

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

WRIT PETITION NO. 277 OF 2016

Paras Babulal Sancheti

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Girish K. Thigale (Naik), Advocate for the Petitioner.

Shri P. N. Kutti, A.G.P. for Respondent Nos. 1 to 4.

Shri B.V. Thombre, Advocate h/f Shri B. R. Sable, Advocate for the Respondent No. 7.

CORAM : S. V. GANGAPURWALA , J.

DATE : 21ST APRIL, 2017.

PER COURT :

. Mr. Thigale, the learned counsel submits that, the respondent No. 1 initiated the proceedings U/Sec. 31(1) of the Bombay Prevention of Fragmentation of and Consolidation of Holdings Act (for short " said Act") and after forty years the said proceedings U/Sec. 31(1) of the said Act were not maintainable. The respondent No. 7 wanted his name to be incorporated. The said proceedings could have been taken up U/Sec. 32 of the said Act only. The learned counsel relies on the judgment of the Division Bench of this Court in a case of Gulabrao Bhaurao Kakade and others Vs. Nivrutti Krishna Bhilare and others reported in *2001(4) Mh. L. J. 31* and another

judgment of the learned Single Judge of this Court in a case of **Limbraj Waman Yede Vs. State of Maharashtra and others** reported in **2004(4) Bom.C.R. 945**.

2. Mr. Thombre, the learned counsel holding for Shri Sable, the learned counsel for the respondent No. 7 submits that, the application was perfectly tenable U/Sec. 31(1) of the said Act. The Consolidation Officer at the relevant time while undertaking consolidation proceedings did not consider that the sale deed was already executed in favour of the respondent No. 7 herein in the year 1970. So instead of recording name of the respondent No. 7 herein wrongly the name of the original owner was recorded. This would come within the purview of clerical error. The said order is rightly passed. No objection was received by the authorities after publication of notice and so rightly the authorities passed the impugned order. The petitioner has earlier filed an appeal against the said order, which he could not have file.

3. I have considered the submissions canvassed by the learned counsel for respective parties.

4. The grievance is that, the name of a person is wrongly recorded and the name of the respondent No. 7 ought to have been recorded cannot be said to be a clerical error. Of course, if

the respondent No. 7 feels that his rights have been affected, the respondent No. 7 is not without a remedy. The proceedings would lie U/Sec. 32 of the said Act before the Settlement Commissioner. The judgment in a case of Gulab **Gulabrao Bhauroo Kakade and others Vs. Nivrutti Krishna Bhilare and others** referred to supra also clarifies the said aspect.

5. In the light of the above, the impugned order is quashed and set aside. It will be open for the present respondent No. 7 to take up proceedings U/Sec. 32 of the said Act and as may be permissible in law. In that event the contentions of petitioner about limitation, maintainability, etc. are kept open. In fact the contentions of respective parties are kept open. The writ petition accordingly is allowed in above terms. No costs.

[S. V. GANGAPURWALA, J.]