

Amberkar (PS)

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

WRIT PETITION NO.8390 OF 2019

Shri. Shahaji Nivrutti Gaikwad .. Petitioner

Versus

Shripati Rangrao Chavan
(since deceased)

Through his heirs and LRs.

1.1 Shushila Shripati Chavan & Ors .. Respondents

WITH

WRIT PETITION NO.8342 OF 2019

Shri. Ramchandra Mahadev Devang .. Petitioner

Versus

Shripati Rangrao Chavan
(since deceased)

Through his heirs and LRs.

1.1 Shushila Shripati Chavan & Ors .. Respondents

WITH

WRIT PETITION NO.8661 OF 2019

Shri. Baburao Ramchandra Toraskar .. Petitioner

Versus

Shripati Rangrao Chavan
(since deceased)

Through his heirs and LRs.

1.1 Shushila Shripati Chavan & Ors .. Respondents

**WITH
WRIT PETITION NO.9519 OF 2019**

Shri. Ramchandra Shripati Dhekane
and Anr. .. Petitioners

Versus

Shripati Rangrao Chavan
(since deceased)
Through his heirs and LRs.
1.1 Shushila Shripati Chavan & Ors .. Respondents

**WITH
WRIT PETITION (St.) NO.13805 OF 2019**

Shri. Sanjay Maruti Patil .. Petitioner

Versus

Shripati Rangrao Chavan
(since deceased)
Through his heirs and LRs.
1.1 Shushila Shripati Chavan & Ors .. Respondents

**WITH
WRIT PETITION (St.) NO.13807 OF 2019**

Maharashtra Nagri Co-operative .. Petitioner
Patsanstha, Ltd. Kotoli

Versus

Shripati Rangrao Chavan
(since deceased)
Through his heirs and LRs.
1.1 Shushila Shripati Chavan & Ors .. Respondents

WITH
WRIT PETITION (St.) NO.13810 OF 2019

Shri. Jaydeep Anandrao Naik and Anr. .. Petitioners

Versus

Shripati Rangrao Chavan
(since deceased)

Through his heirs and LRs.

1.1 Shushila Shripati Chavan & Ors .. Respondents

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- Mr. Chetan G. Patil a/w. Mr. Ruturaj Pawar and Mr. M.G. Bagkar, Advocate for Petitioners in all the Writ Petitions.
- Mr. Datta H. Pawar, Advocate for Respondent No.1.1 to 1.3 in all the Writ Petitions.
- Mr. P.P. Pujari, A.G.P. for Respondent Nos.3 & 4 in W.P. No.8390 of 2019.
- Mr. S.D. Rayrikar, A.G.P. for Respondent Nos.4 & 5 in W.P. No.8342 of 2019.
- Ms. M.S.Bane, A.G.P. for Respondent Nos.3 & 4 in W.P. No.8661 of 2019
- Mr. A.R. Metkari, A.G.P. for Respondent Nos.3 & 4 in W.P. No.9519 of 2019.
- Mr. Y.D. Patil, A.G.P. for Respondent Nos.3 & 4 in W.P. (St.) No.13805 of 2019.
- Mr. A.B. Kadam, A.G.P. for Respondent Nos.3 & 4 in W.P. (St.) No. 13807 of 2019.
- Mr. N.C. Walimbe, A.G.P. for Respondent Nos.3 & 4 in W.P. (St.) No.13810 of 2019.

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CORAM : MILIND N. JADHAV, J.

RESERVED ON : 26th February, 2020.

PRONOUNCED ON : 2nd JULY, 2020.

JUDGMENT:

1. Rule.

2. Rule is made returnable forthwith.
3. Heard finally with consent of the parties.
4. The present judgment will dispose of the aforesaid seven petitions.

5. Learned counsel appearing for the petitioners in the aforesaid seven petitions is the same, however, the petitioners are different persons / entities. The principal contesting respondent Nos. 1.1 to 1.3 in all the aforesaid seven petitions are also the same. Original respondent No. 1 Shripati Rangrao Chavan has expired. His legal heirs are contesting the aforesaid petitions. Learned AGPs as indicated in the cause title above have appeared for respondent No. 3 i.e. Additional Commissioner, Pune Division, Pune and respondent No. 4 i.e Sub Divisional Officer, Panhala Sub Division, District Kolhapur respectively in the aforesaid petitions.

6. On 24.2.2020, both the parties. viz; the petitioners and contesting respondents were heard and arguments were not concluded. Learned counsel

appearing for the contesting respondents sought time to obtain appropriate instructions in respect of the status of the pending appeal from civil suit proceedings and the status of notice under Section 6(2) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "**said Act**"). The matter was adjourned to 26.2.2020 on which date the contesting respondents tendered a fresh affidavit placing on record the status of the pendency of the appeal from civil suit proceedings between the parties and concluded the arguments.

7. The facts in respect of all petitions are identical. For the sake of convenience, the facts in Writ Petition No. 8390 of 2019 are stated herein under.

8. The challenge in the writ petitions is to the concurrent orders dated 31.1.2018 passed by respondent No. 4 - Sub Divisional Officer, Panhala Sub Division, Dist. Kolhapur and order dated 21.2.2019 passed by respondent No. 3 - Additional Commissioner, Pune Division, Pune in the

proceedings initiated by respondent No. 2 under the said Act in respect of various properties. In Writ Petition (st) No. 13807 of 2019, the order passed by respondent No. 4 is dated 15.2.2018. Save and except this difference and the areas of the various properties, the rest of the facts are identical.

9. In writ petition No. 8390 of 2019, the relevant facts, briefly stated, are as under:-

- (a) Respondent No. 2 namely Yeshwant Babu Chavan, since deceased and represented by his legal heirs, vide registered sale deed dated 21.12.1998 sold and conveyed the property bearing Gat No. 132 admeasuring 0.02 R situated at Mouje Punal, Taluka Panhala, Dist. Kolhapur to the petitioner;
- (b) Pursuant to the above sale deed, the name of the petitioner was mutated and entered into in the revenue records and 7/12 extract pertaining to the above property;

- (c) After a period of 19 years, respondent No. 1 - Shripati Rangrao Chavan, since deceased and represented by his legal heirs namely respondent Nos. 1.1 to 1.3, filed application in the year 2017 before Respondent No. 4 under the provisions of Section 31 of the said Act seeking cancellation of the sale deed as being illegal and violative of the provisions of the said Act;
- (d) By order dated 31.1.2018, respondent No.4 allowed the original application and declared the aforesaid sale deed to be illegal in terms of the provisions of Section 9 of the said Act;
- (e) The petitioner, being aggrieved, preferred a revision application No. 64/2018 under Section 35 of the said Act before respondent No. 3;
- (f) By order dated 21.2.2019, respondent No. 3 dismissed the revision application and confirmed the order dated 31.1.2018 passed by respondent No. 4;

(g) Both the above orders are under challenge by the petitioner in the present petition.

