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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6620 OF 2017

Sambhaji Datty Sandge (since deceased)
through LRs.

...Petitioners.

V/s.

Pandharinath Yashwant Sandge & Ors.

..Respondents.

Mr.Umesh Mankapure for the petitioners.

Mr.S.B.Deshmukh i/b. Pramod Khathane for respondent Nos.1(A)
to 1(F).

Mr.R.P.Kadam, AGP for respondent Nos.2 & 3.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 10, 2019

P.C.:-

Heard respective counsel.

2. One Sakharam having three sons namely, Yashwant, Daddu and Dattu left for heavenly abode on November 14, 1941. The land to the extent of 12.33 gunthas which was held by Sakharam, fell to the share of all the three legal heirs. However, the name of elder son Yashwant came to be mutated in 1947 over the entire property.

3. In 1973-74 the consolidation scheme was impleaded

under section 19(1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('the Act' for short) and the entire property stood mutated in the name of Daddu and Dattu.

4. The said mutation entry was noticed by the petitioners, who happened to be legal heirs of Yashwant. Respondents moved the authority i.e. the District Deputy Superintendent of Land Record for carrying out appropriate correction. The District Deputy Superintendent of Land Records vide order dated December 13, 2013 informed the petitioners that the said application moved by the petitioners were referred to the Deputy Superintendent of Land Record, Palus. The Deputy Superintendent of Land Record submitted a report dated April 22, 2014 which speaks of recommendation of the payer of the respondents for carrying out appropriate correction in the revenue entries. The District Director of Land Records based on the aforesaid report submitted a further report to the Deputy Director of Land Record, Pune Region, Pune thereby recommending appropriate correction.

5. It appears that the District Superintendent of Land Records vide a communication dated March 24, 2015 informed the

petitioners that after the proposed consolidation scheme was published pursuant to the provisions of Section 19(1) of the Act, the respondents have not raised an objection thereto as such, the application for correction moved by the respondents was referred to the State Government. The State Government in exercise of the powers under section 35 of the Act has passed the order impugned on August 20, 2015 thereby cancellation the earlier mutation entry No.18993 to the extent of the share of the respondents and further cancelling the mutation entry Nos.18722, 18791 and 19264 and directed the Deputy Superintendent of Land Record to carry out appropriate correction in the mutation entries recorded pursuant to the consolidation scheme as was implemented in 1973-74. As such, this petition.

6. The submission of learned counsel for the petitioners are, Yashwant, the father of the respondents was serving in the police department at Mumbai, who on April 18, 1949 transferred 18 Aar land out of the total holdings. According to him, Yashwant appears to have relinquished his right in question and there was oral partition between Daddu and Dattu. According to him, the said oral partition took place some time prior to the consolidation

scheme was implemented i.e. 1973-74. In the aforesaid backdrop while questioning the order impugned, learned counsel would rely upon the provisions of sections 32, 35 and 36 of the Act so as to claim that the State Government has no power in the matter to order cancellation of the mutation entries. Learned counsel would urge that powers are exercised by the State Government at a much belated stage i.e. after a period of almost 30 years and in absence of any prayer for condonation of delay, he would urge that the proceedings ought not to have been entertained. Learned counsel would place reliance on the Division Bench judgment of this Court in the matter of *Gulabrao Bhaurao Kakade since deceased by L.R.s and others V/s. Nivrutti Krishna Bhilare and others*¹ so as to substantiate his claim of limitation of three years. Learned counsel then would invite attention of this Court to the provisions of section 32 of the Act and by placing reliance upon the Division Bench judgment of this Court in the matter of *Mallappa Guruppa Chaugule V/s. Padmanna Omannu Sajane and others*² would urge that there is a vast difference in the requirement when the powers under sections 32 and 31A of the Act can be exercised. According

1 2001(4) Mh.L.J. 31

2 1980 Mh.L.J. 377

to him, powers under section 32 of the Act can be exercised in case if the scheme is noticed to be defective and on account of an error occurred other than one referred to in section 31A of the Act. He submits that section 31A prescribes for invoking of powers for correcting clerical or arithmetical mistake. According to him, wrong mutation in the name of the petitioners or his predecessor since is not a clerical mistake, the powers under section 31A of the Act ought not to have been exercised in the case in hand.

7. The next limb of submission of learned counsel for the petitioner is, in the case in hand, the order impugned is passed by the State Government thereby cancelling mutation entries in favour of the petitioners. Relying on the language of sections 35 and 36 of the Act, he submits that the State Government is not armed with the jurisdiction to pass the order impugned. As such, according to him, the petition is liable to be allowed.

