IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7292 OF 2014

Dagdu Sambhu Dhane .. Petitioner
vs.
Laxman Sopan Dhane & Ors. .. Respondents

Mr. Rupesh K. Bobade for Petitioner.
Mr. Sharad Bhosale i/b. Mr. Dilip Bodake for Respondent No. 1.
Ms Vaishali Nimbalkar – AGP for State.

CORAM : M. S. SONAK, J.
DATE: 21 SEPTEMBER 2017

ORAL JUDGMENT :

1] Rule.

2] Rule returnable forthwith with the consent of and at the request of the learned counsel for the parties.

3] The challenge in this petition is to the order dated 4th March 2014, by which, the Hon'ble Minister (Revenue) in exercise of powers conferred under Section 35 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (said Act) has set aside the order made by the Assistant Consolidation Officer- 2, Solapur on 14th February 1975. There is no dispute that in this case, the respondent No. 1 filed a revision petition under Section 35 of the said Act before the Hon'ble Minister (Revenue) to challenge the order dated 14th February 1975 only on 21st November 2007. This means that the revision petition was filed after a period of almost 32 years from the date the Consolidation Officer made the order dated 14th February 1975. The Minister (Revenue), has allowed the revision petition, even though, there was no application seeking condonation of delay, which *ex facie,* was inordinate.

4] Learned counsel for the respondent No. 1 points out that there is no period of limitation prescribed in Section 35 of the said Act for institution of a revision petition. He points out that the State Government, can even *suo motu* exercise revisional jurisdiction. He further points out that in the impugned order, there are clear reasons set out as to why the revision was being entertained after 32 years. He points out that in this case the earlier order dated 14th February 1975 was made without compliance with the principles of natural justice. He points out that no notice had been issued by the Assistant Consolidation Officer to the respondent No. 1 before the order dated 14th February 1975 was issued. He points out that the respondent No. 1 came to know about this order when it was sought to be executed. He points out that the order dated 14th February 1975 is till date not sanctioned. He points out that the respondent No. 1 made application to several authorities and thereafter followed by the revision petition. He submits that there is absolutely no jurisdictional error in the making of the impugned order.

5] The circumstance that Section 35 of the said Act prescribes for no period of limitation does not mean that the revisional jurisdiction can be invoked after an inordinate delay. In the context of the very provisions, the Division Bench of this Court in the case of ***Gulabrao Bhaurao Kakade (Smt.) since deceased by his heirs and legal representatives vs. Nivrutti Krishna Bhilare & Ors***.[1] has held that even where there is no period of limitation prescribed for exercise of jurisdiction, jurisdiction has to be exercised within a reasonable period. Further, ordinarily, exercise of such powers after 3 years from the date of finalization of the scheme may not be justified. In the said case, exercise of power on the ground of error after 15 years was held to be grossly unjustified.

6] In this case, respondent No. 1, was expected at least to file an application explaining the circumstances of the delay. Further, the Minister (Revenue), was expected to afford opportunity to the petitioner to contest the explanation for the delay. Thereafter, the Minister (Revenue) could have called for the records to examine whether the explanation offered by the respondent No. 1 was

1 2001 (Supp.) Bom. C.R. 688

indeed proper. Since, it is a case of the respondent No. 1 that the earlier order dated 14th February 1975 was made in violation of principles of natural justice and without issuance of any notice to them. These are matters, which were required to be ascertained by calling for the records and not merely on the basis of statements of the parties. Nothing of this sort has been done, or, if done, reflected in the impugned order. This is a case where revisional jurisdiction has been exercised almost after 32 years. The delay, is indeed *prima facie* inordinate. Unless, there was valid explanation and further, compliance with principles of natural justice in the matter of affording opportunity to the petitioner to contest the explanation so pleaded, there was no question of exercising revisional jurisdiction in this manner.

7] Accordingly, on this ground itself and not on merits the impugned order dated 4th March 2014 is hereby set aside. The respondent No. 1 is however granted liberty to file an application explaining the delay. The matter is remanded to the Hon'ble Minister (Revenue) who shall consider such application, if made within a period of four weeks from today and first decide, whether any case is made out to entertain this revision petition after so much delay. The petitioner would be entitled to file their reply opposing the condonation of delay. The Minister (Revenue) will, having regard to the respective contentions raised by the parties, as well as upon examining the records, decide the issue of delay and only in case, the delay is to be condoned proceed to decide the revision petition on its own merits and in accordance with law.

8] Parties to appear before the Minister (Revenue) on 31^{st} October 2017, because, by then, respondent No. 1 will have made the application explaining the delay. Copy of such application shall be furnished to the petitioner as well as other respondents in the revision petition instituted by the respondent No. 1.

9] All concerned to act on basis of authenticated copy of this order.

10] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka