

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3517 OF 2005

Shri Pandurang Babu Patil .. Petitioner
VS.
Shri Vasant Dnyanu Patil and Ors .. Respondents

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None for the petitioner.
None for the respondents.

CORAM : M. S. SONAK, J.
DATE: 22 NOVEMBER 2016

P.C :

1. None for the petitioner and none for the respondents.
2. The challenge in this petition is to the judgment and order dated 26-08-2003 made by the Deputy Director of Land Records (for short "DDLRL"), Pune, and the judgment and order dated 12-04-2005 made by the Principal Secretary and Officer on Special Duty (Appeals) Revenue and Forest Department, reopening the consolidation scheme under the provisions of Bombay Prevention of Fragmentation and Consolidations of Holdings Act, 1974 (the "said Act").
3. The record indicates that, the consolidation scheme in village Tupari, Tal. Tasgaon (Palus), Dist. Sangli was formulated and

implemented sometime in the year 1965-1966. The respondents claim interest in the property bearing gat nos. 332 and 333. On or about 21-11-1997 i.e. almost 32 years after the consolidation scheme was implemented, the said respondents applied to the DDLR complaining that they ought to have received additional 1.07 acres of land in terms of the scheme and that such additional land admeasuring 1.07 acres be restored to them.

4. The DDLR by a communication dated 6-6-2001 in fact, rejected the respondents application stating that the same was time barred. The respondents thereupon instituted a Revision Application to the State Government, which was allowed by order dated 27-2-2003 and the matter was remanded to the DDLR to undertake a fresh enquiry and make a speaking order after hearing the parties.

5. Upon remand, the DDLR by order dated 26-8-2003 has directed the Taluka Inspector of Land Records to prepare and submit draft variation of the scheme under section 32(1) of the said Act by taking out an area of 1.12 acres from out of gat nos. 58 and 333 and adding the same to the property bearing gat no.322.

6. As against DDLR's order dated 26-8-2003, the present

petitioner appealed to the Principal Secretary and OSD (Appeals), who has, by order dated 12-04-2005, dismissed the appeal and upheld the DDLR's order dated 26-08-2003.

7. The Appellate Authority has reasoned that the DDLR's order dated 26-8-2003 was in compliance with the remand order dated 27-2-2003 made by the Secretary and OSD in the first round of litigation. The Appellate Authority has reasoned that since the remand order was not challenged by the present petitioner, it can be said that the present petitioner subjected himself to the DDLR's jurisdiction and, therefore, now it is too late for the petitioner to complain about the exercise of jurisdiction by the DDLR, almost 32 years after the finalisation and implementation of the consolidation scheme.

8. In my judgment, the impugned order made by the Appellate Authority is unsustainable. In the first round of litigation, the Secretary and OSD by order dated 27-2-2003 remanded the matter to DDLR primarily because, the DDLR had only issued a communication dated 6-6-2001 which contain hardly any reasons and further the same was not preceded by offering hearing to the parties. This means that the order dated 6-6-2001 made by the DDLR in the first round of litigation had basically been struck down

for failure to comply with the principles of natural justice. Upon remand therefore, the DDLR was required to decide the matter after affording opportunity of hearing to all the parties and in accordance with law. The circumstance that the petitioner may not have challenged the remand order dated 27-2-2003, does not mean that the petitioner acquiesced or subjected himself to the DDLR's jurisdiction upon remand. In any case, the failure to challenge does not imply that the petitioner conceded to the exercise of jurisdiction by the DDLR after a lapse of almost 32 years from the date of finalisation and implementation of the consolidation scheme.

9. Although no period of limitation may have been prescribed under the said Act for reopening of the finalised consolidation scheme, such power has to be exercised within a reasonable time. In fact, the Division Bench of this Court in the case of **Gulabrao vs. Nivrutti (2001(4) Mah.L.J. 31)** in the precise context of the provisions of the said Act, has, in para 6, observed thus:

"The power given to the Settlement Commissioner for variation of the scheme is on account of an error other than that referred to in section 31A, irregularity or informality after following the procedure prescribed. Though there is no time limit prescribed under section 32(1) for the Settlement Commissioner to vary the scheme which has come into force, but obviously even in the absence of any period prescribed under section 32, the said power can only be exercised within reasonable period in any case. What would be the reasonable period for exercise of power under section

32(1) by the Settlement Commissioner may depend on facts and circumstances of each case and we do not intend to lay down any specific period for exercise of that power by Settlement Commissioner but ordinarily exercise of such power after three years of finalisation of scheme under section 22 may not be justified. In the facts and circumstances of the present case, the exercise of power by Settlement Commissioner for variation of scheme which has come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within reasonable time. The fact is and that is not disputed that the earlier scheme was finalised in the year 1973 under the Act of 1947 to the knowledge of all the parties concerned. Nobody was aggrieved by the said scheme finalised under the Act of 1947 and the scheme came into force under section 22. The said scheme which had been finalised in accordance with law and came into force and continued to be in force, could not have been unsettled by initiating the proceedings for variation under section 32 on the purported ground of error, irregularity or informality after a lapse of about 15 years. Thus, the exercise of power by Settlement Commissioner under section 32 for variation of the scheme in the facts and circumstances of the present case is grossly unjustified."

10. In the present case, the variation of the scheme by the DDLR almost after 32 years since its finalisation and implementation, constitutes an exercise in excess of jurisdiction or in any case, such exercise is grossly unjustified. There is hardly any explanation worth the name for the inordinate delay of almost 32 years. This was an extremely relevant consideration which has been ignored by both, the DDLR as well as the Appellate Authority.

11. For the aforesaid reasons the impugned orders are set aside. However, this shall not preclude the respondents from approaching

the Competent Civil Court for ascertaining their alleged right, title and interest in the immovable property in question. In fact, this position was made clear at the stage of admission and grant of interim reliefs vide order dated 17-02-2006.

12. Rule is, accordingly, made absolute. There shall, however, be no order as to costs.

13. All concerned to act on the basis of the authenticated copy of this order.

14. The Registry to communicate this order to the parties.

(M. S. SONAK, J.)