8. *Per contra*, learned counsel for the respondents supported the order impugned. According to him, having regard to the factual matrix of the case in hand, a reference made by the Deputy Superintendent of Land Record to the State Government, powers are exercised by the State Government in accordance with

the provisions of section 31A of the Act, having regard to the scope of sections 31A of the Act. He sought dismissal.

9. Appreciated the rival submissions.

10. What is required to be noticed is, the relationship between the parties, common ancestor Sakharam and predecessor of the present respondents, namely Yashwant being brothers of Daddu and Dattu i.e. the petitioners is not in dispute. It is also borne out from the record that the entire property after the death of Sakharam on November 14, 1941 are mutated in the name of Yashwant being Karta.

11. The transfer of the property by Yashwant to the extent of 18 Aar on April 18, 1949 is not disputed by the respondents and the same is based on documentary evidence.

12. The case of the petitioners is, Yashwant was since serving in police department, he had relinquished his share and there was oral partition between Daddu and Dattu.

13. So far as the aforesaid theory is concerned, the same cannot be derived from any of the documentary or oral evidence on record.

14. The fact that after the death of Sakharam and before

the implementation of the consolidation scheme i.e. in 1973-74, the name of deceased Yashwant was recorded in the record of rights is not a fact in dispute.

15. After the scheme was implemented pursuant to the provisions of section 19(1) of the Act, the name of Yashwant disappeared from the revenue record.

16. It is this mistake which prompted the respondents to move before the District Superintendent of Land Record for appropriate correction in the revenue record for correction of error committed while implementing the consolidation scheme in question.

17. The respondents approached the District Superintendent of Land Record in accordance with the provisions of section 31A of the Act. Since the plea by the petitioners of relinquishment was not established, there was no justifiable reason for deletion of the name of Yashwant from the record. The report of the Deputy Superintendent of Land Record which was called on an application for correction moved under section 31A of the Act by the respondents-landlord in voluminous terms recommends the case for correction in exercise of powers under section 31A of the

Act. The petitioners are also unable to establish their defence for justifying the revenue entries based on the plea of oral partition.

18. It is no doubt true that while exercising power under section 32 of the Act, the statute does not prescribe for any limitation, however, reasonable period within which said powers can be exercised as per a judicial verdict is three years. However, while exercising power under section 31A of the Act there is no prescribed limitation either under the statute or otherwise and that being so, the power under section 31A can be exercised by the authority once it is brought to its notice that because of accidental slip or omission, an error has occurred.

19. It appears that since the District Superintendent of Land Record submitted a positive report in favour of the respondents to the Deputy Director of Land Record, Pune Region, Pune recommending exercise of power under section 31A of the Act. Said authority was prompted to refer the matter to the State Government with recommendation of the Deputy Superintendent of Land Record and the report of the Deputy Director of Land Record, Pune Region, Pune. The State Government, as such has proceeded to exercise power under section 31A of the Act for

ordering the correction in the revenue record.

20. The nature of mistake as was noticed by the authorities / State Government while exercising power under 31A of the Act is, for justifiable reason. The name Yashwant was removed after the consolidation scheme was to be implemented, from the record. At-least no proceedings are initiated for removal of the name or such removal of the name of Yashwant is justified based on any documentary evidence. The aforesaid fact has prompted the State Government to consider the nature of correction as was sought. As an accidental slip or omission was noticed by the State Government, order impugned came to be passed thereby considering the mutation entry in the name of the respondents.

21. So far as the contentions of the petitioners that the power under section 35 cannot be exercised by the State Government, if appreciated, the fact remains that the respondents initially approached the District Deputy Superintendent of Land Record, who in turn has referred the matter to the Deputy Director of Land Record, Pune Region, Pune at regional level. It is pursuant to this reference, the State Government passed the order impugned. That being so, having regard to the language of section

35, the order impugned cannot be termed as without jurisdiction.

22. Apart from above, once accidental slip or omission is noticed by the authorities, the authorities can, pursuant to the provisions of section 35A, order correction in the record.

23. In the aforesaid background, I hardly notice any substance in the petition. The petition fails and is dismissed.

24. Even though the petition is dismissed, the same will not preclude the petitioners from taking out a civil proceedings. If such civil proceedings are taken out by any of the parties, the same be decided by the competent Civil Court without being influenced by the findings recorded herein.

(NITIN W.SAMBRE, J.)