10. To complete the facts and narrative in respect of the other petitions, the details are indicated in the following chart:-

Sr. No.	WP No.	Name of the Petitioner	Property	Area	Sale Deed Dated	Details of proceedings in Courts
1.	8390/19	Shahaji Nivrutti Gaikwad	Gat No. 132 situated at Mouje Punal, Taluka Panhala, Dist. Kolhapur.	0.02 R	21.12.1998	Order dated 21.2.2019 in Revision Application No. 64 of 2018 Order dated 31.1.2018 in Application No.100 of 2017
2	8342/19	Ramchandra Mahadev Devang	As Above.	0.02 R	03.06.2002	Order dated 21.2.2019 in Revision Application No. 66 of 2018 Order dated 31.1.2018 in Application No.102 of 2017
3	8661/19	Baburao Ramchandra Toraskar	As Above	0.12 R	04.06.1993	Order dated 21.2.2019 in Revision Application No. 63 of 2018 Order dated 31.1.2018 in Application No.107 of 2017
4	9519/19	Ramchandra Shripati Dhekane & Anr.	As Above	0.02 R	15.12.1998	Order dated 21.2.2019 in Revision Application No. 58 of 2018 Order dated 31.1.2018 in Application No.101 of 2017
5	(st) 13807/19	Maharashtra Nagri Co-Op. Patsanstha Ltd, Kotoli	As Above	0.02 R	17.03.2003	Order dated 21.2.2019 in Revision Application No. 118 of 2018 Order dated 15.2.2018 in Application No.106 of 2017
6	(st) 13810/19	Jaydeep Anandrao Naik	As Above	0.02 R	21.12.1998	Order dated 21.2.2019 in Revision Application No. 65 of 2018 Order dated 31.1.2018 in Application No.105 of 2017
7	(st) 13805/19	Sanjay Maruti Patil	As Above	0.02 R	12.12.2001	Order dated 21.2.2019 in Revision Application No. 67 of

						2018 Order dated 31.1.2018 in Application No.197 of 2017
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11. At the outset, it may be stated that respondent Nos. 1.1 to 1.3 i.e legal heirs of deceased respondent No. 1 filed civil suit bearing RCS No. 41/2017 for seeking partition and possession of original Gat No. 132 against the petitioner and others after a period of almost 19 years from the date of execution of registered sale deed dated 21.12.1998. This suit came to be dismissed by the Civil Court on 20.9.2017. The appeal in RCA No. 313/2017 against the judgment of dismissal of the suit is pending before the District Judge, Kolhapur.

12. Mr. Patil, learned counsel appearing on behalf of the petitioners submitted that due to the dismissal of the civil suit by the Civil Court, respondent Nos. 1.1 to 1.3 filed the original application after almost 19 years before respondent No. 4 under the provisions of Section 31 of the said Act for cancellation of the sale deed. He submitted that respondent No. 4 ought not to have entertained the original application as the same was not made within a reasonable period and there was gross delay of 19 years

after the date of execution of the registered sale deed. He submitted that in allowing the revision application and upholding the revision application, respondent No. 3 had acted contrary to his order dated 26.11.2018 passed in another similarly placed revision application No. 59/2018. He submitted that in revision application No. 59/2018, there was a delay of 12 years in filing the revision application and the same came to be dismissed on the ground that application under Section 31 of the said Act could not be entertained after a lapse of 12 years. He submitted that the Presiding Officer i.e respondent No. 3 in revision application No. 59/2018 and in the present case, was the same and thus, a contrary stand was adopted by respondent No. 3 in the present case without appropriate reasons for condoning the delay and laches. He submitted that restrictions on alienation of the property as contemplated under Section 31 of the said Act are applicable only when the property which is alienated is a "holding" allotted under the provisions of the said Act. He submitted that the subject property in question which was sold and conveyed by respondent No. 2 to the petitioner

has not been classified as a "fragment" or "holding" allotted to respondent No. 2 under the provisions of the said Act and hence, restriction as contemplated under Section 31 cannot be attracted to the present case. He submitted that the provisions of the said Act contemplated determination of the standard area and issuance of notice under Section 6 of the said Act to the holder. He submitted that the original application was devoid of material evidence of the subject property being a "holding" as contemplated under Section 6 of the said Act and as to the description of the standard area in the subject property under the said Act. He submitted that jurisdiction to decide the legality and validity of the registered sale deed of conveyance falls within the exclusive jurisdiction of the civil court and in such a case, if the subject property has not been classified as a "fragment" or "holding" under Section 6 of the said Act, the revenue authorities, viz; respondent Nos. 3 and 4 lacked jurisdiction to cancel the registered sale deed. In support of his submissions, learned counsel for the petitioners referred to and relied upon the following decisions:-

1. Putalabai Lakhu Pawar Vs. Shiva Dhondi Pawar¹;
2. Valjibhai Jagjivanbhai Vs. State of Gujarat²;
3. Order of Civil Judge, J.D. Kheriwade (unreported case);
4. Order of Civil Judge, J.D. ; Kheriwade, Panhala (unreported case).

12.1 In the case of **Putalabai Lakhu Pawar** (supra), the proposition before the Court was with respect to attracting the bar of Section 31 of the said Act in a given case. Learned counsel for the petitioners submitted that there were only two provisions in the said Act inhibiting transfer of the land under the Fragmentation Act in order to attract the bar of Section 31 of the said Act, viz; Section 31(1) which states that such a transfer so as to create a fragment cannot take place without the previous sanction of the Collector and Section 7(1) which states that no person shall transfer any fragment in respect of which a notice has been given under sub-section (2) of Section 6 except to the owner of contiguous survey number or recognized sub-division of a survey number. He submitted that the above provisions clearly envisaged that the bar of Section 31 was attracted only if a notice is given under

1 1980 Mh.L.J. 547

2 1852 G.L.R. 2005(3)

sub-section (2) of Section 6 of the said Act. He, therefore, submitted that if the respondents are in a position to show that a notice under Section 6(2) was indeed given / issued by the appropriate authority in respect of the said "fragment" or "holding" under the said Act, then and only then, the bar of Section 31 would get attracted in the present case. He submitted that in the above case, it was further held that the mere fact that the land was entered as a fragment in 7/12 extract also did not prohibit transfer of the said land under the said Act. He submitted that the provisions of allotment of land as a fragment is laid down in rule 11 of the Rules framed under the said Act and as such, in the present case, the answering respondent has been unable to show that the subject land was declared as a "fragment" or "holding" under the said Act and the statutory notice under sub-section (2) of Section 6 was issued by the appropriate authority. He submitted that Sections 7, 8 and 9 cannot be read independent of and to the exclusion of the provisions of Section 6 of the said Act. He laid emphasis on paragraph Nos. 6, 7, 8 and 9 of the above decision which read thus:-

"6. Feeling aggrieved the plaintiffs have preferred this second appeal.

