

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 240 OF 2016

KASHINATH VENKATRAO KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Vilas Humbe h/f Shri R.J.Nirmal
AGP for Respondents 1 to 3 : Shri N.T.Bhagat
Advocate for Respondents 4 to 7 : Shri Abhishekh C. Deshpande
h/f Shri S.D.Tare

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CORAM : RAVINDRA V. GHUGE, J.
Dated : June 28, 2017
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PER COURT :-

1. The petitioner is aggrieved by the order dated 28.4.2015 passed by respondent No.2 in Appeal No.929 of 2014 by which, the order of the District Superintendent of Land Records, Jalna dated 28.2.2014 has been quashed and set aside and the appeal of the respondent Nos.4 to 8 has been allowed.

2. This Court, while issuing notice on 8.1.2016 has, till the next date, stayed the execution, implementation and effect of the impugned order dated 28.4.2015 passed by the Deputy Director of Land Records in Appeal No.929 of 2014. Ad-interim relief was, thereafter, continued from time to time till this date.

3. The issue as regards varying or disturbing the consolidation scheme by exercising powers under Sections 32 and 33 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act has been considered by the learned Division Bench of this Court in two matters and by the learned Single Judge Bench of this Court in the following matters:-

(1) Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhillare [2001 (4) Mh.L.J. 31],

(2) Dattu Appa Patil Vs. State of Maharashtra [2007 (1) Mh.L.J. 393],

(3) Ganpati Dadu Mali Vs. State of Maharashtra [2012 (1) Mh.L.J. 341],

(4) Writ Petition No.7701 of 2016 [Eknath Vs. Narayan], dated 20.6.2017.

4. It is, therefore, apparent that in the matter of Gulabrao (supra), it is held that beyond three years, disturbing or varying a scheme would depend on the facts of each case and if the application for invoking the powers under Section 32 of the said Act is filed, the same can be entertained within a reasonable period of three years.

5. This Court has repeatedly concluded that though reasonable period would depend upon the facts of each case,

entertaining an application under Section 32 of the said Act and causing a change in the consolidation scheme under Section 33 of the said Act, after a period of 18 years or 26 years, cannot be permitted.

6. In the instant case, the scheme of consolidation was acted upon on 20.3.1973 and the application for causing variation in the said scheme has been filed on 18.9.2014.

7. Notwithstanding the grounds raised by the litigating sides, when respondent No.2 has upset the order passed by respondent No.3, it was imperative that respondent No.2 should have itself considered whether such a variation could have been done after about 38 years.

8. Learned counsel for the respondent Nos.4 to 8 submits that an alternate remedy is available to the petitioner and relies upon the judgment of the Honourable Apex Court in the matter of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra [2015 (6) Mh.L.J. 915].

9. In the said matter, the issue under the Maharashtra Land Revenue Code was before the Apex Court. In the matter before

me, under Section 32, it is the Settlement Commissioner, who can exercise the powers to vary a scheme on the ground of error or illegality or informality. The said order is required to be passed under Section 33 of the said Act. Sections 32 and 33 are provided under Chapter IV of the said Act and Section 36 bars an appeal or revision from orders passed under Chapters II, III and IV of the said Act. Considering the effect of Section 36, the judgment in the case of Gurudassing (supra) would not assist the respondents.

10. In the light of the above, this petition is allowed and the impugned order dated 28.4.2015, passed by respondent No.2 in Appeal No.929 of 2014 is quashed and set aside with the following directions:-

(A) Appeal No.929 of 2014 is remitted to the office of respondent No.2 for primarily considering, whether the claim of the respondent Nos.4 to 8 could be entertained in the light of the delay of 38 years.

(B) The litigating sides agree to appear before respondent No.2 on 14.7.2017 at 11.00 AM, either in person or through a legal representative. Formal notices need not be issued.

(C) Respondent No.2 after giving a reasonable opportunity of hearing to the litigating sides, who would also be permitted to submit written submissions.

(D) Needless to state, Respondent No.2 shall pass a reasoned order dealing with the delay of 38 years to the said proceedings.

(RAVINDRA V. GHUGE, J.)

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