

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1542 OF 2016

Revaji Karbhari Walunj
Age 65 years, Occ. Agriculture,
R/o Pimpalgaon, Tq. Parner,
District Ahmednagar. ..Petitioner

Versus

1. The Divisional Commissioner,
Nashik Division, Nashik.

2. The District Superintendent
of Land Records, Ahmednagar.

3. The Deputy Superintendent
of Land Records, Parner,
District Ahmednagar.

4. Sajjan Maroti Kharmale,
Age 61 years, Occ. Agriculture

5. Santosh Maroti Kharmale
Age 32 years, Occ. Agriculture

Respondents 4 and 5 both are
residents of Post Wadgaon Savtala,
Tq. Parner, Dist. Ahmednagar.

6. Deputy Director of Land Records,
Nashik Division, Nashik. ..Respondents

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Advocate for Petitioner : Shri Gawali Amol K.
AGP for Respondents 1 to 3 and 6 : Shri Bhagat N.T.
Advocate for Respondents 4 & 5 : Shri Karpe Rahul R.

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CORAM : RAVINDRA V. GHUGE, J.

Dated : June 28, 2017

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ORAL JUDGMENT:-

1. Leave to add the Deputy Director of Land Records, Nashik as respondent No.6. Addition be carried out forthwith.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. By this petition, the petitioner has putforth prayer clauses (A) and (B), which read as under:-

“(A) The Honourable High Court may be pleased to quash and set aside the order dated 23.7.2015 bearing No. Ekatri / SR-94/ Kavi-410/15, passed by the respondent No.1 i.e. the Deputy director of Land Record, Nashik Division, Nashik, thereby entertaining the application dated 17.7.2015, filed by the respondent Nos.4 and 5 without considering the delay of 45 years in filing the said application and further directing the respondent No.3 to conduct an enquiry and submit a final report for amendment of consolidation scheme.

(B) The Honourable High Court may be pleased to quash and set aside the proceeding undertaken by the respondent Nos.1 and 3 in furtherance of the order dated 23.7.2015 for

amendment of consolidation scheme as per the Application dated 17.7.2015 by the respondent Nos.4 and 5.”

5. I have considered the submissions of the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

6. Sections 32 and 33 under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (“the said Act”) permits the competent authority to vary or revoke a scheme. Respondents 4 and 5 have sought such revocation by moving an application dated 17.7.2015. Respondent No.1 has forwarded the said application to respondent No.3 with the direction to complete the enquiry and submit the report, by his communication dated 23.7.2015. It is informed that the copies of the reports dated 3.11.2015 and 27.11.2015 are the outcome of such an enquiry.

7. The petitioner has raised two issues, based on which, it is contended that respondent No.1 could not have initiated the process of enquiry. Firstly, that respondent No.1 cannot delegate the powers to respondent No.3, which are to be exercised under Sections 32 and 33 of the said Act. Secondly, the original consolidation scheme, which has been settled for about 45 years ago, cannot be upset by respondent

Nos.1 or 3, by entertaining the applications of respondents 4 and 5, without condonation of delay.

8. In the matter of Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhillare [2001 (4) Mh.L.J. 31], the learned Division Bench of this Court has concluded that the Settlement Commissioner, who can exercise the powers for causing variation in the scheme, will be permitted to do so within a reasonable period, though no limitation has been prescribed under Section 32 of the said Act. It is held that what would be a reasonable period for exercising such powers by the Settlement Commissioner would depend upon the facts and circumstances of each case. Ordinarily, the said power cannot be exercised after three years of the finalization of the scheme.

9. The learned Division Bench in the matter of Dattu Appa Patil Vs. State of Maharashtra [2007 (1) Mh.L.J. 393], has concluded that variation of a consolidation scheme after 27 years is totally unjustified and the Settlement Commissioner ought not to exercise its powers under Section 32 of the said Act.

10. This Court in the case of Ganpati Dadu Mali Vs. State of Maharashtra [2012 (1) Mh.L.J. 341], has held that the powers to vary the scheme cannot be exercised after the period of 18 years under

Section 32 of the said Act.

11. Learned counsel for the petitioner submits that this Court by order dated 20.6.2017 in Writ Petition No.7701 of 2016 [Eknath Vs. Narayan], has remitted the proceedings to the Settlement Commissioner with a direction that he shall decide the issue of condonation of delay in the light of the three judgments referred to above.

12. Learned counsel for the respective sides submit that they are willing to appear before respondent No.6 - Deputy Director of Land Records, Nashik. who is the Settlement Commissioner under Section 32 of the said Act.

13. In the light of the above, this petition is partly allowed with the following directions:-

(A) The litigating sides shall appear before respondent No.6 on 7.7.2017 at 3.00 PM.

(B) Respondent Nos.4 and 5 shall file an application seeking condonation of delay with the date of reference being the date of the filing of the application under Sections 32 and 33 of the said Act, which is 23.7.2015.

(C) The petitioner shall, thereafter, file a reply within four

weeks, with regard to the application for condonation of delay.

(D) Respondent No.6, while considering the said application shall take into consideration the law laid down by this Court in the judgments in the cases of Gulabrao, Dattu and Ganpati (*supra*).

(E) Respondent No.6 shall pass a reasoned order on the application for condonation of delay.

(F) Until then, the reports of respondent No.3 dated 3.11.2015 and 27.11.2015 shall be kept in abeyance.

(G) In the event the delay is allowed, this order of keeping the two reports in abeyance shall continue for a period of six weeks from the date of the passing of the order by respondent No.6, so as to enable the petitioner or any other aggrieved party to take recourse to any legal remedy.

(H) Needless to state, if respondent No.6 did not condone the delay, the said two reports dated 3.11.2015 and 27.11.2015 shall stand rejected.

14. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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