

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

WRIT PETITION NO. 1931 OF 2015

ANIRUDH NAMDEO DUDILE
VERSUS
SOPAN NIVRUTTI DUDILE AND OTHERS

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Advocate for the Petitioner : Shri V. D. Gunale
Advocate for Respondent No.1 : Shri Ram S. Shinde
h/f. Shri B. M. Dhanure
AGP for Respondent Nos.10 and 11 : Shri S.R. Yadav -
Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 06th DECEMBER, 2019

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PER COURT :

1. Considering that Respondent No.1 has issued a vakilpatra to learned Advocate Shri Shinde to appear on his behalf, Shri Dhanure learned Advocate submits that his appearance may be discharged. His appearance is, therefore, discharged from this proceeding.

2. On 25/02/2015, this Court had passed the following order :-

“ 1. The petitioner is aggrieved by the impugned order dated 08-01-2015 passed by the Deputy

Director of Land Records, Aurangabad in Appeal SR.-947 of 2014.

2. The petitioner was aggrieved by the order dated 22-10-2014 passed by the District Superintendent of Land Records, Latur under Section 32 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. The appeal filed before the Deputy Director of Land Records was under Section 247 of the Maharashtra Land Revenue Code, 1966. By the impugned order dated 08-01-2015, the appeal is held to be untenable.

3. Section 36 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, clearly indicates that no appeal or revision shall lie from any order under Chapter II, III and IV of this Act. It is not in dispute that Section 32 of this Act falls under chapter IV. It, therefore, prima-facie appears tht appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 was not

maintainable.

4. Shri Gunale, learned Advocate prays for two weeks time to address the Court on this issue.”

3. All the Respondents have been served. Shri Shinde has caused an appearance on behalf of Respondent No.1, who is the original applicant and contesting respondent. The learned AGP has appeared on behalf of Respondent Nos. 10 and 11.

4. The Petitioner is aggrieved by the order dated 22/10/2014 passed by the District Superintendent of Land Records, Respondent No. 10, by which, he has directed the Deputy Superintendent of Land Records, Chakur to measure Survey No. 49 by issuing appropriate notices and submit a report under Section 32(1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

5. The grievance of the Petitioner is that the consolidation scheme was formalized in 1985. For the

first time, on 15/01/2014, Respondent No.1 has raised a grievance as regards the holdings of land. Though the District Superintendent of Land Records is now authorized to exercise jurisdiction as a Settlement Commissioner, he could not have exercised jurisdiction under Section 32 after 29 years.

6. The learned Advocate for Respondent No.1 / original applicant strenuously submits that the Settlement Commissioner has simply directed the measurement of the said survey number so as to find out whether there was any defect on account of an error or irregularity or informality in the said consolidation scheme. Thereafter, he would decide whether circumstances warrant any interference and cause a change for which the draft variation would be published and within one month of such publication, any affected person would raise an objection in writing.

7. The learned AGP submits that the act does not prescribe any limitation under Section 32, though

there are reported judgments which indicate that such variation should not occur after a long duration since it would cause a change in the holdings which is likely to disturb the agriculturists, who have settled in their holdings.

8. Shri Gunale relies upon the following judgments :-

1) *Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhillare and Ors., 2001(4) Mh.L.J. 31.*

2) *Gunda Tuka Shinde Vs. Pandharinath Ramrao Shinde and Anr., 1991 Mh.L.J. 669,*

3) *Dattu Appa Patil and others Vs. State of Maharashtra and others, 2006 (6) ALL MR 421 : 2006 (6) BCR 246.*

4) *Vyankat s/o Nagnath Sabde and others Vs. Namdeo Nivruti Gume, Writ Petition No. 1936/2015, decided on 17/11/2015. (Aurangabad Bench).*

5) *Champabai Piraji Sonawane Vs. State of Maharashtra and others, 2010(5) ALL MR 336.*

9. He contends that the law laid down in the above referred reports is that though there is no time limit prescribed for variation, a variation after a long period should not be permitted.

10. Considering the above, I find that it would be appropriate for Respondent No. 1 to move an application before the said authority under Section 32 making out circumstances as regards the period of 29 years that has lapsed after the consolidation scheme was formalized and explain as to why the competent authority should cause indulgence and initiate the proceedings.

11. The learned Advocate for Respondent No.1 submits that if this Court directs, he would prefer an application setting out the circumstances and after hearing the parties, Respondent No.10 can decide as to whether the procedure laid down under Section 32, deserves to be followed for initiating the variation proceedings.

12. In view of the above, this petition is partly allowed. *Insofar* as the proceedings under Section 247 of the MLR Code 1966 are concerned, the said authority has rightly concluded vide the impugned order dated 08/01/2015 that the said proceedings are not maintainable. Consequentially, the Petitioner and Respondent No. 1 shall appear before Respondent No.10 on 20/12/2019 at 03.00 p.m. If the other Respondent Nos. 2 to 9 in Appeal No. SR.-49/2014 have not appeared, Respondent No.10 would issue notices to the said respondents. The original applicant Sopan shall move an application setting out the circumstances as to why Respondent No.10 should initiate proceedings under Section 32, after 29 years. After hearing all the litigating sides, Respondent No. 10 shall decide the said application on its own merits.

13. Until then, the impugned order dated 22/10/2014 shall be kept in abeyance. If Respondent No. 10 concludes that the circumstances warrant initiation of the proceedings under Section 32, the said order

dated 22/10/2014 shall come into operation.

14. Needless to state, all the parties would be at liberty to take recourse to a remedy as may be permissible in law.

(RAVINDRA V. GHUGE, J.)

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