7. In order to attract the bar of Section 31 of the Fragmentation Act, the holding must have been allotted under the Fragmentation Act. The relevant provisions of Section 31(1) of the Fragmentation Act run as follows:--

31. (1) Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof, shall save as otherwise provided in this section-

(a) be transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) or by way of gift, exchange, lease, or otherwise; or

(b) be sub-divided, whether under a decree or order of a Civil Court or any other competent authority, or otherwise, so as to create a fragment, without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed."

8. It will, therefore, be seen that in order to attract the bar of the section, the holding must have been allotted under this Act. There is nothing in the instant case to show that the suit land was a holding allotted to the defendants under this Act. On the admitted facts the suit land cannot be a holding allotted under the Fragmentation Act to the defendants because Lakhu executed a sale deed of the suit land to the defendants privately. The provision of allotment is laid down in Rule 11 of the Rules framed under the Fragmentation Act. So all these provisions clearly go to show that the suit land is not a holding allotted under this Act and, therefore, the bar under Section 31 of the Fragmentation Act cannot be attracted. Both the Courts below have proceeded on the assumption that this section is applicable and both of them have not taken into consideration the wording used in the section and that is why both of them have fallen in error.

9. The only other section which prohibits transfer is Section 7(1) of the Fragmentation Act and it runs as follows:--

"7. (1) No person shall transfer any fragment in respect of which a notice has been given under Sub-section (2) of Section 6, except to the owner of a contiguous survey number or recognized subdivision of a survey number."

This provision clearly goes to show that this bar is attracted only if a

notice is given under Sub-section (2) of Section 6 of the Fragmentation Act. It is not the contention in this case that any such notice was given under Sub-section (2) of Section 6 of the Fragmentation Act. The mere fact that this land is entered as a fragment in 7/12 extract does not prohibit the transfer of the land under the Fragmentation Act. I have so far pointed out that there are only two provisions in the Act inhibiting transfers of the fragments and I have so far pointed out that none of these two provisions are applicable in the instant case and so there can be no bar under the Fragmentation Act for enforcing the agreement of reconveyance."

12.2. While relying on the case of Valjibhai Jagjivanbhai (supra), attention of the Court was drawn by Mr. Patil to the exercise of revisional power under Section 35 of the said Act. He submitted that the concept of reasonable time is required to be adhered to in order to exercise power under the said Act. While referring to the above decision and more particularly paragraph Nos. 16, 16.1, 16.2 and 17.1, learned counsel submitted that Section 6 of the Act envisaged that an entry be made in the record of rights of all the fragments in the local area upon issuance of notification of standard area under sub-section (3) of Section 5 of the said Act. He submitted that immediately thereafter, statutory notice under sub-section (2) of Section 6 is required to be given in the manner prescribed and then under Rule 4 of the said Act, an appropriate entry is required to be made as required under

sub-section (1) of Section 6 of the said Act. He submitted that the aforesaid statutory process under the said Act enables the revenue authorities to find out whether the sale was legal or whether it was made in contravention of any of the provisions of the said Act. Learned counsel emphasised on paragraph Nos. 16, 16.1, 16.2 and 17.1 which read thus:-

"16. A comparative study of the aforesaid decisions cited by counsels of both the sides would show that so far the present Act is concerned, there are two different views taken by this Court. One view is that so far the revisional powers under Section 35 are concerned, since there is no limitation prescribed under the concerned statute, these powers are required to be exercised within reasonable time. However, when the action is required to be taken, as in the present case under Section 9, the impugned act cannot be validated only on the ground of lapse of considerable time. In other words, the act which is void ab initio is non-est and it can be declared as such at any point of time. Such act cannot be validated only on the ground that it has remained as such, without being disturbed, for considerably long period. The other view is that even power under Section 9 of the Act is required to be exercised within reasonable time. However, as already stated, in this Court's decisions cited by Mr. Trivedi the ratio laid down by the Apex Court in the cases of (1) The State of Punjab v. Gurdev Singh & Ashokkumar (2) The State of Kerala v. M.K. Kunhikannan Nambiar (3) Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim has not been taken into consideration. Over and above this, one cannot overlook the fact that in respect of Section 11 of the Hindu Minority and Guardianship Act, in the case of Madhegowda v. Ankegowda [supra] the Apex Court has held that "In view of the clear statutory mandate, there is little scope for doubt that any transfer in violation of the prohibition incorporated in Section 11 of the Act is ab initio void." In para 25 of its judgment, the Apex Court has held "Such an invalid transaction is not required to be set aside by filing a suit or judicial proceeding." This is irrespective of the fact that there is no provision like or similar to Section 9(1) of the Act in Hindu Minority and Guardianship Act. According to Black's Law Dictionary 'statutory' means "Relating to a statute, created or defined by a statute, required by a statute, conforming to a statute". Hence act of such transfer would be statutory void. Despite that in the case

of Madhukar Vishwanath Munje v. Madhao [supra] a three Judge Bench has decided that a minor's suit challenging the disposal of his or her property by a de facto guardian has to be brought within prescribed period of limitation. In that case minor's suit for this purpose was dismissed on the ground of limitation. These decisions lend considerable support to the second view i.e. under Section 9 of the Act power has to be exercised by the Collector within reasonable time. In latter two cases listed above, administrative actions and adjudicatory process were under consideration and not judicial proceedings. There is one more decision of the Apex Court on this line which is rendered in the case of Situ Sahu v. Jharkhand reported in 2004 AIR SCW p. 5189. We will refer to it little later.

16.1 For considering, from different angle, the submission that even to the provisions like Section 9 of the Act, the proposition of law that the steps annulling such act or transaction are required to be taken within reasonable time can be made applicable; again we have to turn our attention to certain provisions of the Act. As stated above, Chapter II of the Act deals with the determination of local and standard areas and treatment of fragment. Section 5(1) deals with determination of standard areas by the State. Sub-section (3) of Section 5 deals with publication of notification in the Official Gazette giving public notice of any standard area determined under sub-section (1) or revised under sub-section (2) of Section 5. Section 6 of the Act envisages entry to be made in the record of rights of all the fragments in the local area upon issuance of notification of standard area under sub-section of Section 5 and where there is no record of rights maintained in such in such village the record as the State Government may prescribed. Sub-section (2) of Section 6 requires notice to be given in the manner prescribed for the giving of the notice under relevant Code, of an entry in the register of mutations. It would be also necessary at this juncture to refer to Rule 4 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1959 [hereinafter referred to as 'the Rules'], which prescribes that all the fragments in the village where no record of rights is maintained shall be entered as such as required by sub-section (1) of Section 6 in the following form :-

