

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION 3815 OF 1998

- 1) Santosh s/o Punjaram Pakhare,
- 2) Ambadas s/o Yeshwant Pakhare,
- 3) Govind s/o Ambadas Pakhare,
- 4) Punjaram s/o Ambadas Pakhare

Above all age: Major, occu: Agril
r/o village Gondegaon, Tq. And
District : Jalna

Petitioners

versus

- 1) Vinayak s/o Sampatrao Wagh,
- 2) Sudam s/o Ananda Wagh,
- 3) Smt. Shaila Ganesh Wagh,
- 4) Balasaheb Sampat Wagh,
- 5) Manikrao Sampatrao Wagh,
- 6) Uttamrao Karbhari Wagh,

Above all Age – major,
occupation – Agril,
r/o village Gondegaon,
Tq. & District – Jalna.

- 7 The State of Maharashtra
through Secretary & Officer
on special duty, Revenue &
Forest Department, Govt. of
Maharashtra, Mantralaya, Mumbai

- 8 The Deputy Director of
Land Records, Aurangabad
Division, at Aurangabad

Respondents.

Mr. P.V. Mandlik, Sr. Counsel i/b Mr. A.S. Gandhi advocate for
petitioners

Mr. R.S. Dhamangaonkar advocate for respondents No.1 to 6

Mr. N.T. Bhagat, Assistant Govt. Pleader for respondents No.7 &

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CORAM: ROHIT BABAN DEO, J.Date: FEBRUARY 13th, 2020

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ORAL JUDGMENT

1 The petitioners assail the order dated 26.6.1998 rendered by the State Government whereby the revision preferred by the respondents challenging the order dated 29.6.1996 rendered by the Deputy Director of Land Records, Aurangabad is allowed.

2 The revision is purportedly entertained under section 257 of the Maharashtra Land Revenue Code 1966 (Code). The short submission of the learned senior counsel Shri P.V. Mandlik appearing on behalf of the petitioners is that the revisional order impugned suffers from a jurisdictional error. The learned senior counsel Mr. Mandlik would invite my attention to provisions of section 36 of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947 (Act for short) which read thus:-

" 36. Except as provided in this Act, no appeal or revision application shall lie from any order passed under Chapter II, III of IV of this Act. "

3 The learned senior counsel would submit that irrefutably the order which was challenged in the revision is an order invoking the provisions of section 31-A which is part of statutory scheme of chapter IV of the Act. The submission is that neither appeal, nor revision is maintainable against any order passed under Chapter IV.

4 It is not in dispute that the order which is set aside in revision is issued in exercise of powers under section 31-A of the Act. A clerical error in the consolidation scheme is purportedly corrected. In this view of the matter, the said order is not amenable to revision, in view of unambiguous provisions of section 36 of the Act.

5 The revisional authority committed a jurisdictional error in purportedly invoking the provisions of section 257 of MLR Code. The Act is a special enactment and in view of the bar incorporated under section 36, an order under the Act could not have been set aside in purported exercise of powers under section 257 of the MLR Code.

6 Without intending to make any observation on the merits of the contentions, the petition is allowed.

7 The order impugned is set aside.

8 Every contention raised in the petition and in rebuttal, except the contention based on the provisions of section 36 of the Act, is kept extremely open.

9 Rule is made absolute in the above stated terms.

10 Pending Civil Application stands disposed of.

(ROHIT BABAN DEO, J)