

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

WRIT PETITION NO.4212 OF 2014

M/s D.H. Constructions,
A partnership firm having its office at
Laxminarayan, Behind Gopal Hall,
New Osmanpura, Aurangabad,
through its Partner
Abdul Hasan Khurram Ali Hashmi
Age 32 years, Occu. Business,
R/o Plot No.7, CTS No.2337/2, B/6,
Shahin Bag, Dilras Colony,
Near Aamkhas Maidan, Aurangabad

... PETITIONER

VERSUS

1. The State of Maharashtra,
through its Principal Secretary,
Revenue & Forests Department,
Govt. of Maharashtra,
Mantralaya, Mumbai
2. The Hon'ble Minister for State,
Revenue Department,
Govt. of Maharashtra,
Mantralaya, Mumbai
3. The Settlement Commissioner and
Director of Land Records,
(M.S.), Pune
4. The Deputy Director of Land Records,
Aurangabad Region, Aurangabad
5. Anilkumar s/o Suwalal Mugdiya,
Age 58 years, Occu. Business,
R/o House No.98, Tofkhana Bazar,
Cantonment, Aurangabad
6. Kantilal s/o Suwalal Mugdiya,
Age 52 years, Occu. Business,
R/o House No.98, Tofkhana Bazar,
Cantonment, Aurangabad

7. Ravindra s/o Babulal Jain,
Age 48 years, Occu. Business,
R/o G-3, Khivansara Park,
Garkheda, Aurangabad
8. Nafisa Fatema d/o Khaja Samiullah,
Age 40 years, Occu. Doctor,
R/o TRT-2, Labour Colony,
Aurangabad.
9. Dhansingh s/o Ramsingh Wani,
Age 65 years, Occu. Agriculturist,
R/o Padegaon, Taluka and
District Aurangabad
10. Bansi s/o Chintaman Wani,
Age 67 years, Occu. Agriculturist,
R/o Padegaon, Taluka and
District Aurangabad
11. Rukmeshchandra s/o Hemprakash
Mishra, Age 72 years, Occu. Agril. &
Retired, R/o Chinor Arched,
Padegaon, Taluka and
District Aurangabad.
12. Dr. Sara Sultana w/o Dr. Abdul Majid,
Age 39 years, Occ. Medical Practitioner,
R/o Plot No.151, 152, Motiwala Nagar,
Aurangabad.
13. Santosh s/o Devidas Takalkar,
Age 45 years, Occ. Medical Practitioner,
R/o Plot No.63, Ulkanagari,
Aurangabad

... RESPONDENTS

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Shri S.V. Varad, Advocate for petitioner
Shri Zia-Ul-Mustafa, Advocate for respondent Nos.5 & 6
Shri A.P. Bhandari, Advocate for respondent No.7
Shri P.N. Sonpethkar, Advocate for respondent No.8
Shri N.R. Solunke, Advocate for respondent Nos.9 to 11
Shri D.S. Pawar, Advocate holding for
Shri K.C. Sant, Advocate for respondent Nos.12 & 13

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CORAM: S. B. SHUKRE, J.

DATED: 6th February, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. On going through the order dated 28/2/2014, passed by the Hon'ble Minister, I find that the Hon'ble Minister has rightly concluded that the possibility of the area falling in Gat No.153, which is of respondent Nos.5 to 7, getting affected is very much there and, therefore, their objections ought not to have been rejected only on the ground that they are not concerned with Gat No.151 and 152. I also find that, the Hon'ble Minister is right when he has observed that the Deputy Director, Land Records has not applied his mind to the delay occurred in the case, and no finding in that regard has been recorded by him, although there is a prayer made in the composite application filed under Section 31-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 seeking condonation of delay.

3. Of course, learned counsel for the petitioner submits that, the Bombay Prevention of Fragmentation and Consolidation

of Holdings Act, 1947 being a special statute, the implied power of exercise of the right within reasonable limitation is not available as held by the Hon'ble Apex Court in the case of **Uttam Namdeo Mahale Vs. Vithal Deo & ors.** reported in **(1997) 6 SCC 73.** With due respect, I am of the view that, these observations of the Hon'ble Apex Court were in the context of the provisions of the Mamlatdar's Courts Act, 1906 and, therefore, would have no direct application to the facts of the case. I am also of the further view that, the view taken by the Division Benches of this Court in two cases i.e. In the case of **Gulabrao Baburao Kakade Vs. Nivrutti Krishna Bhilare,** reported in **2001 Mh.L.J. 31 and Dattu Appa Patil Vs. State of Maharashtra,** reported in **2007 Mh.L.J. 393** would be squarely applicable to the facts of the present case.

4. In each of the said cases, the Division Benches of this Court, held that even though no time limit is prescribed for seeking variation of the scheme, it must be done in a reasonable period of time and what is a reasonable period of time will depend upon facts and circumstances of each case and if there is no explanation whatsoever given for such delay, as the delays of 16 years onwards, it would be unjustified for the authority to introduce variation in the scheme. In the case of Dattu (supra), in particular, the Division Bench of this Court has also drawn

support from the judgment of the Hon'ble Apex Court in the case of **Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim,** reported in **1997 (4) ALL MR 447 (S.C.)**. Learned counsel for the petitioner has tried to distinguish ratio of these cases from the facts of the case, contending that, in those cases not only the variation in the scheme was sought but possession was also claimed and in the instant case, the variation in the map of Gat Nos.151 and 152 has been claimed without claiming possession. Such a distinction cannot be made if we consider the prayer made in the application filed under Section 31-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The prayer seeks correction of the map of the aforesaid Gat numbers and the notice issued by the authorities also makes a reference to the areas, which were likely to be reduced if such a correction was made. Thus, in the instant case, the facts are not merely confined to the correction of the maps and they go beyond such correction of the maps and enter into the arena of reduction of the areas of the property already in possession of the other affected persons including respondent Nos.5, 6 and 7. Therefore, the facts of the present case are not distinguishable and as such, the ratio of the cases decided by the Division Benches of this Court would be squarely applicable to the instant case. So, as already stated, the competent authority ought to have considered the aspect of long delay occurred in filing an

application under Section 31-A in accordance with law. Now the question is as to whether the order of the Hon'ble Minister, impugned herein, should be confirmed as it is; or the matter be remanded back to the Deputy Director, Land Records for considering all the issues and points involved in the case.

5. I find that, interest of justice could be served better by giving an opportunity to the parties to raise all the points before the Deputy Director, Land Records and if so raised, the Deputy Director, Land Records shall consider the same in accordance with law, which in fact he should have considered at the first instance itself.

6. In this view of the matter, the order of the Deputy Director, Land Records, Aurangabad, dated 30/4/2013, is hereby quashed and set aside and the matter is remanded back to the Deputy Director, Land Records, Aurangabad for deciding the application of the petitioner afresh in accordance with law, keeping all the contentions/ issues open. The Deputy Director, Land Records shall give opportunity of hearing to the petitioner as well as respondent Nos.5, 6 and 7 and 8 to 13, and all the other objectors whose areas are likely to be affected as per the public notice, if they appear before him within one month from the date of this order. The application shall be finally disposed of

by the Deputy Director, Land Records within four months from the date of appearance of the parties. Parties to appear before the Deputy Director, Land Records on 7th March 2017. The Writ Petitions are thus partly allowed by modifying the order dated 28/2/2014, passed by the Hon'ble Minister in aforesaid terms. Rule made absolute in above terms. No costs.

(S. B. SHUKRE)
JUDGE

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