercise of revisional powers, it does not mean that such a power can be exercised at any time. Rather, it should be exercised in a reasonable time. In the facts of the case, this decision could have no application because it has already been held by the District Court, which finding has been confirmed by this Court that the variation entry is null and void. That means, it is not to be taken cognizance of. In that circumstance, even if the application for correction in the revenue records has been made at such a belated stage, that application was only for carrying out the ministerial act of correction of the record and it did not decide the rights of the parties so as to unsettle the same. It is also to be noted that, after this Court confirmed the findings of the District Court as regards variation under consolidation scheme, the petitioners have not challenged the same any further thereby accepting the order. In that case, the petitioners could have no complaint as regards the correction of the revenue records so as to make the same consistent with the orders passed by this Court. Hence, the Writ Petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1541 OF 2016
IN
WRIT PETITION NO. 1487 OF 2016

Shri. Dattu Chandra Patil
and Ors.

.....Applicants

V/s.

1(i) Shri. Maruti Jayram Patil
and Ors., since deceased
through his heirs.

.....Respondents

* * * * *

Mr. Ashutosh M. Kulkarni, Advocate for the applicants.

Mr. V.S. Talkute, Advocate for respondents no.1 to 8.

Ms. M.S. Bane, 'B' Panel Counsel for respondents no.9 and 10.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 8TH AUGUST, 2016.

P.C. :-

1). This Civil Application is to bring the heirs of respondent no.8 on record. Since the application is in time, the same is allowed in terms of prayer clause (b). Amendments to be carried out forthwith.

(SMT. R.P. SONDURBALDOTA, J)