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

24 WRIT PETITION NO. 3887 OF 2019

1. Kisan Bhimrao Patil,
Age. 71 years, Occ. Agri.,
R/o. Sawargaon,
Taluka Shirur Anantpal,
District Latur.

2. Venkatrao S/o. Bhimrao Patil,
Age. 65 years, Occ. Agri.,
R/o. As above.

3. Madhukar S/o. Bhimrao Patil,
Age. 63 years, Occ. Agri.,
R/o. As above. ...Petitioners.

Versus

1. The State of Maharashtra.

2. The Deputy Director of Land Records,
Aurangabad Region, Aurangabad.

3. The District Superintendent,
Land Records, Latur, Taluka and
District Latur.

4. The Deputy Superintendent,
Land Records, Latur, Shirur Anantpal,
Taluka Shirur Anantpal,
District Latur.

5. Sidram S/o. Lachreddy Algule,
Age. 56 years, Occ. Agri.,
R/o. At Post Hipalgaon,
Taluka Shirur Anantpal,
District Latur. ...Respondents.

Advocate Mr. V.P. Golewar for Petitioners.

AGP Mr. S.N. Morampalle for Respondent Nos. 1 to 4.
Advocate Mr. S.S. Panale for Respondent No. 5.

CORAM : MANGESH S. PATIL, J.
Reserved on 19.10.2020
Pronounced on 26.10.2020

Judgment :

Heard. Rule. The Rule is made returnable forthwith. With the consent of all the parties, the matter is heard finally at the stage of admission.

2. The question that is to be answered in this Writ Petition under Article 226 and 227 of the Constitution of India is as to whether in the facts and circumstances, the Settlement Commissioner should have ordered variation of the scheme under the provisions of Section 32 the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1948 (herein after 'the Consolidation Act').

3. The facts as are essential for decision of the Writ Petition may be summarized as under :

For the purpose of consolidation of lands in the village Savargaon, Taluka Shirur Anantpal, District Latur, a survey was carried out in the year 1970-71. The Scheme under Section 21 of the Act was finalized on 31.03.1990. The petitioners' father, the predecessor of the respondent No. 5

Pandharinath Tulshiram Shelke and few other persons were the owners in possession of different portions of the land Survey No. 1. According to the Scheme, the different portions from Survey No. 1 were allotted Gat numbers as follows :

Survey No.	Hissa No.	Area Hectare.Are	Gat No.	Holders
1	1	3.26	1	Bhimrao Madhavrao Patil
	2	1.22	2	Pandharinath Tulshiram Shelke
	3 4/A 5/A	1.26 0.42 4.45	3	Umakant Vaijnath Murudkar - 8 - Ramakant Vaijnath Murudkar - 8 -
	Total	2.13		
	4/B	0.60	9	Madhukar Vyankoba Hale
	5/B	0.40		
	Total	1.00		
	Total Sum	**7.61**		

4. Under a registered sale deed dated 24.07.1974, respondent No. 4, who was then a minor through his mother guardian, purchased a portion of land admeasuring 1 Hectares 51 Ares from Pandharinath Tulshiram Shelke. However, no steps were taken to mutate his name in place of Pandharinath Tulshiram Shelke in the revenue record. Consequently, in spite of such transfer during finalization of the Scheme name of Pandharinath was shown

as the owner of the portion as is mentioned herein above in the chart to 1 Hectare 22 Ares portion only.

5. The respondent No. 4 raised an objection on 20.04.2005 by submitting an application to the office of the Land Records by presenting a copy of the sale deed. The Taluka Inspector of Land Records, Nilanga, carried out measurement of the Gat Nos. 1 & 2 on 23.03.2007 and submitted a report to the District Superintendent of Land Records (Respondent No. 3) suggesting that there was no error in the Scheme that was finalized and requested to dispose of the grievance of respondent No. 5 in accordance with the Government Circular dated 17.03.2004.

