

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

WRIT PETITION NO.7477 OF 2014

Kamalbai w/o Shrirang Kukade (Salunke)
Age 63 years, Occu. Agri.,
R/o Gangapur, Taluka and
District Latur.

... PETITIONER

VERSUS

1. The Deputy Director of Land Records,
Aurangabad Division, Aurangabad
2. The District Superintendent of Land Records,
Latur.

(Copy to be served on Govt. Pleader,
High Court, Bombay, Bench at Aurangabad
for respondent Nos.1 and 2)

3. Raosaheb s/o Rama Kukade (Salunke)
Age major, Occu. Agri.
4. Raghunath s/o Rama Kukade (Salunke)
Age major, Occu. Agri.
5. Balaji Dhondiba Kukade (Salunke)
Age major, Occu. Agri.
6. Mohan s/o Dhondiba Kukade (Salunke)
Age major, Occu. Agri.
7. Lalasaheb s/o Dhondiba Kukade (Salunke)
Age major, Occu. Agri.
8. Satish s/o Shivaji Kukade (Salunke)
Age major, Occu. Agri.
9. Sanjay s/o Sadashiv Kukade (Salunke)
Age major, Occu. Agri.

Nos.3 to 9 R/o Gangapur,
Taluka and District Latur.

10. Sow. Nirmalabai w/o Bhausaheb Shinde,
Age 52 years, Occu. Agri. & Household,
R/o Gangapur, Taluka and District Latur.

... RESPONDENTS

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Shri S. S. Panale, Advocate for petitioner
Shri A. V. Deshmukh, A.G.P. for respondent Nos.1 & 2
Shri A. P. Deshmukh, holding for
Shri V. B. Jadhav, Advocate for respondent Nos.3 to 9

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CORAM: S. B. SHUKRE, J.

DATED: 20th January, 2017.

ORAL JUDGMENT :

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

2. One of the impugned orders dated 30/7/2013, purports to have been passed under Section 32(1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. By this order, as provided under Section 32(1), the District Superintendent, Land Records has not published any draft of variation. He has issued a direction to the Deputy Superintendent to record statements of the affected persons and then submit an appropriate proposal regarding draft variation in the consolidation scheme. Perusal of Section 32(1), at this stage, discloses that it does not include any power of the

authority thereunder to issue a direction for recording of the statement before a draft variation is published. It also does not confer any power on the authority to direct his subordinate officer to submit a proposal regarding draft variation in the scheme. The power under this Section arises with the publication of draft of the variation in the scheme and not before that. Therefore, the question would arise as to under which provision of law or the Statute the impugned order has been passed, and according to learned counsel for the petitioner, the answer points out towards the provisions of the Maharashtra Land Revenue Code, which is not accepted by learned counsel for respondent No.3.

3. Learned A.G.P. appearing for respondent Nos.1 and 2 supports the order, but is unable to point out any particular provision of the Fragmentation Act under which it could be said to be passed. Therefore, the submission of the learned counsel for the petitioner that this order would have to be considered as passed under the provisions of the Maharashtra Land Revenue Code, would have to be accepted and is accepted accordingly. Once this is done, the power under Section 32(1) of the Fragmentation Act would not come in the way in entertaining the appeal filed under Section 247 of the Maharashtra Land Revenue Code. Therefore, the other impugned order dated 3/1/2014,

cryptically observing that there is no provision under the law to file an appeal, deserves to be quashed and set aside.

4. The Writ Petition is allowed. The impugned order dated 3/1/2014 is quashed and set aside. The appeal filed before the Deputy Director, Land Records is restored with a direction to the learned Deputy Director that the appeal shall be decided by him in accordance with law within three months from the date of receipt of this order. Rival contentions of parties are kept open. Rule is made absolute in the above terms. No costs.

6. Writ Petition is allowed. Rule is made absolute in above terms. No costs.

(S. B. SHUKRE)
JUDGE

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