

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

WRIT PETITION No. 7928 of 2016

Dagadu Awadaji Naikwadi (DIED)
through legal representatives

1. Ganpat S/o Dagadu Naikwadi, age 70 years
2. Popat S/o Ganpat Naikwadi, age 50 years
3. Savkar S/o Ganpat Naikwadi, age 45 years

All agriculturists by occupation and
R/o Loni-Mawla Taluka Parner District Ahmednagar.

...PETITIONERS.

VERSUS

1. The State of Maharashtra
through the Secretary,
Revenue Department, Mantralaya, Mumbai – 32.
2. The Deputy Director of Land Records,
Nashik Region, Nashik
3. The Superintendent of Land Records,
Ahmednagar.
4. Maruti S/o Thama Naikwadi,
age 65 years occupation Agriculture
R/o Loni Mawla Taluka Parner District Ahmednagar
5. Bansi S/o Thama Naikwadi,
age 55 years occupation and R/o as above
6. Sandeep S/o Maruti Hadwale,
age 35 years occupation and R/o as above
7. Dnyandeo S/o Maruti Hadwale,
age 37 years occupation & R/o as above.

8. Rambhau S/o Mahipati Malwe,
age 65 years occupation & R/o as above
9. Vishwanath S/o Mahipati Malwe,
age 60 years occupation & R/o as above. ...**RESPONDENTS**

Mr N.K. Kakade, Advocate for petitioner

Mrs V.N. Patil-Jadhav, Asstt. Govt. Pleader for respondents No. 1 to 3

Mr M.S. Deshmukh, Advocate for respondents No.4 & 5

Mrs A.N. Ansari, Advocate for respondents No.6 & 7

CORAM : NITIN W. SAMBRE, J.

DATE : 20th November, 2017

ORAL ORDER :

Petitioner has questioned order dated 29th May 2015 passed in Appeal Proceedings under the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, (hereinafter referred to as “the Act” for the sake of brevity), particularly, Section 35, and the Order of the Government passed on 16th June 2016 under the provisions of Section 255 of the Maharashtra Land Revenue Code, rejecting his appeal against said order, on the following facts and grounds.

2. The petitioner claims that the property involved in the present proceedings 196R came to be mutated in the name of their father and out of the same, land to the extent of 86R came to be

acquired by the State Government, which was owned by the respondents. The respondents have received the compensation towards the acquisition of the land, and as such, the property to the extent of 86R of respondents stood vested in the Government thereby names of the respondents having been removed from the record. In 1986 Consolidation Scheme was executed/implemented, in which it is claimed that respondent No.4 has given no objection for mutation of this property in favour of the petitioner.

3. After the period of about more than 18 years, the said entry pursuant to the Consolidation Scheme, came to be varied in favour of respondents by virtue of the orders impugned. As such, this petition.

4. The learned Counsel for the petitioner while inviting attention of this Court to the provisions of Section 32 and 35 of the Act would make following submissions in view of no objection given by respondent No.4 while implementing Consolidation Scheme in 1986. It is not open for the respondents to claim varying of the same pursuant to the provisions of section 35 of the Act. The next submission of the learned Counsel for the petitioner is that the provisions of Section 35 of the Act are not prescribing any limitation, however, such powers are to be exercised within reasonable period.

He would draw support from the judgment of this Court in the matter of **Ganpati Dadu Mali since deceased through L.Rs. Vs. State of Maharashtra and others {2012 (1) MAH.L.J. 341}**, and **Dattu Appa Patil (since deceased) by LRS. Vs. State of Maharashtra and others {2007 (1) Mh.L.J. 393}**, so as to claim that the correction or variation to the scheme under the Act cannot be permitted beyond the reasonable period. He would urge that the Appellate Authority without considering the issue of limitation has proceeded to pass an order by relying upon such material, which was never called for by either of the parties viz. measurement report. In addition, he would urge that the learned Minister though has dealt with issue of limitation by observing that while exercising powers under Section 35 of the Act, limitation is not prescribed, however, the Authority below has not at all touched or dealt with the said issue.

5. Shri Deshmukh, learned Counsel for respondents No. 4 & 5 and Mrs. Patil-Jadhav, learned Assistant Government Pleader for respondents No.1 to 3, would support the orders impugned on the factual ground that no objection extended by respondent No.4 was not in relation to the land in question. According to learned Counsel Shri Deshmukh, a thorough inquiry is conducted by the Authority before passing order impugned and has noticed that the holding of

the petitioner is more than permissible one, and as such, an order under Section 35 of the Act came to be passed. He submits that no interference is warranted in extra ordinary jurisdiction, particularly, when, as a consequence, what has been ordered by the Authority by virtue of order impugned, has not resulted into reducing the holding of the petitioner. The learned Asstt. Govt. Pleader supports the order impugned.

6. Considered rival submissions. So far as the issue qua no objection given by respondent No.4 is concerned, both the Authorities have not in clear terms dealt with the same, whether such objection was given by respondent No.4 qua claim made by the petitioner in the present petition and respondents before the lower Authority. The least that was expected from the Appellate Authority was to record the finding of fact to that effect.

7. The parties are in agreement that the powers, which are exercised by the Authority, are pursuant to the provisions of Section 32 read with Section 35 of the Act. That being so, the learned Counsel for the petitioner was right in inviting attention of this Court to the judgments of this Court in the matters of **Ganpati** and **Dattu**, cited supra, so as to claim that the correction/variation in the scheme under the Act has to be permitted within reasonable period. The

order impugned passed by the first Authority has not at all dealt with the issue of limitation, whereas, the State Government has committed an error in observing that while exercising powers under Section 35 of the Act limitation is not applicable, when both these judgments govern the field.

8. Apart from above, the fact remains that measurement report dated September 29, 2014, as has been referred by the Settlement Commissioner, was never put to either of the parties so as to meet the same and explain the position leaving apart source thereof.

9. In the wake of above, both the orders impugned, in my opinion, are not sustainable, and are liable to be quashed and set aside.

10. For the reasons recorded here-in-above, the petition stands allowed in terms of prayer clause "B".

11. The parties hereto are directed to appear before the Settlement Commissioner viz. Dy. Director of Land Records, Nashik, on 11th December 2017.

12. The said Authority shall make available all the relevant

reports and papers to the respective parties for inspection, upon their application and payment of usual charges/copying charges.

13. The said Authority is further directed to deal with the issue of limitation, the issue of no objection by respondent No.4 while dealing with the claim of respondents herein.

14. The Authority is expected to decide the proceedings without being influenced what has been observed here-in-above.

15. The said authority shall make every endeavour to conclude the proceedings within six months from the date of receipt of this order.

(NITIN W. SAMBRE, J.)

pjm