6. The respondent No. 5 once again applied to the respondent No. 3 who allowed his application by the order dated 31.03.2012. Pursuant to such order for remeasurement passed by the respondent No. 3, another measurement was undertaken by the surveyor on 27.05.2012 of lands Gat Nos. 1, 2, 3 and 9. In the end, the respondent No. 3 submitted a proposal to respondent No. 2 (Settlement Commissioner) proposing modification in the Scheme as contemplated under Section 32 of the Consolidation Act. The petitioners raised objection to the proposed variation by submitting objection petitions on 12.02.2016 and 25.02.2016. The respondent No. 2 by the

impugned order dated 03.08.2017, allowed the objections raised by the petitioners and refused to approve the proposed variation. The respondent No. 5 challenged the Order before the State under Section 257 of the Maharashtra Land Revenue Code, 1966. By the impugned judgment and order, the learned State Minister (Revenue) allowed the Revision, quashed and set aside the order of the respondent No. 2 and directed the latter to undertake a fresh enquiry and to correct the record of Gat No. 2 belonging to the respondent No. 5. Hence this petition.

7. The learned Advocate Mr. Golewar submitted that there was no error, irregularity or infirmity in the Scheme that was approved under Section 21. Though the petitioners' father, Pandharinath Tulshiram Shelke and few other persons were the owners of different portions of the land Survey No. 1, only a portion admeasuring 1 Hectare 22 Ares was recorded in the revenue record of Hissa No. 2 belonging to Pandharinath Tulshiram Shelke. Since the revenue record was in that form and neither Pandharinath having raised any objection to the draft Scheme, by Mutation Entry No. 118, name of Pandharinath was mutated only to a portion admeasuring 1 Hectare 22 Ares and accordingly, the Scheme was finalized. Though the respondent No. 5 purchased a land admeasuring 1 Hectare 51 Ares from Pandharinath, on the date of the sale deed, the revenue record merely showed 1 Hectare 22 Ares land in the name

of Pandharinath. The respondent No. 4 never made any attempt to mutate his name pursuant to such sale deed for years together and has sought to vary the scheme by taking steps after long span of 13 years.

8. By referring to the catena of judgments of this Court, the learned Advocate Mr. Golewar would submit that the Settlement Commissioner can exercise the powers under Section 32 only within the reasonable time. Apparently there was no reason and justification for him to have approved such variation after lapse of 13 years. There was no error committed by him in refusing to approve the variation and had rightly rejected the objection of the respondent No. 5. In spite of there being no sufficient ground to cause any interference in the revision, the learned Minister by the impugned order has set aside the order of the respondent No. 2. There is no discussion about the ground and the reasons for arriving at the conclusion and therefore, this Court should intervene under the writ jurisdiction.

9. The learned Advocate for the respondent No. 5 vehemently submitted that there was a glaring error which was apparent on the face of the record which could have enabled the respondent No. 2 - Settlement Commissioner to vary the Scheme under Section 32. He would submit that the Scheme that was finalized under Section 21 was clearly an eye wash. He would submit

that the 7/12 record of the Land Survey No. 1 for number of years prior to the year 1970-1971 consistently, shows that a portion admeasuring 3 Acres 31 Guntha was standing in the name of predecessor of the respondent No. 5 Pandharinath. He would further point out that even there is an entry to show that Pandharinath's name was recorded by virtue of a Mutation Entry No. 26. He adverted my attention to the copy of such 7/12 extract of several years prior to 1970-1971. The learned Advocate also demonstrated as to how the name of the petitioner's predecessor was recorded to the portion admeasuring only 2 Acres 85 Ares for all these years. The learned Advocate, therefore, submitted that the respondent No. 5 having purchased a portion admeasuring 1 Hectare 51 Ares under the registered sale deed dated 24.07.1974 from Pandharinath, his claim and right cannot be allowed to be defeated merely because of his lapse in not initiating the steps for, firstly, getting his name mutated in the revenue record, and secondly, in raising objection to the Scheme which was finalized.