Sr. No.	S. No. or name of the field	Inam Class & No. how long land continuable nation Register & Tenure & decision if any.	in No. Alie	Survey Area specimen and Judi.	Ordinary division assess.	Sub.- No.	
1	2 3(a)	3(b)	3(c)	4	5	6	
Area	Assessment	Judi. or Special N.A. assessment payable	Owner or land	Nature and origin of title with name of right holder or	Other rights or encumbrances	Ref. to mutation diary	Remarks

				encumbrance			
				s			
7	8	9	10	11	12	13	14

These provisions enable the revenue authorities to have complete details of the land which is entered as fragment in the record of rights or in absence of it, the record which is maintained in accordance with Section 6(1) of the Act, in any local area. It is, therefore, presumed that whenever change in the ownership is required to be entered into the revenue records after a sale transaction between two parties in respect of such land is over, the revenue authority would be able to find out whether the sale was legal or it was made in contravention of any of the provisions of the Act. No need to say that when the sale transaction is found to have been made contrary to the provisions of the Act, no change in the mutation entry would be effected. Naturally when the fragment is sought to be sold or is actually sold, it is against the provisions of Section 7, as transfer by partition or in any other way of a fragment is in contravention of provisions of Sections 7, 8, 8AA, etc. This is illustrative and not exhaustive.

16.2 So far Section 9 is concerned, as seen above, sub-section (1) thereof declares any act of transfer or partition of any land contrary to the provisions of the Act void and also prescribes the resultant actions that can be taken by the Collector, namely imposition of fine on the owner of the land as per sub-section (2) and the summary eviction of the unauthorized occupant or a person in wrongful possession of the land in question on account of any transfer or partition either by the act of parties or by operation of law. Though specifically it is not provided for, under Section 9 the Division Bench of this Court in the case of *Govindsingh v. G. Subbarao* [supra] has prescribed the procedure in detail to be followed by the Collector. It is true that by virtue of Section 9(1) there is no need to find any negative effect of the transaction of land which is, after inquiry, found to be in contravention of the provisions of the Act.

16.3.....

16.4.....

16.5.....

17.....

17.1 The aforesaid discussion shows that there is sufficient scope for the revenue authorities of the State to know about illegal transaction which can be termed void under Section 9(1) of the Act, inspite of that, if such void transaction is allowed to exist for years together, it is difficult to hold that the competent authority, even then would be within its bounds to initiate proceedings to declare such transaction void and annul it. It is also difficult to envisage that when two routes are available for reaching the ultimate destination under Section 9(2) and (3) of the Act, on the route prescribed under Section

35, the authority named therein will not be permitted to travel and the shutters will be drawn at the point where reasonableness ends. Whereas the other route i.e. under Section 9 of the Act will remain open for all time to come. To lay down proposition of law, in relation to Section 9 of the Act, that the Collector can exercise power thereunder even after inordinate delay, irrespective of the fact that there is scope for him to know about illegality committed cannot only be dangerous because it can give ample opportunity to some crafty seller to exploit the situation to his advantage, as we will presently discuss, but it can also be against the principle that one cannot sleep over his right for unreasonable period. It has to be pursued vigilantly.

12.3 Relying on the unreported judgment dated 20.9.2017 passed by the Court of Civil Judge Junior Division at Kale (Kheriwade), Tal. Panhala in RCS No. 41/2017 (old RCS No. 42/2010), learned counsel for the petitioners submitted that respondent No. 1 - Shripati Rangrao Chavan through his legal heirs had filed a civil suit bearing old RCS No. 42/2010 against several purchasers for seeking partition and separate possession in respect of the same subject land which is the subject matter of the present petitions. Defendant Nos. 1, 3, 4, 5, 6, 7 and 8 in the said RCS suit are the petitioners in the present group of petitions. He submitted that appropriate issues were framed and trial was conducted wherein the civil court came to the conclusion that the suit property was not a joint and ancestral property belonging to respondent No. 1's legal heirs and that the suit property was already

partitioned between respondent No. 1's predecessor-in-title and co-sharers. He submitted that by virtue of the judgment and decree given by the Civil Court, respondent No. 1 did not have any right whatsoever in the subject property and as such, the two impugned orders passed by the lower authorities could not be sustained. He submitted that in view of the above judgment and decree, disentitling respondent No. 1's predecessor-in-title in respect of the subject property / land, proceedings under the provisions of the said Act filed subsequent to the passing of the above judgment and decree were a complete afterthought and did not have any force in law.

13. PER CONTRA, Mr. Datta Pawar, learned counsel appearing for respondent Nos. 1.1 to 1.3 submitted that the registered sale deeds executed by respondent No. 2 in favour of the petitioners was in contravention of Section 7, 8 and 9 of the said Act. He submitted that both the impugned orders have been passed in accordance with law and in compliance of provisions of the said Act. He submitted that the statutory notice required to be given

under Section 6(2) of the said Act, was not given in the present case but according to him such a notice is required to be given by the authority i.e Talathi as per Section 150(2) of the Maharashtra Land Revenue Code, 1966 to the owner of the land and not to the purchaser. He submitted that absence of the notice in the present case would not come in the way of upholding the two impugned orders as the provisions of Section 6 are to be read independent of the provisions of Sections 7, 8 and 9 of the said Act

13.1 Mr. Pawar further submitted that issuance of statutory notice under Section 6(2) of the said Act had no nexus with the provisions of Sections 7, 8 and 9 of the said Act. He submitted that the various sale deeds executed by respondent No. 2 in favour of the petitioners were in contravention of the provisions of Sections 7, 8 and 9 of the said Act and therefore, the original application made by respondent No. 1 under Section 31 of the said Act for setting aside of the various sale deeds was maintainable. He submitted that respondent No. 1 filed Suit No. 41/2017

for seeking partition and separate possession before the trial Court against the petitioner and other purchasers. He submitted that respondent No. 1, however, could not have filed the suit challenging breach of the said Act since there was a specific bar created under Section 36A of the said Act and the only remedy available to respondent No. 1 was to file an application under the provisions of Section 7 read with Sections 8 and 9 of the said Act before the appropriate authority. He painstakingly stressed that the original proceedings filed by respondent No. 1 were on the basis of the provisions contained in Sections 7, 8, 9, 31A and Section 35 of the said Act. He submitted that there was no time bar and embargo upon a party to approach the appropriate authority under the aforesaid provisions for making the appropriate application and therefore, submissions made on behalf of the petitioners pertaining to delay and laches are not relevant in the present case. He submitted that in the year 2017, Section 9 of the said Act was amended by virtue of which it gave an opportunity to the purchaser who had purchased any property from 15.11.1965 onwards till passing of the amendment Act,

2017 to make an appropriate application to the appropriate authority if there was any violation of the provisions of the said Act. He submitted that the various petitioners did not approach the appropriate authority for seeking regularization / the breach committed by the petitioners and thus, the said Act could not come to the petitioners' aid. In support of his submissions, learned counsel referred to and relied upon the following decisions:-

