IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6848 OF 2018

1. Chandrabhan Raibhan Jadhav,
Age: 56 years, Occu.: Labour,
R/o. Deolai,
Tal. and Dist. Aurangabad

2. Sukhadeo Raibhan Jadhav,
Age: 54 years, Occu: Labour
R/o. Deolai,
Tal. and Dist. Aurangabad

3. Rupchand Raibhan Jadhav,
Age: 49 years, Occu.: Labour,
R/o. Deolai,
Tal. and Dist. Aurangabad

4. Manohar Raibhan Jadhav,
Age: 47 years, Occu.: Labour
R/o. Deolai,
Tal. and Dist. Aurangabad

Through GPA holder of S.No. 4 to 5
Satyanarayan Tulshiram Kamble,
Age: 60 years, Occu.: Business,
R/o.: Amrut Sai Plaza, Railway Station,
Aurangabad, Dist. Aurangabad. … Petitioners

Versus

1. The State of Maharashtra
Through Department of Revenue Development,
Mantralaya, Mumbai.

2. The State Minister for Revenue,
Maharashtra State,
Mantralaya,
Mumbai.

3. Deputy Director of Land Record,
Aurangabad Region,
Aurangabad.

4. District Superintendent of Land Record,
Aurangabad.

5. Ujawala Kishor Vairagade,
Age: 60 years, Occu.: Agri.,
R/o. N-3, CIDCO, Aurangabad

6. Shaikh Kasam Shaikh Madan,
Age: Major, Occu.: Agri,
R/o. : Deolai, Tal. and
District Aurangabad

7. Fayyaz Khan Ahmed Khan,
Age: Major, Occu.: Agri.,
R/o. Deolai,
Tal. And Dist. Aurangabad

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Advocate for Petitioners : Mr. Devdatt P. Palodkar
AGP for Respondents No.1 to 4 – State : Mrs. V. S. Chaudhari
Advocate for Respondent No.5 : Mr. A. D. Kasliwal
Advocate for Respondent No.6 : Mr. G. K. Thigale
Advocate for Respondent No.7 : Mr. V. D. Sapkal, Senior Advocate

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 30th NOVEMBER, 2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition takes exception to the order dated 22-06-2016, passed by respondent No.2 – the State Minister for Revenue in Appeal No. 2015/Pra.Kra.-326/J-7, filed by respondent Nos. 5, 6 and 7 against the petitioners, challenging the decision of respondent No.3 – the Deputy Director of Land Records, Aurangabad, dated 04-07-2014 in

proceeding No. Pr.Kr./Colly./Appeal/S.R.906/2014.

3. The consolidation scheme was made applicable to the petitioners' and respondents' lands and the consolidation scheme was finalised on 05-03-1962. The same was published in the official Government Gazette on 15-03-1963. The petitioners approached respondent No.3 – the Deputy Director of Land Records, in the year 2012, seeking correction in the consolidation scheme on the ground that less area was allotted to them. The petitioners in the said appeal made only the Government as a respondent. Land bearing Gat No.72, belonging to respondent Nos. 5 to 7, is not mentioned in the said appeal. The petitioners contended that it was a technical and inadvertent error on the part of the consolidation authorities that less area was allotted to the petitioners. The proceedings filed by the petitioners was transferred to respondent No.4 – the District Superintendent of Land Record, Aurangabad, wherein total 24 respondents were added. The respondent Nos. 5 to 7 are made party in the proceedings filed before respondent No.4 – the District Superintend of Land Record. After hearing the parties, respondent No.4 allowed the appeal and directed the Deputy Superintendent of Land Records, Aurangabad, to initiate correction proceedings in respect of Survey Nos. 25, 26, Gat Nos. 66 to 71, in terms of Section 32(1) of the Maharashtra Prevention Of Fragmentation And

Consolidation Of Holdings Act, 1947 (for short 'Act, 1947') along with map, to respondent No.3 – the Deputy Director, Land Records, Aurangabad.

4. The petitioners challenged the said decision before respondent No.3. Vide order dated 04-07-2014 the appeal filed by the petitioners came to be allowed and in this appeal respondent Nos. 5 to 7 were not made party. So also, Gat No.72 was not subject matter of the proceedings filed before respondent No.4 – the District Superintend of Land Records. Respondent No.3 allowed the said appeal and directed to initiate proceedings in respect of Survey No.26, Share No.2, admeasuring 9 Acres, 33 Gunthe (3 Hectare 97 R) of Gut No.72 in respect of ownership of the said Gat number.