10. The learned Advocate would further submit that the Gunakar book in Hissa Form No. 4 also duly recorded the holdings of each of the land holders from Survey No. 1 (Exhibit R 1) showing that the land of the plaintiffs bearing Gat No. 1 is only to the extent of 2 Hectares 96 Ares and the land of the respondent No. 5 bearing Gat No. 2 corresponding to Hissa No. 2 of Survey

No. 1 admeasures 1 Hectare 52 Ares. He would further point out that this is a photocopy of the original record and bears signatures of all the petitioners, respondent No. 5 and one more holder of land Gat No. 3.

11. The learned Advocate also pointed out that the lapse of the respondent No. 5 in not taking urgent steps also will have to be looked at from another angle. He would point that soon after purchasing the land from Pandharinath in the year 1974, a Mutation Entry No. 50 was duly effected on 27.07.1974 and was even approved on 22.04.1976 as can be seen from the copy of that Mutation Entry produced along with the petition (Exhibit 'C' colly). Even this Mutation Entry, gives effect to the sale of the property purchased by the respondent No. 5 as 3 Acres 30 Gunthas. Though the mutation was certified in the year 1976 when consolidation scheme was not finalized, cognizance thereof could have been taken by the surveyors particularly when the Scheme was finalized in the year 1990. The learned advocate, therefore, submitted that the old revenue record clearly demonstrates that Pandharinath was the owner of a portion admeasuring 3 Acres 30 Gunthas. The respondent No. 5 has purchased this entire portion and even a Mutation Entry No. 50 was certified in the year 1976. Conversely the petitioners' father was shown to be the owner of only 7 Acres 2 Gunthas Portion (2 Hectares 85 Ares) for the years prior to 1970-1971, rightful claim of the respondent No. 5 could not

have been allowed to be defeated. The respondent No. 2 - Settlement Commissioner had not given any plausible reason for refusing to intervene and approved the variation proposed by respondent No. 3.

12. Referring to the decisions cited on behalf of the petitioners, the learned Advocate for the respondent No. 5 would submit that there cannot be any dispute as to the law laid down in these decisions. However, he would point out that as laid down in the case of **G.B. Kakade Since Deceased Through His Heirs And Legal Representatives and Others Versus Nivrutti Krishna Bhillare and Others; 2001 Volume 103 (Bombay LR 664)**, there is no time limit fixed for exercising the powers by the Settlement Commissioner under Section 32. The learned Advocate Mr. Panale, therefore, submitted that the claim of respondent No. 5 cannot be allowed to be hampered on sheer technicalities and the petitioners cannot be allowed to unjustly enrich.

13. I have carefully gone through the papers and the impugned order as well as the order passed by the Settlement Commissioner respondent No. 2. Taking a stock of the situation there is an enough material to clearly demonstrate that the actual holdings of the representative share holders when the Scheme was approved could not have been as mentioned in the chart reproduced herein above. One cannot lose sight of the fact that for several

years prior to the year 1970-1971, before effecting Mutation Entry No. 118, the land standing in the name of petitioners' father was to the extent of 7 Acres 2 Gunthas whereas the land standing in the name of Pandharinath was 3 Acres 31 Gunthas. The petitioners' father's land was having Survey No. 1 Hissa No. 1 - A, whereas that of Pandharinath was Survey No. 1 Hissa No. 1 / B2. This can be substantiated by the 7/12 record of the earlier years.

14. There can be no dispute about the fact that the respondent No. 5 purchased a 3 Acres 30 Gunthas portion from Pandharinath under a registered sale deed dated 24.07.1974. There is also record showing that by Mutation Entry No. 50 which was prepared in the year 1974 and certified in the year 1976. Name of respondent No. 5 should have been recorded in the 7/12 record immediately. For whatever reasons, in spite of such certification of Mutation Entry No. 50, neither the respondent No. 5 nor the revenue authorities took steps for giving effect to such mutation. Admittedly, for the purpose of original Scheme the measurements were carried out in the year 1970-1971, but the scheme was approved and finalized in the year 1990. It is also evident that during the course of finalization of the original Scheme, only a portion admeasuring 1 Hectare 22 Ares was shown to be belonging to Pandharinath and was allotted Gat No. 2. But simply on the basis of such sporadic entry one cannot allow the right, title and interest of the respondent

No. 5 over land admeasuring 3 Acres 30 Gunthas (1 Hectare 51 Are) to be defeated.

