

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

WRIT PETITION NO. 7569 OF 2019

Gajanan Prabhakar Kumbhar & Ors. ... Petitioners.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr. Manoj Patil, Advocate a/w. Nitin Rajguru, Advocate
for the Petitioners.

Mr.A.B.Kadam, AGP for the State-Respondent Nos.1 to 6.

Mr.S.S.Prabhune, Advocate for Respondent Nos. 7 to 10.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 07, 2019.

PC :

1 Heard Mr. Manoj Patil, learned counsel for the
Petitioners; Mr. A.B. Kadam, learned AGP for the State;
and Mr. S.S. Prabhune, learned counsel for Respondent
Nos. 7 to 9.

2 This case was heard on 15.10.2019 and today
is fixed for delivery of order. Accordingly, order is
dictated in the open court.

3 By filing this Petition under Article 227 of the Constitution of India, Petitioners seek quashing of the order dated 29.05.2019 passed by Respondent No. 2 - Hon'ble Minister for Revenue, allowing the Revision Application filed by Respondent Nos. 7 to 9.

4 Because of a series of sale transactions, the facts appear to be quite cumbersome. However, reference will be made only to those facts which are considered to be relevant for adjudicating the challenge made.

5 The land in question forms a part of the land covered by original survey no.271/A, which was purchased by one Shri Vishnu Sane from one Shri Balbhim Shankarrao Patil vide registered sale deed dated 01.03.1962. Portion of the said land was ultimately purchased by Petitioner Nos. 1 and 2 by registered sale deed dated 29.11.2004, where after names of Petitioner Nos. 1 and 2 came to be recorded in the record of rights vide Mutation Entry No. 673.

6 Side by side another portion of the said land was sold by Shri Dharmaraj Nemchand Gandhi to Suyog Electricals & Engineers through its partners Anilkumar Nemchand Shah and Navinchandra Motilal

Kothari vide registered sale deed dated 07.10.1974. Dharmaraj Nemchand Gandhi sold his remaining plot of land also to Anilkumar Nemchand Shah vide registered sale deed dated 10.07.1980; where after name of Anilkumar Nemchand Shah came to be recorded in the revenue record vide Mutation Entry No. 1103.

7 Thereafter, Suyog Electricals & Engineers through Navinchandra Motilal Kothari made an application for deletion of the name of Suyog Electricals & Engineers in the record of all the properties and instead to enter the names of the partners. Following such application, Tahasildar of Indapur recorded the names of the partners in the land record.

8 Anilkumar Nemchand Shah died on 03.10.2004 and after his death names of Petitioner Nos. 3 and 4, being the legal heirs, came to be recorded in the record of rights vide Mutation Entry No. 693.

9 At this stage, it may be mentioned that in terms of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, a Consolidation

Scheme was framed and sanctioned in the year 1973, which covered the land in question.

10 Petitioners submitted applications dated 04.08.2009 and 13.08.2009 before the Taluka Inspector of Land Records, raising objections to the sanctioned Consolidation Scheme and seeking correction. The District Superintendent of Land Records, Pune passed order dated 17.10.2011, accepting the objections raised by the Petitioners and allowed corrections in the land record pertaining to the land in question covered by the Consolidation Scheme.

11 Aggrieved by the said order dated 17.10.2011, Respondent Nos. 7 to 9 presented Revision Application before Respondent No.2 which was registered as RTS No. 3418 of 1702/P.K.229/J-5. By order dated 29.05.2019 Respondent No. 2 allowed the Revision Application and cancelled the order dated 17.10.2011 passed by the District Superintendent of Land Records, Pune.

12 Aggrieved, present writ petition has been filed.

13 This court by order dated 28.08.2019 had directed the parties to maintain status-quo till the next date, which order has been continued.

14 Learned counsel for the Petitioners has assailed the order passed by Respondent No.2, allowing the Revision, by contending that the Revision Application was filed very belatedly, five years after the order dated 17.10.2011. Though a delay condonation application was filed, Respondent No.2 without condoning the delay in preferring the Revision Application, decided the Revision on merit. Further contention is that such Revision Application is not maintainable under section 36 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

15 Per contra, learned AGP as well as learned counsel for Respondent Nos. 7 to 9 have supported the impugned order passed by Respondent No.2, allowing the Revision Application. Their contention is that the District Superintendent of Land Records could not have corrected the Consolidation Scheme of 1973 in the year 2011 i.e. after 38 years. Therefore, Respondent No. 2 had rightly interfered with the order dated 17.10.2011.

16 Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record.

