

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 12130 OF 2017

Balu Sonu Wagh and Ors.

....Petitioners

Vs.

Hanumanta Bhikaji Gaikwad and Ors.

....Respondents

Mr. Rahul Motkari for Petitioners

Mr. Tushar Sonawane for Respondent Nos.1 to 5

Mr. S.D. Rayrikar, AGP for Respondent Nos. 6(a) to 6(c)

CORAM : M.S. SANKLECHA, J.
MONDAY, 27TH NOVEMBER, 2017

P.C.

. Not on board. Upon mentioning, the petition is taken up on the production board.

2. This petition was scheduled to be come up today. However, it appears on curtailed list on today's board. Therefore, the application for urgent hearing was made.

3. At the request of the counsel of the parties, the petition is being disposed of at this stage.

4. This petition challenges the order dated 27th June, 2017 passed by the

Minister (Revenue), Maharashtra State, in exercise of power under section 257 of the Maharashtra Land Revenue Code, 1966 (Code) and under section 35 of the Maharashtra Prevention of Fragmentation and Consolidation Act, 1947 (the Act). The impugned order dated 27th June, 2017 has allowed the revision application of the Respondents herein from the order dated 31st August, 2016 of the Deputy Director of the Land Records.

4. The genesis of the present proceedings is an application of the Respondents in 2013 to the Superintendent of Land Records to correct the mutation entry No. 1740 in the Land Records to delete the name of the Petitioners (as recorded in 1977) and substituting it with the Respondents' name. The Superintendent of Land Records by order dated 8th June, 2014, dismissed the Respondent's application for correction of mutation entry No. 1740 in the land records as being barred on account of unjustified delay. An appeal was preferred by the Respondents from the order dated 8th June, 2014 to the Deputy Director of Land Records under Section 247 of the Code. This appeal was also dismissed by the order dated 31st August, 2016 by the Deputy Director of Land Records, Nashik on account of the gross delay in making the application for change in Mutation Entry No. 1740 of the Land Records. Being aggrieved, the Respondents preferred a revision application under

Section 257 of the Code seeking a modification of the Mutation Entry No. 1740 of the Land Records to the Minister. This application has been allowed by the impugned order dated 27th June, 2017 of the Minister.

5. The grievance of the Petitioner to the impugned order is two fold as under:

- (a) It does not advert to the fact that there has been a gross delay on the part of the Respondent in making an application for modification of Mutation Entry and also basis of the orders of the Superintendent of Land Records and Deputy Director of Land Records; and
- (b) It allows the revision application on invocation of its powers under Section 35 of the Act. This in the absence of any proceeding relating to the modification of the Scheme under the Act being before him.

6. In the above view, it is an agreed position between the parties that the impugned order dated 27th June, 2017 be quashed and set aside and the revision application filed in September, 2016 bearing Consolidation Revision No. 3016/653/P.K. 536/G-6 be restored to the Revenue Minister for fresh consideration. It is also an agreed position between the parties that in a revision under section 257 of the Code only relating to modification of Mutation Entry, the Minister could not have exercised her powers under

section 35 of the Act. The power under Section 35 of the Act, if any, has to be exercised independently and not in a revision filed by the Respondents under section 257 of the Code in respect of the mutation entry.

7. In the above view, the impugned order is set aside and the revision application of the Respondents is restored to the Minister for fresh consideration of the revision bearing Consolidation Revision No.3016/653/P.K. 546/G-6 on the basis of the application filed by the Respondents.

8. Accordingly, petition is disposed of in the above terms. No order as to costs.

[M. S. SANKLECHA, J.]