

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6299 OF 2016

Shanta Ashok Hake & Anr. .. Petitioners
Vs.
Birudeo Haibati Chougule & Ors. .. Respondents

Ms.Anjali R.S. Baxi for the petitioners.
Mr.Sandesh D. Patil for the respondent no.4.
Mr.S.D.Rayrikar, AGP for the respondent nos.6 to 8.

CORAM : R.D. DHANUKA, J.
DATE : 7th June 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 21st May 2015 passed by the Secretary Revenue and Forest Department, Mantralaya rejecting the application filed by the petitioners.

2. It is the case of the petitioners that The petitioners are the legal heirs of the Rajaram Chougule. The Gat No.120, Gat No.160 at Mauje Pimplewadi and Gat No.868 at Agran Dhulgaon, Tal.Kavathe Mahankal, District Sangli were owned by Bhau Chougule. Rajaram and Haibati are the legal heirs and representatives of Bhau Chougule. Both were having ½ share each.

3. The Consolidation Scheme of the said village was approved on 10th November 1973. It is the case of the petitioners that after Rajaram Chougule died, an application was made by the petitioners for correction of Gat numbers in the consolidation scheme sanctioned on 10th November 1973. The concerned authority by an order dated 24th June 1981 rejected the said application on the ground that the said application was not made within 30 days.

2. Prior to 15th October 2005, the petitioners appear to have made representation to the Deputy Director of Land Record, Pune. By an order dated 5th September 2006, the learned Deputy Director of Land Record referred to the letter dated 15th October 2015 from the City Survey Officer and allowed the application and conveyed the said decision to the Superintendent of Land Records.

3. The respondent no.4 and others challenged the said order before the Secretary and Special Executive Officer. The learned Secretary and Special Executive Officer passed an order dated 21st May 2015 allowed the said appeal filed by the respondent no.4 and others on various grounds.

4. Learned counsel appearing for the petitioners invited my attention to various annexures to the writ petition and would submit that the learned Appellate Authority did not consider the application annexed at Exhibit 'C' properly and erroneously came to the conclusion that the said application was made belatedly by the petitioners. She submits that the said application was made in the year 1982.

5. Mr.Patil, learned counsel appearing for the respondent no.4, on the other hand, submits that the application made by the legal heirs of Rajaram Chougule was rejected in the year 1981 itself on the ground that the same was not made within 30 days. The petitioners thereafter did not pursue any application for challenging the said order. He invited my attention to the letter/order dated 5th September 2006 issued by the Deputy Director of the Land Revenue, Pune from the Superintendent of Land Records modifying the scheme without any basis. He also invited my attention to the order dated 21st May 2015 passed by the Secretary and Special Executive Officer allowing the revision application filed by the respondent no.4 and others allowing the revision filed by them after following the principles of law laid down by the Supreme Court in several judgments. He submitted that in this case, after 1981, there was no fresh application made by the petitioners within a reasonable period

of time. The so called application, if any, was made made in the year 2005 which was after 32 years of sanction of consolidated scheme and thus the Deputy Director of Land Record could not have modified the sanctioned consolidated scheme.

6. Learned counsel for the respondent no.4 placed reliance on the judgment of this Court in the case of ***Gulabrao Bhauro Kakade, (since deceased) by his heirs and legal representatives & Ors. Vs.Nivrutti Krishna Bhilare & Ors. reported in 2001 (4) Mh.L.J. 31*** holding that the application made by the petitioners after 15 years for modification of the consolidated scheme was not considered as made within a reasonable time and thus could not have been modified. He submits that the principles of law laid down by this Court has been followed in several matters by this Court.

7. In so far as the submission of the learned counsel for the petitioners that the application was made in the year 1981 is concerned, the learned counsel invited my attention to the said application alleged to have been made by the petitioners and would submit that the said copy annexed to the petition neither carry any date nor any acknowledgement. The document on the basis of which the learned Deputy Director of Land

Record appears to have modified the sanctioned consolidated scheme was in the year 2005 which was after 35 years of the date of sanctioned consolidated scheme.

8. A perusal of the record indicates that there is no dispute that the consolidated scheme was approved on 10th November 1973. The application made by the legal heirs of Rajaram Chougule for modification of the scheme came to be rejected in the year 1981 itself by an order dated 24th June 1981. Even if the argument of the learned counsel for the petitioner is accepted that the said communication dated 24th June 1981 was only a letter and not an order, the fact remains that by the said letter, the learned authority had made it clear that since the application was not made within 30 days, complaint of the petitioners could not be entertained. The petitioners did not challenge the said so called communication till date.

9. In so far as the submission of the learned counsel for the petitioners that the petitioners have made an application in the year 1982 also for modification of the consolidated scheme is concerned, letter annexed to the petition does not indicate any date or acknowledgement thereon, of the City Survey Officer who is empowered to pass an order

of modification of the entire consolidated scheme under the provisions of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947 and more particularly under Section 32 thereof. I am thus not inclined to accept the submission of the learned counsel for the petitioners that any such application was made by the petitioners in the year 1982 and prior to year 2005.

10. A perusal of the order passed by the Deputy Director of Land Record indicates that the Deputy Director has modified the scheme without any basis and without following the provisions of the said Act. A perusal of the said order indicates that in the said order, the learned authority failed to consider the principles of law laid down by this Court in the case of ***Gulabrao Bhaurao Kakade (since deceased) by his heirs and legal representatives & Ors. (supra)*** and also several other judgments of this Court. The judgment of the Division Bench of this Court squarely applies to the facts of this case. I am respectfully bound by the said judgment.

11. In this case, the application, if any, for consolidated scheme was made after 32 years that also after rejection of similar application made in the year 1981 and thus cannot be considered as made within

reasonable time for modification of the consolidated scheme. I do not find any infirmity with the impugned order passed by the authority. The said order is well reasoned order and does not show any perversity. In my view, the petition is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.