

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11816 OF 2016
AND
CIVIL APPLICATION NO. 577 OF 2018
WITH
CIVIL APPLICATION NO. 11807 OF 2017

1. Jalindar Sadashiv Hirde,
Age 56 years, Occ. Agriculture,
R/o Hirdu Mala, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.

2. Sahebrao Sadashiv Hirde,
Age 50 years, Occ. Agriculture,
R/o as above.

3. Sow. Ashadevi Sunil Pare
Age 46 years, Occ. Agriculture,
R/o as above.

4. Sow. Hirabai Dattatraya Hirde
Age 62 years, Occ. Agriculture,
R/o as above.

5. Sanjay Dagdu Hirde
Age 48 years, Occ. Agriculture,
R/o as above.

6. Dhananjay Dagdu Hirde
Age 44 years, Occ. Agriculture,
R/o as above.

7. Smt. Tanabai Dagdu Hirde,
Age 67 years, Occ. Agriculture,
R/o as above.

8. Sunil Devidas Pare
Age 57 years, Occ. Agriculture,
R/o as above.

9. Ashok Dattatraya Hirde
Age 34 years, Occ. Agriculture,
R/o as above.

10. Dashrath Dattatraya Hirde
Age 41 years, Occ. Agriculture,
R/o as above.

..Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.

2. The Deputy Director of
Land Records, Nasik Division,
Nasik.

3. The District Superintendent of
Land Records, Ahmednagar.

4. The Dy. Superintendent of Land
Records, Shrigonda, Tq.Shrigonda,
Dist. Ahmednagar.

5. Ashru Babu Bhole
Age 90 years, Occ. Agriculture,
r/o Bholewasti, Shrigonda,
Dist. Ahmednagar, through GPA.

..Respondents

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Advocate for Petitioners : Shri A.V. Indrale Patil
AGP for Respondents 1 to 4 : Shri S.K.Tambe
Advocate for Respondent 5 : Shri V.D.Hon, Sr. Adv.
i/b Shri A.V. Hon

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 02, 2018

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ORAL JUDGMENT:-

1. While considering the submissions of the learned Advocates
for the respective sides on the Civil Application, the learned

Advocates have stated that the petition itself could be heard at this stage, since this Court has passed an order on 2.11.2017, thereby admitting the Writ Petition and granting interim relief as per paragraph Nos.5 and 6, set out in the said order.

2. In the above backdrop, I have considered the submissions of the learned Advocates on the Writ Petition itself by taking it up for final hearing by consent.

3. Though Shri Patil, learned Advocate for the petitioners, learned AGP on behalf of respondent Nos.1 to 4 and Shri Hon, the learned Sr. Advocate on behalf of respondent No.5, have canvassed their submissions in extenso, I find that only two issues have been raised in this petition for my consideration, which are as under:-

(a) Whether Section 31A of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, which does not prescribe any limitation, would permit a competent authority to entertain an application for modification in the scheme beyond a particular period?

(b) Whether, it would be the Settlement Commissioner alone who could have the authority to exercise powers under Section 31A of the said Act?

4. On both the above counts, the issue is no longer *res integra*. This Court in the matter of Limbraj Waman Yede Vs. State of Maharashtra [2004 (4) BCR 945], has concluded that as amongst the revenue officers, it would only be the Settlement Commissioner, who can exercise his powers under Section 31-A, considering the provision under Section 32 of the said Act. The conclusions drawn by this Court in paragraph Nos.10 to 12 of the Limbraj's case (supra), read as under:-

"10. If there is any clerical or arithmetical mistake in the consolidation scheme by virtue of section 31-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the Act of 1947), the Settlement Commissioner has authority to correct the clerical or arithmetical mistakes in the consolidation scheme. No authority except the Settlement Commissioner has power to remove the defect arising on account of any clerical or arithmetical mistake including accidental slip or omission. Section 32 of the Act of 1947 imposes power on the Settlement Commissioner to make necessary corrections in consolidation scheme in respect of an error other than that referred to in section 31-A of the Act of 1947. In that regard, the Settlement Commissioner is required to publish a draft of such variation shall state every amendment proposed to be made in the scheme. Within one month from the date of publication of draft variation scheme, the persons so affected shall communicate in writing objection to such variation to the Settlement Commissioner. After receipt of the

objections Settlement Commissioner is required to hold enquiry as deemed fit and make necessary variation with or without modification. If the scheme is varied under sub-section (3) of section 32 of the Act of 1947, a notification stating that the scheme has been varied, shall be published in Official Gazette and the scheme so varied shall be published in the prescribed manner in the village or village concerned.