17 Perusal of the impugned order dated 29.05.2019 would go to show that Respondent No.2 had taken a view that Petitioners had challenged the Consolidation Scheme before the District Superintendent of Land Records after 38 years. Interference with the Consolidation Scheme after 38 years was found to be not justified and accordingly such interference vide order dated 17.10.2011 was set aside.

18 The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (called earlier as the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947), hereinafter referred to as the Act, has been enacted to prevent fragmentation of agricultural land holdings and to provide for consolidation of the agricultural land holdings for the purpose of better cultivation thereof.

18.1 Chapter 3 of the said Act deals with the procedure for consolidation. Section 15 provides that the object of consolidation of land holdings in any

village, mahal, taluka or tahsil, or any part thereof is for the purpose of better cultivation of lands therein. The State Government may on its own motion or on an application made in that behalf declare by a notification in the official gazette and by publication in the prescribed manner in the village or villages concerned, its intention to make a scheme for the consolidation of holdings in such village or villages or part thereof as may be specified. On such publication in the village or villages concerned, the State Government may appoint a Consolidation Officer who shall proceed to prepare a scheme for the consolidation of holdings.

18.2 While section 19 deals with preparation of draft scheme and of amended draft scheme, Section 20 provides for confirmation of draft scheme or amended draft scheme whereas section 21 provides for enforcement of such scheme including the procedure and time line.

18.3 As per section 31-A, if after a scheme has come into force, it appears to the Settlement Commissioner that the scheme is defective on account of any clerical or arithmetical mistake or error arising therein from any accidental slip or omission, and he is satisfied that the correction of such mistake or error

would not vary the scheme in any material particular, he may by order in writing correct such mistake or error and publish his order in the prescribed manner. Settlement Commissioner is defined under section 2(9c)

18.4 Similarly, under section 32 (1), if after a scheme has come into force, it appears to the Settlement Commissioner that the scheme is defective on account of an error, other than that referred to in section 31-A, to remove the irregularity or informality, the Settlement Commissioner shall publish a draft of such variation in the prescribed manner. The draft variation shall state every amendment proposed to be made in the scheme. Thereafter, the procedure is laid down in the following sub-sections regarding correction or variation to be made in the Scheme.

19 In **Gulabrao Bhaurao Kakade (Smt.) since deceased vs. Nivrutti Krishna Bhilare**, reported in 2001 (Supp.) Bom. C.R.688, a Division Bench of this court, referred to the provisions contained in section 32 of the Act and observed that 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 even in the absence of any period

prescribed under section 32, the said power can only be exercised within a reasonable period. Elaborating further, the Division Bench opined that though the reasonable period for exercise of power under section 32(1) may depend upon facts and circumstances of each case but ordinarily exercise of such power after three years of finalization of scheme under section 22 may not be justified.

19.1 This decision has since been followed in subsequent judgments of this court, including in the case of **Jalindar Sadashiv Hirde vs. State of Maharashtra**, reported in 2018 (4) Mh.L.J. 200.

20 On the other hand, it may be mentioned that following an amendment, limitation for filing revision application has now been extended to five years. Therefore, to contend that the revision application was delayed by five years would not be correct. However, having said that, it is evident that the Revisional Authority had interfered with the order dated 17.10.2011 only on the ground of delay without examining whether there was any justification for making variation in the Consolidation Scheme after 38 years which is permissible under both sections 31-A and 32(1) of the Act.

21 Therefore, in my considered opinion, both the orders suffer from illegality and infirmity, requiring interference. In the facts and circumstances of the case, court is of the view that Respondent No.5 i.e. District Superintendent of Land Records, Indapur, Dist. Pune, is required to re-consider the application of the Petitioners for correction in the Consolidation Scheme in accordance with law and after giving opportunity of hearing to Respondent Nos. 7 to 9.

22 Consequently and in the light of the above, both orders dated 29.05.2019 and 17.10.2011 are set aside. The matter is remanded back to the District Superintendent of Land Records, Indapur, Pune for deciding afresh, the objections filed by the Petitioners dated 04.08.2009 and 13.08.2009 in accordance with law after giving due opportunity of hearing to Respondent Nos. 7 to 9, keeping in mind the legal provisions, as discussed above. Let such decision be taken within a period of three months from the date of receipt of an authenticated copy of this order.

23 Since the parties are before the court, let them appear before the District Superintendent on 03.12.2019 at 10.30 am..

24 Till the matter is re-decided by the District Superintendent as above, status-quo order passed by this court earlier will hold the field.

25 Writ Petition is disposed of in the above terms.

(UJJAL BHUYAN, J.)

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