15. Conversely, the revenue record that is 7/12 record of the year prior by 1971-1972 clearly demonstrates that the petitioners' father Bhimrao was the owner of only a portion admeasuring 7 Acres 2 Gunthas (2 Hectares 85 Ares). Order passed by the respondent No. 2 - Settlement Commissioner at no place demonstrates as to how and why the extent of the holdings of Bhimrao and Pandharinath could have changed only while carrying out measurement on the basis of which the original Scheme was finalized under Section 21. He seems to have swayed away by the fact that the respondent No. 5 had sought variation of the scheme after lapse of 13 years. Though he has stated that there were no notices issued to the adjoining owners when measurements were again carried out during the process of variation, a copy of the statement of the petitioners dated 27.05.2012 produced by the respondent No. 5 along with his affidavit-in-reply clearly demonstrates that the petitioners specifically admitted that a fresh measurement was carried out according to the position of the respective holders of Gat Nos. 1, 2, 3 and 9 and even consented for the variation. There is no reference to this statement in the order passed by the respondent No. 2 - Settlement Commissioner which was challenged before the State.

16. The learned Advocate for the petitioner Mr. Golewar vehemently argued that the signatures on this statement are forged one. However, he could not demonstrate if any such argument was made before the respondent No. 2 - Settlement Commissioner.

17. This takes me to the decisions of this Court :

(1) Gunda Tuka Shinde since by his heir Bajirao Tukaram Shinde Vs. Pandharinath Ramrao Shinde and another, 1991 Mh.L.J. 669,

(2) Gulabrao Bhaurao Kakade, since deceased by his heirs and legal representatives and others Vs. Nivrutti Krishna Ehilare and others, 2001 Vol. 103(2) Bom. L.R. 664,

(3) Mallappa Guruppa Chaugule Vs. Padmanna Omanna Sajane and others, 1980 Mh.L.J. 377,

(4) Dattu Appa Patil and others Vs. State of Maharashtra and others, 2007 (1) Mh.L.J. 393,

As can be seen, in case of Gunda Tuka Shinde (supra) it has been specifically laid down that there is no time limit prescribed for variation of the Scheme under Section 32 (1) of the Consolidation Act. Though in that matter and the other matters as well, it has been laid down that such variation should be done within the reasonable time, it has also been laid down that what is a reasonable time would depend upon the facts and circumstances of each case. In the matter in hand, in my considered view, the respondent No. 5 alone was not responsible for the delay of 13 years. After having purchased the land in the year 1974, Mutation Entry No. 50 was duly certified in the year 1976 for giving effect to such transfer. For the reasons best known to the revenue authorities, it was not actually implemented. Resultantly, the original scheme which was approved in the year 1990 perpetuated the error. If the revenue authorities would have been prompt, there would not have been any occasion for respondent No. 5 to apply for variation of the Scheme. Be that as it may, in the peculiar facts and circumstances, in my considered view, the delay of 13 years can reasonably be explained.

18. It is thus apparent that though there was a lapse on the part of respondent No. 5, in not promptly raising any objection on the Scheme that was approved, in the facts and circumstances, a plausible view was taken by the learned Minister by the impugned order in finally recognizing the right, title and interest of the respondent No. 5 over a portion admeasuring 1 Hectare 51 Are. True it is that the learned Minister has not elaborately discussed the material but when the judgment and order passed by the respondent No. 2 - Settlement Commissioner is palpably perverse and arbitrary, when except the petitioners, no other sharers from the original land

Survey No. 1 has raised any objection about their respective share holdings, the impugned decision of the learned Minister being a plausible view, this court cannot intervene in exercise of the writ jurisdiction.

19. The Writ Petition is dismissed. Rule is discharged.

(MANGESH S. PATIL, J.)

S.P.C.