On plain reading of sections 31-A and 32 of the Act of 1947, it is clear that power of correction and variation is vested in the Settlement Commissioner and none else. Having examined the correctness of the impugned order in the light of sections 31-A and 32 of the Act of 1947, I am constrained to hold that the respondent No. 2 has no lawful authority to make corrections in the consolidation scheme. The respondents Nos. 2 and 3 have acted beyond their jurisdiction. The respondent No. 2, particularly acting on the suggestions made by respondent No. 3, passed impugned order which suffers from illegality.

11. In the case of (Gulabrao Kakade v. Nivrutti Krishna Bhilare)¹, 2001(Supp.) Bom.C.R. 688 : 2001(4) Mh.L.J. 31, Division Bench of this Court has elaborately considered the scope of jurisdiction of Settlement Commissioner under section 32 of the Act of 1947. There is no time limit prescribed under section 32(1) of the Act of 1947 for the Settlement Commissioner to vary the scheme. In the said case, the consolidation scheme was finalised in the year 1973 and the proceedings for correction of the scheme was initiated in the year 1988. This Court held that exercise of powers by Settlement Commissioner for variation of scheme which has come into force in the year 1973 by initiating proceedings in

the year 1988, cannot be said to be within a reasonable time.

12. The Settlement Commissioner has power of correction as well as to make suitable variation in the scheme after following due procedure laid down in the Act of 1947. In the instant case, the respondent No. 4 did not move the Settlement Commissioner for correction of clerical or arithmetical mistakes in consolidation scheme. The respondent No. 4 has also not moved the Settlement Commissioner for suitable variation in the scheme on account of an error other than that referred to in section 31-A of the Act of 1947. The respondent No. 4 moved the respondent No. 2 and the respondent No. 2, without any lawful authority, has made corrections in the record and varied the scheme. The action of the respondent No. 2 is, therefore, not only arbitrary but illegal."

5. It is, therefore, obvious that besides the Settlement Commissioner, the proceedings under Section 31-A cannot be entertained by any other Revenue Officer. In the instant case, the consolidation scheme has been settled in 1970. Respondent No.5 has moved the Deputy Director of Land Records, Nasik Division, Nasik by making an application on 9.2.2013, which is after 43 years. Though he has invoked Section 247 of the Maharashtra Land Revenue Code 1966, it is apparent that the said authority cannot usurp the powers of the Settlement Commissioner under the 1947 Act for interfering with or correcting or modifying a Consolidation

Scheme under Section 31A. The said proceedings were entertained by the authority, which was legally incompetent to do so. As such, on the first issue, the petitioners succeed.

6. In so far as the second issue pertaining to limitation is concerned, it requires no debate that Section 31-A does not prescribe any limitation. However, the learned Division Bench of this Court in the matter of Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhilare and others [2001 (4) Mah. L.J. 31], has concluded that after taking into account the various provisions of the 1947 Act, a prayer for correction in the scheme only to be done by the Settlement Commissioner, can be permitted within a reasonable period. While dealing with the facts in the Gulabrao's case (supra), it was concluded that when the consolidation scheme was finalized in 1973, ordinarily, exercising the power under Section 31-A, after three years, may not be permissible and justified under Section 32. It was, therefore, held, on the facts, that the Settlement Scheme of 1973 cannot be disturbed in 1988, notwithstanding whether it suffers any clerical or arithmetical errors.

7. The observations of the learned Division Bench in the case of Gulabrao (supra), in paragraph Nos. 6 & 7, read as under:-