1. Jairam Baban Makode & Ors. Vs. Bhagirathibai Mitharam Patil & Ors.³;
2. Patel Jividas Trikamdas & Ors. Vs Collector & Ors.⁴;
3. State of Orissa Vs. Brundaban Sharma.⁵;
4. P.K. Palanisamy Vs. N. Arumugham & Anr.⁶;
5. M.P. Steel Corporation Vs. Commissioner of Central Excise⁷

13.2 In the case of **Jairam Baban Makode** (supra), the purchaser of agricultural land challenged the orders passed by Sub-Divisional Officer on 26.10.1989 and

3 2005(2) ALL MR 360

4 AIR 1997 GUJARAT 121

5 1995 (supp 3) SCC 249

6 Judgment of the Supreme Court dated 23.7.2019 passed in Civil Appeal No. ____ of 2009 (Arising out of SLP (Civil) No. 2308 of 2009)

7 (2015) 7 SCC 58

18.7.1990 directing restoration of land in favour of the original owner by invalidating the sale on the ground that it was a fragment which had been sold to a person who was not owner of contiguous land. Learned counsel referred to and relied upon the findings rendered in paragraph 5 of the judgment which in turn, was based upon the judgment in the case of **Putalabai Vs. Shiva Dhoni**⁸, which reads thus:-

"5. In the thus apparent that until and unless the land is notified as fragment as contemplated by Section 6(2) of the Fragmentation Act, bar under Section 7 cannot be pressed into service. The provisions of sub-section (2) of Section 6 prescribes notice of every entry made under sub-section (1) as given in the manner prescribed for giving notice of entry in the register of Mutation. The said procedure for giving notice of entry in the Mutation register is mentioned in Section 150(2) of Maharashtra Land Revenue Code and it requires a complete copy of entry to be displayed at a conspicuous place in the Chavadi and also written intimation to be given to all persons appearing from the record of rights or register of mutations to be interested in mutation. Thus, it is apparent that here, after holding the land to be a fragment under Section 6(1) of Fragmentation Act, notice thereof ought to have been published in a conspicuous place in the chavdi and also should have been given in writing to at least owners of that land. The Sub-Divisional Officer as also the revisional authority have not recorded any finding in this respect. Until and unless the finding that the land was notified as fragment as contemplated by Section 6(2) of the Fragmentation Act is reached, bar under Section 7(1) could not have been invoked and could not have been utilized by these authorities to set aside the sale deeds. Thus, very jurisdiction fact is found to be missing in these orders. Hence, these orders dated 31-3-1989 and 26-10-1989 passed by the respective authorities are quashed and set aside. The matter is remanded back to the Sub-Divisional Officer, Akot, for taking fresh decision on the application filed by Respondent No.1 before it under Section 7 read with Sections 9 and 10 the Fragmentation Act, after giving due notice to all concerned. Such

8 1980 Mh.L.J. 547

decision should be taken as early as possible in any case, within a period of six month from the date of receipt of this order."

13.3 In the case of **Patel Jividas Trikamdas** (supra), the question that arose before the Gujarat High Court was "Whether an illegal transaction or sale in contravention of the provisions of law could be questioned or revoked or cancelled after a lapse of several years under Article 226 / 227 of the Constitution of India. In the facts of the said case, learned counsel drew the court's attention to paragraph Nos. 6, 7 and 8 and relied upon the proposition that once an order is found in violation of the provisions of law, it is illegal and void and therefore, it is non est for all purposes. He submitted that in such a case even if the exercise of revisional power is made after a long lapse of time, the same was found to be valid as held by the Apex Court in the case of **Brundaban Sharma** (supra) which was referred to and relied upon in the said case. Paragraphs 6, 7 and 8 of the judgment read thus:

"6. It is a settled proposition of law that any action, transaction, decision or order which is illegal and void ab initio is to be treated as non est. The validity of such an illegal non est order could be questioned in any proceedings at any stage by anybody. The very nature of the non est order in its effect does not create any right, title or interest. It being a void, it confers no any status or any right. With the result, such non est or illegal order, decision, transaction or

action would be for all purposes ineffective and of no consequence in the eyes of law. This proposition of law is very well explained, examined and expounded by catena of judicial pronouncements. The view being taken by this Court at this juncture is reinforced by a decision of the Hon'ble Apex Court in the case of State of Orissa v. Brudaban Sharma, 1995 Supp (3) SCC 249. In that case, the question had arisen under the Orissa Estate Abolition Act, 1951. Section 38-B was added in 1973 in the said Act. The Board of Revenue under the said Act had exercised power under Section 38B after a period of 27 years. Thus, the confirmation of tenancy rights by the Tehsildar without obtaining prior confirmation of the Board of Revenue was questioned after 27 years. It was found in the said decision that the order of the Tahsildar was void. The Board of Revenue was therefore justified in quashing the said order even after 27 years had lapsed since the grant of patta by the Tahsildar in favour of the party. It was laid down by the Hon'ble Apex Court that once the order is found in violation of the provisions of the law, it is illegal and void and therefore it is non est for all purposes. It was, therefore, held that it cannot be said that the Board of Revenue exercised the power under Section 38-B of the said Act after an unreasonable lapse of time. In the circumstances, the exercise of revisional power under Section 38-B by the Board of revenue after 27 years was found legal and valid and it was further held that it brooked no delay. It was also held by the Hon'ble Apex Court that the order passed by the Tahsildar without the confirmation by the Board which was a requirement of the law was non est and a non est order is void and it confers no title and its validity can be questioned or invalidity be set up in any proceedings or at any stage.

7. In view of the decision of the Apex in the case of State of Orissa v. Brundaban Sharma, (1995 Supp (3) SCC 249) (supra), the two decisions relied on by the learned counsel appearing for the petitioners would not assume any more significance. The ratio of the decision of the Hon'ble Apex Court would undoubtedly water down the ratio of the aforesaid two decisions of this Court. In the circumstances, the aforesaid two decisions relied on by the learned counsel for the petitioners is of no avail.