5. Respondents being aggrieved by the said decision approached respondent No.2 – the State Minister for Revenue, by filing Appeal No. 2015/Pra.Kra.-326/J-7 along with the delay condonation application. Respondent No.2 – the State Minister for Revenue, by the impugned order dated 22-06-2016, condoned the delay and allowed the revision. The said decision is impugned in this writ petition.

6. Heard the learned Advocate Mr. Palodkar for petitioners, the learned Senior Advocate Mr. V. D. Sapkal for respondent No.7, the learned Advocate Mr. Kasliwal for respondent No.5, the learned

Advocate Mr. Thigale for respondent No.6 and the learned Assistant Government Pleader Mrs. V. S. Chaudhari for respondent Nos. 1 to 4 – State.

7. Learned advocate for petitioners submitted that no opportunity of hearing was given to the petitioners by respondent No.2 – the Hon'ble State Minister, while deciding the revision. On that ground alone the impugned order is liable to be quashed and set aside and the matter is required to be remanded back to respondent No.2 – the Hon'ble State Minister. He further submitted that only arithmetical correction is sought by the petitioners, hence, the question of limitation would not come in the way of petitioners. Respondent No.2 – the Hon'ble State Minister for Revenue, has committed error in deciding delay condonation application as well as appeal simultaneously, which is not permissible in law. By relying on the decision in **Sidappa Rama Patil Vs. Sattur Laxman Kole (Died) Through LRs.**, reported in **2004 (4) MH.L.J. 119**, he submitted that the proceedings were rightly decided by the Revenue authorities.

8. Per contra, the learned Senior Advocate for respondent No.7 submitted that respondent Nos. 5 to 7 were not made party in the proceedings filed before respondent No.3. He further submitted that the proceedings initiated by the petitioners was hopelessly barred by

limitation. As the consolidation scheme was finalised in the year 1962 and was published in the Government Gazette in the year 1963, the challenge for the first time raised by the petitioners in the year 2012, could not have been entertained by the respondent authorities. By pointing out the impugned order, he further submitted that notices were issued to the petitioners, however, the petitioners have chosen to remain absent. In that view of the matter, petitioners are not entitled now to claim that, they were not heard and on that ground petition is liable to be allowed. He, further submitted that under what provision the proceedings were initiated was not made clear by the petitioners. Gat No.72 was not mentioned in the proceedings filed before respondent No.4 – the District Superintendent of Land Record. In that view of the matter, respondent No.3 was not justified in giving directions in respect of Gat No.72, since it was not claimed by the petitioners in the proceedings initiated before respondent No.4. According to him, the impugned orders passed by respondent Nos. 3 and 4 were without jurisdiction and have been rightly set aside by respondent No.2 – the State Minister for Revenue. He further submits that though the respondent Nos. 5 to 7 were necessary party in the proceedings filed before respondent No.3 they were not added as a party. He further pointed out that in terms of Section 31(A) of the Act, 1947, Settlement

Commissioner has jurisdiction to entertain the grievance of the petitioners and not respondent Nos. 3 and 4. He further submits that proceedings initiated after 50 years ought to have been dismissed at the threshold. Re-opening of the consolidation scheme is not permissible after such inordinate and unexplained delay.

9. Learned Advocates for respondent Nos. 5 and 6 adopted the arguments of the learned Senior Advocate for respondent No.7. They further submitted that the impugned order passed by the State Minister is of the year 2016 and the same was challenged in the year 2018. There is no justification for the delay given by the petitioners. Even in the petition there is no statement that no notice of the proceedings filed before respondent No.2 – the State Minister for Revenue, was served on the petitioners. Learned Advocate for respondent No.6, in addition, submitted that the order impugned does not cause any prejudice to the petitioners. The petitioners initially appeared through the lawyer. However, thereafter they have remained absent. In that view of the matter, there is no substance in the contentions raised by the petitioners.

10. In reply, the learned Advocate for petitioners submitted that the powers of Settlement Commissioner are delegated to the District Superintendent of Land Record in terms of Section 31(A) of the Act, 1947. He further submitted that petitioners were justified in

approaching respondent No.4.

