

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4682 OF 1994

Eknath Krishna Katkar and others. ... Petitioners.

V/s.

Sakharam Kondiba Katkar and others. ... Respondents.

D.S.Mhaispurkar for the petitioners.

A.I.Patel, AGP for the respondent- State.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 21st September 2017.

JUDGMENT : (PER A.S.OKA, J.)

Called out for final hearing. This petition of 1994 remained pending as the files were misplaced. At the outset, we must note here that the learned counsel appearing for the petitioner pointed out to us that an application for bringing on record the legal representatives of respondent No.2 was filed and is still pending. He pointed out that the file of the said application has not been reconstructed.

2. This petition takes an exception to the order passed by the State Government on 20th October 1994 in Revision Application filed by the first to fifth respondents for challenging the order dated 11th August 1994. The order dated 11th August 1994 has been passed by the Settlement Commissioner and Director of Land Records, Maharashtra

State. By the said order dated 11th August 1994, the Settlement Commissioner exercised the power of varying the consolidation scheme prepared under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short “the said Act”). It appears that to the proposed variation of the consolidation scheme, first to fifth respondents had raised objections. By the impugned order, the Settlement Commissioner over-ruled the said objections and confirmed variation of the scheme.

3. It is this order which was subjected to a challenge by the first to fifth respondents by filing a revision application. By the impugned order dated 20th October 1994, the State Government purported to stay the order dated 11th August 1994 passed by the Settlement Commissioner. The impugned order dated 20th October 1994 records that the revision application preferred by the first to fifth respondents and the stay application therein are pending. On 16th November 1994, rule was issued by the Division Bench of this Court and an interim relief in terms of prayer clause (b) was granted. Prayer clause (b) reads thus:

(b) that during the pendency and hearing of this Petition, the order passed by the State Government (Respondent No.6) dated 20-10-1994 granting stay and entertaining application filed by the Respondents be stayed and further the Respondent No.6 be restrained from hearing the said appeal/application.

4. The said order of interim relief continues to operate till today and, in fact, the first to fifth respondents have applied for vacating the said order.

5. The interests of parties can be protected by directing the State Government to decide the pending revision application by continuing the order of interim relief granted in this petition. The petitioners can always raise the contention before the State Government that the State Government has no power of revision and is not empowered to interfere with the order passed by the Settlement Commissioner.

6. Hence, we dispose of the petition by passing the following order:

ORDER

(1) We direct the petitioners or their representatives to remain present before the Principal Secretary of the Revenue and Forest Department on 10th October 2017 at 2.30 p.m. The petitioners shall produce before the Principal Secretary an authenticated copy of this judgment and order;

(2) If the revision application preferred by the first to fifth respondents is already disposed of, a copy of the order passed on the revision application be provided to the petitioners on the date fixed for their appearance;

(iii) If the revision application is still pending, we direct the State Government to decide the same as expeditiously as possible within three months from 10th October 2017. If the revision application is still pending, the interim relief granted by this Court on 16th November 1994 shall continue to operate till the disposal of the revision application;

- (iv) It will always be open for the petitioners to raise the contention before the State Government that the revision application is not maintainable in law and/or the State Government has no power to interfere with the order passed by the Settlement Commissioner;
- (v) If the revision application is pending, the State Government shall issue notice of the date fixed for hearing of the revision application to the first to fifteenth respondents;
- (vi) The order passed by the State Government shall be communicated to the petitioners and all other parties to the revision application;
- (vii) If the order passed on the revision application be adverse to the petitioners, the effect shall be given to the said order only after the expiry of period of six weeks from the date on which the said order is communicated to the petitioners;
- (viii) We make it clear that we have made no adjudication on the merits of the revision application preferred by the first to fifth respondents. The revision application shall be decided uninfluenced by the order granting interim relief and continuation thereof;
- (ix) Rule is partly made absolute on the above terms.
- (x) Pending civil applications do not survive and the same are disposed of accordingly.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)