8. In the present case, there is no dispute about the fact that fragmentation is prohibited under Section 8 of the Act. It is clearly provided that no land in any local area shall be transferred or partitioned so as to create a fragment. The petitioners purchased the disputed land admeasuring 2 acres in block No: 1029/93 out of the total land of 6 acres and 17 gunthas and thereby created fragment of the agricultural land which is prohibited under Section 8 of the Act. In case of any violation of the provisions of the Act, penalty for transfer or partition contrary to the provisions Act is prescribed under Section 9. The proceedings were started by the Collector, respondent No. 1,

against the petitioners in 1988 pursuant to the provisions of Section 9 in Fragment case No. 30/88. It is true that the proceedings questioning the validity of the sale transaction in violation of the provisions of Section 8 have been initiated 20 years after the transaction took place. However, that by itself would not be sufficient to justify the illegal transaction. The impugned order of respondent No. 1 came to be passed on 30-7-92 which came to be confirmed in appeal by the respondent No. 2 on 4-10-94. The said orders could not be said to be illegal or unjust requiring interference of this Court exercising extraordinary, equitable, plenary and discretionary writ jurisdiction under Article 226/227 of the Constitution of India. It may also be mentioned that there is no proof of the date as to when the mutation came to be made in the record of rights. There is nothing on record which would even remotely indicate that the petitioners were shown owners of the land by virtue of the disputed transaction of sale in 1968. Apart from that, in view of the aforesaid settled proposition of law, the petitioners are not entitled to claim any equity. Of course, there is no any material whatsoever to indicate that the petitioners have spent huge amount, except the bare version of the petitioners. Even assuming that huge amount has been spend on the land, then also, it would not be a ground not to exercise the statutory rights or powers under Section 9 of the Act by the Competent Authority. Not only that the amount must have been spent for taking better crops which are admittedly enjoyed by the petitioners since last more than 20 years, In the circumstances, the aforesaid three grounds raised by the learned counsel for the petitioners would not constitute any legal hurdle or hindrance in rejecting the petition under Article 226/227 of the Constitution of India."

13.4 While relying on the decision in the case of **Brundaban Sharma** (supra), learned counsel drew the court's attention to paragraph Nos. 16, 17 and 18 in support of the proposition that revisional power was required to be exercised in a reasonable manner and within a reasonable time in order to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of powers by the lower authorities or fraud or suppression. However, he submitted that in any event, a

non-est order is a void order and it conferred no title and its validity cannot be questioned or invalidity be set up in any proceedings or at any stage after exercise of such powers after an unreasonable lapse of time. He submitted that on the strength of this proposition, the delay of 19 years in the present case, in respondent No. 1 making the original application under the provisions of the said Act is required to be considered as acceptable. Paragraph Nos. 16, 17 and 18 of the judgment passed by the Apex Court read thus:-

"16. It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answers would be no.

17. It is already seen that the proceedings for settlement of the tenure is a quasi-judicial order and it should be guided by authentic and genuine documentary evidence preceding the cut-off date and the date of vesting of the lands under the Act. Since the Act creates a right and interest in the holder of the land as tenant, pursuant to an order making the settlement by the competent authority, the Tahsildar is enjoined to conduct an inquiry in that behalf. It is seen that under first proviso to Section 5(1), if the Collector concludes that the lease, transfer or settlement is not to be set aside, he should obtain prior confirmation from the Board of Revenue. No such

approval was, in fact, obtained by the Tahsildar Though in the first instance, when the respondent had brought it to the notice of the Government of his claim, in 1967 proceedings initiated were got dropped by the Government obviously at the instance of the respondent. Later on the instructions of the Government itself, inquiry was got done; and on receipt of the report from the Additional District Collector on 4-10-1982, proceedings were initiated by the Board and the respondent was given reasonable opportunity of hearing. The order was passed within a reasonable time thereafter.

18. Under these circumstances, it cannot be said that the Board of Revenue exercised the power under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tahsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 years did pass. But its authenticity and correctness was shrouded with suspicious features. The records of the Tahsildar were destroyed. Who is to get the benefit? Who was responsible for it? The reasons are not far to seek. They are self-evident. So we hold that the exercise of revisional power under Section 38-B by the Board of Revenue was legal and valid and it brooked no delay, after it had come to the Board's knowledge. That apart as held by the Board of Revenue, the order passed by the Tahsildar without confirmation by the Board is non est. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage."

13.5 Relying on an unreported decision of the Apex Court in the case of **P.K. Palanisamy** (supra), learned counsel referred to and relied upon the contention / proposition stated in paragraph 13 of the said decision. For the sake of convenience, paragraph No. 13 is reproduced below:-

"13. A contention has been raised that the applications filed by the appellant herein having regard to the decisions of the Madras High Court could not have been entertained which were filed under Section 148 of the Code. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code.

Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity.

It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and / or statutory authority had the requisite jurisdiction therefor."

13.6 Relying on the case of **M.P. Steel Corporation**

(supra), learned counsel referred to and relied upon the proposition that applicability of the Limitation Act to tribunals and jurisdiction of the tribunals was required to be considered because the petitioner had raised the ground of limitation. He submitted that bar of limitation contained in the schedule to the Limitation Act applies to suits, appeals and applications. He fairly submitted that the first division in the schedule to the Limitation Act deals with suits and Section 3(2) of the Limitation Act shows that "suits" are instituted as actions begun in courts of law established under the Constitution of India. He further submitted that the second division in the schedule concerns itself with appeals which again are only to the Courts established under the Constitution of India. He further submitted that the third division concerns with all applications that are referred to under Articles 118 to 137 being a reference only to courts either under the Code of

Civil Procedure or under other enactments. Therefore, it is his submission that when the Constitution uses the expression "court", it refers to the court system and such court system is a system which is opposed to and contrary to the system exercised by quasi judicial bodies and statutory officers / tribunals. He, therefore, submitted that even though there was an inherent delay in approaching and filing of the original application on the part of respondent No. 1 under the provisions of the said Act, in view of the above proposition, the bar of limitation would not apply to respondent No. 1's case and thus, the submissions made on behalf of the petitioners that there was a delay of 19 years in filing the original application deserve to be rejected. He submitted that the judgment clearly holds that Limitation Act applies only to courts and does not apply to quasi judicial bodies and therefore, the issue of delay as raised by the petitioners deserve to be dismissed.

14. I have heard both the learned counsel appearing for the respective parties at length. Before I analyze the

submissions made by the respective parties, it would be apposite to consider the legal provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holding Act, 1947 which are applicable to the present case. Sections 6, 7, 8 and 9 of the said Act read thus:

"6. Entry in the Record of Rights.

- (1) On notification of a standard area under sub-section (3) of the section 5 for a local area all fragments in the local area shall be entered as such in the Record of Rights or where there is no Record of Rights in such village record as the State Government may prescribe.
- (2) Notice of every entry made under sub-section (1) shall be given in the manner prescribed for the giving of notice in the Hyderabad area of the State, under the Hyderabad Record of Rights in Land Regulation, 1358 Fasli and elsewhere, under the relevant Code, of an entry in the register of mutations.

7. Transfer and lease of fragments.

- (1) No person shall transfer any fragment in respect of which a notice has been given under sub-section (2) of section (6) [except to the owner of] a contiguous survey number or recognized sub-division of a survey number:
[Provided that the holder of such fragment may mortgage or transfer it to the State Government or a land mortgage bank or any other co-operative society as security for any loan advanced to him by the State Government or such bank or society, as the case may be.]
- (2) Notwithstanding anything contained in [any law for the time being in force or in any instrument or agreement], no such fragment shall be leased to any person other than a person cultivating any land which is contiguous to the fragment.

