

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

WRIT PETITION NO. 38 OF 2014

1. Raosaheb s/o. Vishwanath Bochare .. Petitioners
Age. 45 years, Occ. Agri.,
R/o. Padoli (a),
Tq. & Dist. Osmanabad.
2. Ravan s/o. Vishwanath Bochare
Age. 55 years, Occ. Agri.,
R/o. Padoli (a),
Tq. & Dist. Osmanabad.
3. Shahu s/o. Vishwanath Bochare
Age. 60 years, Occ. Agri.,
R/o. Padoli (a),
Tq. & Dist. Osmanabad.
4. Babru s/o. Vishwanath Bochare
Age. 65 years, Occ. Agri.,
R/o. Padoli (a),
Tq. & Dist. Osmanabad.
5. Balaji s/o. Venkat Bochare
Age. 40 years, Occ. Agri.,
R/o. Padoli (a),
Tq. & Dist. Osmanabad.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary,
Revenue and Forest Dept.,
Mantralaya, Mumbai.
2. The Superintendent of Land Records,
Osmanabad.

3. The Taluka Inspector of Land Records,
Osmanabad.
4. Uttam s/o. Gundu Bochare
Age. 50 years, Occ. Agri.,
R/o. Padoli (a),
Tq. & Dist. Osmanabad.

Mr.K.K. Kulkarni, Advocate for the petitioner.
Mr.A.P. Basarkar, AGP for respondent/State.
Mr.V.B. Deshmukh, Advocate for respondent No.4.

CORAM : S.B. SHUKRE,J.
DATED : 23.02.2017

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent.

2. The learned Single Judge of this Court in in the case of Limbraj Waman Yede Vs. State of Maharashtra & Ors., 2004(4) Bom.C.R.945 has taken a view that power under section 32(1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 can be exercised only by the Settlement Commissioner and nobody else. The language of Section 32(1) is also plain and clear and there is no ambiguity insofar as authority on whom the power is conferred. The authority is Settlement Commissioner and there is no provision of delegation of authority in this Act. Therefore, as held

in the case of Limbraj (Supra), it could be said that this power must be exercised by the Settlement Commissioner only.

3. In the instant case, the powers under section 32(1) of the Act are exercised by the Superintendent of Land Records, Osmanabad. He has no jurisdiction to remove any defect on account of error referred to in Section 32(1) of the Act. Therefore, the impugned order would have to be quashed and set aside.

4. The learned Counsel for the petitioner relying upon the case of Gulabrao Bhauro Kakade (since deceased by LRs) & Ors. Vs. Nivrutti Krishna Bhilare & Ors., 2001(4) Mh.L.J.31 submits that the application for removal of defect under section 32(1) of the Act in the present case was time barred as it was filed after a period of 31 years. However, I do not propose to make any observation in this regard, in view of the fact that learned Counsel for the respondent No.4 has prayed for grant of liberty to approach the Settlement Commissioner by filing a fresh application.

5. In view of above, the writ petition is allowed with costs. The impugned order is quashed and set aside. Liberty is granted to the respondent No.4 to approach the

Settlement Commissioner by filing fresh application under section 32(1) of the Act subject to the law of limitation as discussed in the case of **Gulabrao (Supra)**. All points are kept open.

6. Rule made absolute accordingly. No costs.

[S.B. SHUKRE, J.]