11. It is not disputed that the consolidation scheme was finalized on 05-03-1962 and the same was published in the Government Gazette on 15-03-1963. After lapse of almost 50 years period the petitioners initiated proceedings before respondent No.3 on 25-01-2012, seeking correction in consolidation scheme. Absolutely no reason is given explaining such inordinate and enormous delay. Before respondent No.4, in the proceedings filed by the petitioners, there is no reference of Gat No.72. The petitioners only sought correction in the consolidation scheme in respect of Gat Nos. 66 to 71 of Mauje Deolai, Tal. & Dist. Aurangabad. Respondent No.4 allowed the application filed by the petitioners and directed to prepare corrected scheme and map to be submitted to respondent No.3.

The said decision was challenged by the petitioners before respondent No.3. Respondent No.3 erroneously proceeded to pass an order thereby canceling the decision of respondent No.4 and issuing directions in respect of Gat No.72, which was admittedly not a subject matter of the proceedings filed before respondent No.4. The said decision of respondent No.3 was, therefore, erroneous and unsustainable.

12. Respondent Nos. 5 to 7, therefore, challenged the said

decision by filing appeal before respondent No.2 – the Hon'ble State Minister for Revenue. Along with the appeal application for delay condonation was filed. In the appeal, notices were issued to the petitioners and the same were served on the petitioners. It appears from the impugned order that in spite of service of notice, though opportunity was given to them, petitioners have chosen not to file written arguments. The petitioners did not remain present on the date of hearing. Respondent No.2, after considering record and hearing the parties present before him, condoned the delay and allowed the revision, thereby setting aside the decision of respondent No.3. The said decision is rendered by taking into consideration the fact that in the proceedings filed before respondent No.3, respondent Nos. 5 to 7 were not made parties and they were not heard. When the petitioners challenged the decision of respondent No.4 before respondent No.3 the grievance of the petitioners was in respect of Survey No. 25, 26 and Gat Nos. 66 to 71. However, the respondent No.3 has erred in issuing directions and passing order in respect of Gat No.72. Respondent No.3 has no jurisdiction to change the orders of Settlement Commissioner, Land Record. Further finding is recorded that as per Section 31(A) of the Act, 1947, after the scheme is implemented the arithmetical error or inadvertent error in the writing can be corrected. However, there was no such error in respect of Gat No.72. In spite of that respondent No.3 has erroneously proceeded to direct correction in respect of Gat No.72. It is also noted that the consolidation scheme was finalized on 05-03-1962 and the Government has published the same in the Gazette on 15-03-1963 and the consolidation scheme was implemented and the appeal has been filed by the petitioners after delay of 40 years. The respondents have purchased Gat No.72 by way of a registered Sale Deed and no competent Civil Court has set it aside. In view of these findings respondent No.2 was justified in allowing the revision filed by respondent Nos. 5 to 7.

13. I do not agree with the submissions of the learned Advocate for petitioners that respondent No.2 ought to have first allowed the delay condonation application and thereafter should have considered the revision on merits by issuing fresh notices. The petitioners are not entitled to take advantage of their own wrong of not appearing in the proceedings filed before respondent No.2, though they were duly served.

14. The decision of respondent No.2 is in consonance with the provisions of law and record. Fact remains that the petitioners have approached respondent No.3 after delay of more than 40 years and respondent No.3 had no jurisdiction to entertain proceedings filed by the petitioners as the jurisdiction lies with the Settlement Commissioner.

Though the learned Advocate for petitioner tried to contend that powers are delegated to the District Superintendent of Land Record, proceedings filed by the petitioners and the order passed by respondent No.4 reveal that the petitioners approached respondent No.4 and not the Settlement Commissioner. Therefore, that argument is not acceptable.

15. The orders passed by respondent No.3 and 4 were, therefore, without jurisdiction and respondent No.2 has rightly allowed the revision filed by the petitioners. Learned Senior Advocate for respondent No.7 was right in placing reliance in **Mohammad Swalleh and Others Vs. IIIrd Addl. District Judge, Meerut and Another**, reported in **AIR 1988 SC 94**, wherein it is stated that if by allowing writ petition illegal order is being revived then the writ Court shall not interfere in the impugned order.

16. The petitioners have failed to explain as to why the order impugned in the present petition, which is passed in the year 2016, is challenged after delay of two years i.e. in the year 2018.

17. For the aforestated reasons, there is no substance in the writ petition. Writ petition is, therefore, dismissed. Rule is discharged. No costs.

(NITIN B. SURYAWANSHI, J.)

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