8. Fragmentation prohibited.

No land in any local area shall be transferred or partitioned so as to create a fragment.

[8AA. Restriction on partition of land.

- (1) Where, by transfer, decree, succession or otherwise, two or more persons are entitled to shares in an undivided agricultural

land in any local area for which standard areas have been fixed, and the land has to be partitioned among them, such partition shall be effected so as not to create a fragment.

- (2) Where such partition is made by the Court or the Collector, the following procedure shall be adopted:-
 - (a) If, in effecting a partition among several co-sharers, it is found that a co-sharer is entitled to a specific share in the land and cannot be given that share without creating a fragment, he shall be compensated in money for that share. The amount of compensation shall be determined so far as practicable in accordance with the provisions of section 23 of the Land Acquisition Act, 1894.
 - (b) If, in effecting a partition, it is found that there is not enough land to provide for the shares of all the co-sharers in accordance with the provisions of sub-section (1), the co-sharers may agree among themselves as to the particular co-sharers or co-sharers who should get the share of land and which of them should be compensated in money. In the absence of any such agreement, the co-sharers to whom a share of land can be provided and those to whom money compensation should be given shall be chosen by lot in the manner prescribed.
 - (c) The compensation shall be payable by each co-sharer in proportion to the excess value of land he gets over the share of land legally due to him, and such co-sharer shall deposit the proportionate amount of compensation in the manner prescribed before taking possession of the share allotted to him. On his failure to do so, his share shall be allotted to any other co-sharer to whom land has not been previously allotted and who is chosen in the manner provided in clause (b) subject to the payment of similar compensation to the co-sharers not getting shares of land.
 - (d) If none of the co-sharers to whom land has been allotted under clause (c) pays the compensation and takes the share, the share shall be sold in auction to the highest bidder, and the purchase money shall be paid to the co-sharers not getting land in proportion to their respective shares.
 - (e) Where the parties agree upon any other method of partition which will not result in the creation of a fragment, that method shall be followed in effecting partition.
- (3) Where a partition is effected in execution of a decree all questions relating to the partition of the land and apportionment of compensation shall be decided by the Court executing the

decree or by the Collector effecting the partition, as the case may be, in accordance with the provisions of sub-section (2).]

[8A. Sections 7 and 8 not to apply to transfer for public purpose.

Nothing in sections 7, [8 and 8AA] shall apply to a transfer of any land for such public purpose as may be specified in this behalf by the State Government by notification in the Official Gazette.]

9. Penalty for transfer or partition contrary to provisions of Act.

- (1) The transfer or partition of any land contrary to the provisions of this Act shall be void.
- (2) The owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs. 250 as the Collector may, subject to the general orders of the State Government, direct [Such fine shall be recoverable as an arrear of land revenue.]
- [(3) Any person unauthorizedly occupying, or wrongfully in possession of, any land the transfer or partition of which, either by the act of parties or by the operation of law, is void under the provisions of this Act, may be summarily evicted by the Collector.]

"Provided that, save as otherwise provided in section 31, the Collector may, upon an application made in this regard, regularize a transfer or partition of a land contrary to the provisions of this Act made on or after 15th day of November 1965 and before the date of commencement of Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2017, if such land is allocated to residential, commercial, industrial, public or semi-public or any non-agricultural use, in the prevailing draft or final Regional Plan; or is intended to be used for any bona fide non-agricultural user, subject to payment of regularization premium at such per centum not exceeding 25 per cent. of the market value of such land as per the Annual Statement of Rates, as the Government may notify, from time to time, in the Official Gazette:

Provided further that, save as otherwise provided in section 31, if a transaction of transfer or partition of land contrary to the provisions of this Act is regularized on the ground that the land would be used for any bona fide non-agricultural use, then failure to start such bona fide non-agricultural use within 5 years from the date of regularization shall result in forfeiture of such land by the Collector. Such land thereafter shall be first offered to the holder or occupant of a neighbouring contiguous survey number or recognized sub-division of a survey number on payment of 50 per cent. of the market value of such land as per the prevailing Annual

Statement of Rates and three-fourth of the amount so collected shall be paid to the defaulting person from whom such land was forfeited to the Government and the remaining one-fourth of the amount so collected shall be credited into the Government account. Where occupant of such neighbouring contiguous survey number or recognized subdivision refuses to purchase the fragment, the fragment shall be auctioned by the State Government and the proceeds thereof shall be divided between the defaulting person and the Government in the ratio of 3:1.

Explanation.- For the purpose of this sub-section, the term "Annual Statement of Rates" shall mean the Annual Statement of Rates published under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 or any other Rules for the time being in force in this regard, prevalent in respect of the year in which the order of regularization is issued by the Collector or the year in which such premium is paid, whichever is later."

Under sub-section (1) of Section 6, a notification of standard area which has been issued under sub-section(3) of Section 5 in respect of all fragments is required to be entered as such in the Record of Rights or when there is no Record of Rights in such village as prescribed under Rule 11 of the said Act. Under sub-section (2) of Section 6, unless and until the land is notified as fragment, bar under Section 7 cannot be pressed into service. The provisions of sub-section (2) of Section 6 prescribe for giving of notice of entry in the register of mutations. The procedure for entering notice of entry in the mutation register is as per Section 150(2) of the Maharashtra Land Revenue Code, 1966 and it requires

complete copy of the entry to be displayed at a conspicuous place in the chavadi and also requires written intimation to be given to all persons of the entry in the Record of Rights or register of mutations. This envisages that notice thereof is required to be displayed at a conspicuous place in the chavadi and also should have been given in writing to at least the owners of that land. Under sub-section (1) of Section 7, there is a complete prohibition for transfer of such land which is prescribed and qualified as a "fragment" for which a notice under sub-section (2) of Section 6 has been given. This provision clearly envisages that the bar under Section 7(1) gets attracted only if the notice is given under sub-section (2) of Section 6 of the said Act. Under Section 8, fragmentation is prohibited and it states that no land in any local area shall be transferred or partitioned so as to create a fragment.

15. On a conjoint reading of the above provisions, it is observed that there is a prohibition on transfer of any fragment in respect of which a notice has been given

under sub-section (2) of Section 6. In order to attract the bar of Section 31 of the Fragmentation Act, the holding must have been allotted under the Fragmentation Act. Further, in order to protect the bar on prohibition of transfer under Section 7(1) of the Fragmentation Act, a notice given under sub-section (2) of Section 6 of the Fragmentation Act is required to be shown. In the case of Putlabai (supra), It has been held that the mere fact that land is entered as a fragment in 7/12 extract does not prohibit the transfer of the said land under the Fragmentation Act.