"6. The power given to the Settlement Commissioner for variation of the scheme is on account of an error other than that referred to in section 31A, irregularity or informality after following the procedure prescribed. Though there is no time limit prescribed under Section 32(1) for the Settlement Commissioner to vary the scheme which has come into force, but obviously even in the absence of any period prescribed under section 32, the said power can only be exercised within reasonable period in any case. What would be the reasonable period for exercise of power under Section 32(1) by the Settlement Commissioner may depend on facts and circumstances of each case and we do not intend to lay down any specific period for exercise of that power by Settlement Commissioner but ordinarily exercise of such power after three years of finalisation of scheme under section 22 may not be Justified. In the facts and circumstances of the present case, the exercise of power by Settlement Commissioner for variation of scheme which has come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within reasonable time. The fact is and that is not disputed that the earlier scheme was finalised in the year 1973 under the Act of 1947 to the knowledge of all the parties concerned. Nobody was aggrieved by the said scheme finalised under the Act of 1947 and the scheme came into force under section 22. The said scheme which had been finalised in accordance with law and came into force and continued to be in force, could not have been unsettled by initiating the proceedings for variation under section 32 on the purported ground of error, irregularity or informality after a lapse of about 15 years. Thus, the exercise of power by Settlement Commissioner under section 32 for

variation of the scheme in the facts and circumstances of the present case is grossly unjustified.

7. *Even we find that the procedure contemplated for variation of scheme under Section 32(1) of the Act of 1947 and the Rules framed thereunder viz. The Bombay Prevention of Fragmentation & Consolidation of Holdings Rules. 1959 (for short "Rules of 1959") has also not been followed. The original petitioner in paragraph 7 of the writ petition set up the specific case that no notice of the proposed variation was given nor any opportunity of hearing was afforded before passing any order adverse to him and that the procedure as contemplated in law has not been followed. In response to the said averment made in the writ petition, in the affidavit in reply, the respondent Nos. 3 to 5 have stated that the variation proposal accepted by the Settlement Commissioner was sent to the Consolidation Officer for publication vide letter dated 26.9.1988 and was so informed to the original petitioner and all concerned and objections were called for. The Consolidation Officer, Pune caused the publication of the scheme through the Talathi in the village by beat of drum on 14.10.1988 and on Taluka Notice Board on 21.10.1988 and since no objections were received within a stipulated period of 30 days. Settlement Commissioner confirmed and varied the scheme on 2.1.1989."*

8. In the instant case, the Scheme was settled in 1970. Though I am not dealing with the issue of the Sale Deed, since the sale deeds have not been challenged for the past about 62 years, it is brought to my notice that the father of respondent No.5 / Babu Bhole was the

predecessor-in-title of the land at issue. After his demise, respondent No.5, who is about 92 years of age today, sold the said land by a registered sale deed dated 17.7.1966 to the predecessor-in-title of the petitioners, namely, Mahadu Savitra, Kesu Savitra, Sada Savitra and Dagadu Kesu. Another sale deed was executed by the uncle of respondent No.5 on 17.1.1957. Thereafter, these parties got the possession of the said land and since then, the L.Rs. are now in possession of the said property. What is intended by respondent No.5 after 57 years of the sale deed and after 43 years of the consolidation scheme is that the name of the L.Rs. of Mahadu and others be replaced by the name of respondent No.5, ignoring the sale deeds, on the plea of correcting an arithmetical and clerical mistake.

9. In the light of the above, this petition is allowed in terms of prayer clause "C" and "D", which read as under:-

"(C) By issuing writ of certiorari or any other appropriate writ, order or directions the impugned judgment and order dated 9.11.2016 passed by the Honourable State Revenue Minister, Maharashtra State, Mantralaya, Mumbai in Revision bearing Case No. Conso/3316/2561/No.120/J-6 be quashed and set aside. Consequently revision petition preferred by the petitioners be allowed and for that purpose necessary directions be issued.

(D) Pending the admission hearing and final disposal of this writ petition, the order dated 9.11.2016 passed by the Honourable State Revenue Minister, Maharashtra State, Mantralaya, Mumbai in Revision bearing Case No. Conso/3316/2561/No.120/J-6 and order dated 17.10.2014, passed by the respondent no.2 Deputy Director of Land Record Nasik Division, Nasik (Exh.G), consequent corrigendum issued by the respondent no.3 District Superintendent of Land Record, Ahmednagar dated 9.11.2014 (at Exh.I) thereby effecting the change and amendment to the consolidation scheme as regards to land bearing Gut No.1149 (Survey No.531/1) and land Gut No.1144 (Survey No.531/2) situated at Shrigonda, Tq. Shrigonda, Dist. Ahmednagar and be stayed and for that purpose necessary directions be issued."

10. The Civil Applications stand disposed off since the contentions raised therein by the respondents have been considered while deciding this petition.

(RAVINDRA V. GHUGE, J.)

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