

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

WRIT PETITION NO. 9484 OF 2015

NAGAPPA NARU KURLE DIED
THROUGH LRS GURULING NAGAPPA KURLE AND OTHERS
VERSUS
THE SUPRITENDENT OF LAND RECORDS AND OTHERS

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Advocate for the Petitioners : Shri S.A.Wakure
AGP for Respondent No.1 : Shri S.K.Tambe
Advocate for Respondent Nos. 5B, C : Shri R. K. Ashtekar

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 06th JULY, 2018.**

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PER COURT :

1. I have heard the learned Advocates for the respective sides and the learned AGP on behalf of respondent No.1.

2. The petitioners are aggrieved by the order dated 16/03/2015 and 15/06/2015, by which, the learned District Superintendent of Land Records, Osmanabad, has disposed off the applications filed by these petitioners on the basis of a circular dated 17/03/2004 issued by the Consolidation Commissioner and Director of Land Records, State of Maharashtra, in view of the judicial mandate of this Court in

the matter of *Gunda Tuka Shinde Vs. Pandharinath Shinde*, (1991(1)Mh.L.J.669), by which, this Court has concluded that the correction in the consolidation schemes should not be permitted beyond permissible period of limitation.

3. The learned Advocate for the petitioners has strenuously canvassed that his applications were disposed off without hearing him and without considering his contention about delay.

4. When called upon to submit as to where has he pleaded in the memo of the petition as regards the date of the cause of action, the period of delay and the reasons for condonation of such delay, it is submitted that no such pleadings are putforth in the petition.

5. When called upon to state as to which is the consolidation scheme which the petitioners desire that should be corrected, it is submitted that there are no pleadings in the memo of the petition.

6. When called upon to point out as to what are the pleadings in the memo of the petition which would convince this Court that the issue of delay deserves to be gone into, it is submitted that there are no such pleadings on record.

7. The petitioners have failed to state the details about the consolidation scheme that was brought into effect under Section 32 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

8. The learned Advocate submits that the petitioners have nowhere stated in the memo of the petition that they have contended in the Appeal that was filed on 03/03/2015 before the Superintendent of Land Records, Osmanabad, that the correction is being sought in the consolidation scheme that was settled on 05/12/1969. However, he insists that his pleadings in the memo of the Appeal dated 03/03/2015 may be considered.

9. The learned AGP as well as the learned Advocate for the respondent individuals, submit that from 1969 till 2015, a

period of 46 years, these petitioners have been cultivating their lands which have come to their share. For 46 years, they have not raised any objection or grievance about the consolidation scheme. It is after 46 years that the correction in the consolidation scheme is being sought on the ground that proper notice was not issued to these petitioners, the notice was not affixed in the village Chawdi or a conspicuous part of the grampanchayat or village locality. As such, making of pot hissa and other ROR record is made "*in a hazardous and fictitious manner*", and hence certain mutation entries have to be set aside and by setting aside the mutation entries, the consolidation scheme will also have to be quashed.

10. Considering the above, I called upon the learned Advocate for the petitioners to make his submissions as to what are the grounds, on the basis of which the delay of 46 years pursuant to the consolidation scheme, can be condoned. The only argument that is advanced on the basis of the memo of the Appeal preferred before the Superintendent of Land Records, Osmanabad is that the Measuring Authority has not distributed the land as per the quality, quantity and fertility.

Which portion is Bagayat or which is a Jirayat portion and which portion of the land can be termed as being a fertile black cotton soil, has not been considered. The consolidation scheme has been settled "*As per the whims and vagabonds of Measuring Authority, hence it is worthily to be cancelled*" (reproduced verbatim).

11. In ***Gunda Tuka Vs. Pandharinath Shinde*** (*supra*), a complaint was lodged for seeking an amendment to the scheme formulated by the Settlement Commissioner after 2 years of such formalisation. The learned Division Bench of this Court concluded that objections cannot be made after the period set out under Section 19(1) of the Act has expired. The application seeking correction after the parties have chosen the blocks with open eyes, cannot be entertained. It was held that the Settlement Commissioner was not justified in correcting the scheme by exercising his power under Section 32 on the ground of equalization of the areas coming to the shares of the respective litigants.

12. In the case in hand, these petitioners have cultivated

their shares for the last 46 years without any murmur. After 46 years, a grievance is being made. The circular dated 17/03/2004 is in the light of the judgment of this Court in *Gunda Tuka Shinde (Supra)*. Limitation prescribed under Section 19(1) of the Act is held to cover the acts of the Settlement Commissioner.

13. With this factual matrix before this Court, I do not find that the impugned orders based on the law settled by this Court and the contentions of the parties, could be termed as being perverse or erroneous. This petition, being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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