16. On due consideration of the pleadings filed by the petitioners in the respective petitions and the applicability of the provisions of the said Act to the facts and circumstances of the case, it has not been pointed out before me that any notice under sub-section (2) of Section 6 has been issued in respect of the subject land which is the subject matter of the various petitions before me. On 26.2.2020 i.e before the conclusion of final arguments, respondent No. 1.2 Shripati R. Chavan filed an affidavit

bearing Stamp No. 830 dated 25.2.2020 wherein the following stand has been taken in paragraph Nos. 7 and 8 thereof:-

- "7. I say that the Respondent submits that the sale deed executed by the Respondent No. 2 in favour of the Petitioner is in contravention of section 7, 8 & 9 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. I say that if for the sake of argument we assume that the Application is not maintainable u/sec. 31 of the Act still the sale deed is violating provisions of sec. 7,8 & 9 of the said Act.
8. I say that the Petitioner has not disputed that the slab for holding which violates fragmentation in respect of the suit property. I say that though section mandates notice shall be given under 6(2) of the Act however that notice is required to be given by Authority i.e. Talathi as per Sec. 150(2) of the Maharashtra Land Revenue Code, 1966 (MLRC) to the owner of land and not to the purchaser. I say that in present matter it is not disputed that sealing for fragmentation is 20R therefore objection raised by the Petitioner that notice under Section 6(2) is not given is not justifiable and valid. I say that the Petitioner has totally misinterpreted the provisions of sec. 6 and 7."

17. On 24.2.2020, both learned counsels for the respective parties, as also the learned AGPs completed their oral arguments. On that day, Mr. Pawar, learned counsel for respondent Nos. 1.1 to 1.3 in all petitions sought permission from this Court to inform the Court about the status of the appeal from the civil suit proceedings which came to be decided against respondent No. 1's successors and also the status of notice issued under Section 6(2) of the said Act. Accordingly, time was

granted to him and the petitions were adjourned to 26.2.2020.

18. Respondent Nos. 1.1 to 1.3 have not been in a position to show that any statutory notice was issued under sub-section (2) of Section 6 of the said Act in respect of the subject land. Further, the submissions on behalf of respondents that the provisions of Sections 7, 8 and 9 are required to be read and applied independent of the provisions of sub-section (2) of Section 6 of the said Act cannot be accepted in view of the various decisions of this Court rendered on the above subject and which have been reproduced (supra). The provisions of Section 6 are a precursor and a pre-condition in so far as the applicability of the provisions of Sections 7, 8 and 9 are concerned. There cannot be an independent application of the provisions of Section 6 on the one hand and the provisions of Sections 7, 8 and 9 on the other hand. Sub-section (1) of Section 7 clearly refers to transfer of a fragment in respect of which a notice has been given under sub-section (2) of Section 6 of the said Act and therefore, in

order to attract the bar under sub-section (1) of Section 7, it is mandatory that the subject land has been registered / entered in the Record of Rights or the register of mutations as a fragment and notice thereof has been given as prescribed. In the present case, there has been a complete non-application of mind on the part of both the lower authorities on the above aspect which goes to the root of the case. There is no discussion or finding by both the lower authorities namely respondent Nos. 3 and 4 on the aforesaid issue which is a mixed question of fact and law. The Revisional Authority in para 6.1 of the impugned judgment has come to the conclusion that under the provisions of the said Act the Collector being the appropriate authority has the power to set aside the sale without giving a finding as to whether the subject land was declared as a fragment, whether the subject land was entered as a fragment in the Record of Rights and whether the statutory notice in respect of the subject land was given under sub-section (2) of Section 6 of the said Act. This finding given in paragraph 6.1 goes against the very basis of enactment of the said Act and the two bars

envisaged under the said Act under sub-section (1) of Section 7 and sub-section (1) of Section 31. It is trite to notice that sub-section (1) of Section 7 refers to "fragment" in respect of which notice has been given under sub-section (2) of Section 6 and sub-section (1) of Section 31 refers to "holding" allotted under the said Act. Both the above legal statutory provisions clearly envisage that unless and until the subject land is determined as a "fragment" or "holding", the bar under these two provisions will not apply in a given case. Both the lower authorities failed to consider the bar given under the aforesaid two provisions with reference to the facts of respondent No. 1's case, viz; that the subject land was never declared as fragment and no notice under sub-section (2) of Section 6 was given in respect of the same. It was required by both the lower authorities to call upon respondent No. 1 to produce the material evidence in respect of the aforesaid two issues before considering the original application filed by respondent No. 1 in September 2017 under the provisions of Section 31 of the said Act, after a period of almost 19 years from the date of

execution and conveyance of the sale deed.

19. The submission on delay and laches made on behalf of the petitioner deserve to be accepted. It can be seen from the record that respondent No. 1 has been prosecuting his right in respect of the subject land in the civil court from 2010 onwards. Respondent No. 1 has failed to prosecute his right of partition in respect of entitlement of the subject land namely Gat No. 131. Only after failing in his attempt to seek entitlement to the subject land, respondent No. 1 initiated the present proceedings by invoking the provisions of Section 31 of the said Act for the first time on 7.9.2017 by filing various applications against the petitioners (purchasers) in the present group of petitions. Mr. Pawar fairly concedes that the appeal in respect of RCS Suit No. 41/2017 is pending adjudication before the District Judge, Kolhapur. He has also placed on record a copy of the status report of the pendency of Regular Civil Appeal No. 313 of 2017 which is enclosed as "Exc. C" to the affidavit in reply dated 25.2.2020. Mr. Patil, learned counsel appearing for the

petitioners does not object to the status report placed on record by the respondents and submits that the petitioners have not conveyed any specific information to him regarding pendency of the aforesaid appeal. He, therefore, submits to the order of the Court.

20. In view of the reasons recorded above, in Writ Petition Nos. 8390 of 2019, 8342 of 2019, 8661 of 2019, 9519 of 2019, (st) (st) 13805 of 2019 and 13810 of 2019, the orders dated 31.1.2018 passed by respondent No. 4 - Sub Divisional Officer, Panhala Sub Division, Dist. Kolhapur and orders dated 21.2.2019 passed by respondent No. 3 - Additional Commissioner, Pune Division, Pune are quashed and set aside. In Writ Petition (st) No. 13807 of 2019, the order dated 15.2.2018 passed by respondent No. 4 - Sub Divisional Officer, Panhala Sub Division, Dist. Kolhapur and order dated 21.2.2019 passed by respondent No. 3 - Additional Commissioner, Pune are quashed and set aside.

21. The Original Application bearing Nos. 100/2017, 101/2017, 102/2017, 105/2017, 106/2017 & 197/2017

stand dismissed.

22. Writ Petition Nos. 8390 of 2019, 8342 of 2019, 8661 of 2019, 9519 of 2019, (st) 13805 of 2019, (st) 13807 of 2019 and (st) 13810 of 2019 are allowed.

23. Rule is made absolute in the above terms.

24. Parties to bear their own costs.

[MILIND N. JADHAV, J.]