

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9732 OF 2021

Gulam Rasool Majid Patel,
Age 38 years, Occ. Agriculture,
R/o. Takali Rajarai, Tq. Khultabad,
District Aurangabad.

... Petitioner.

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Revenue and Forest Department
Mantralaya, Mumbai -32.
- 2) The Dy. Director of Land Record,
Aurangabad.
- 3) The District Superintendent of Land
Record, Aurangabad.
- 4) The Dy. Superintendent of Land Record,
Khultabad Dist. Aurangabad.
- 5) Shaikh Nawaz Dada Patel,
Through Shaikh Mujeeb Shaikh Nawaz,
Age 55 years, Occ. Business,
R/o. Near Nurani Masjid, Garkheda,
Aurangabad.
- 6) Hanif s/o Abdul Rehaman Patel,
Age 65 years, Occ. Agriculture.
- 7) Sandu s/o Abdul Rehaman Patel,
Age 70 years, Occupation Agriculture.

Both r/o. Takali Rajarai, Tq. Khultabad,
Dist. Aurangabad.

... Respondents.

...

Advocate for the Petitioner : Mr. S. S. Thombre h/f Mr. N. D. Sonwane.
A.G.P. for the Respondent/State : Mr. K.B. Jadhavar.
Advocate for Respondent No. 5 : Mr. N.L. Jadhav.

...

WITH

WRIT PETITION NO. 9764 OF 2021

- 1) Hanif s/o Abdul Raheman Patel,
Age 75 years, Occ. Agriculture,
R/o. Takali Rajarai, Tq. Khultabad,
District Aurangabad.
- 2) Sandu s/o Abdul Raheman Patel,
Age 75 years, Occ. Agriculture,
R/o. Takali Rajarai, Tq. Khultabad,
District Aurangabad.

... **Petitioners.**

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
- 2) The Hon'ble for Revenue
State of Maharashtra,
Mantralaya, Mumbai.
- 3) The Settlement Commissioner,
Maharashtra State, Pune.
- 4) The Deputy Director of Land Records
Aurangabad Revision, Aurangabad.
- 5) The District Superintendent of Land
Records, Aurangabad, Dist. Aurangabad.
- 6) The Deputy Superintendent of Land
Records, Khultabad Tq. Khultabad
Dist. Aurangabad.
- 7) Shaikh Navaz Dadu Patel,
Age years, Occupation Agriculture,
R/o. Takali Rajarai, Tq. Khultabad
District Aurangabad,
Through his G.P.A. holder, Mujib
Shaikh Navaz Patel, Age Major,
Occ. Agriculture, R/o. Near Nurani
Masjid, Garkheda Area, Aurangabad,
Tq. & Dist. Aurangabad.

... **Respondents.**

...

Advocate for the Petitioner : Mr. S.S. Thombre
A.G.P. for the Respondent/State : Mr. K.B. Jadhavar.
Advocate for Respondent No. 7 : Mr. N.L. Jadhav.

CORAM	:	MANGESH S. PATIL, J.
RESERVED ON	:	03.09.2021.
PRONOUNCED ON	:	01.10.2021.

JUDGMENT :

Since in both these Writ Petitions the self same order passed by the learned Minister in the Revision under Section 35 of the Maharashtra Prevention and Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter 'the Act') preferred by respondent Shaikh Navaz Dadu Patel, who is respondent No. 5 in Writ Petition No. 9732/2021 and respondent No. 7 in Writ Petition No. 9764/2021, both these Writ Petitions have been heard together and are being disposed of by this common judgment.

2. Heard. Rule. The Rule is made returnable forthwith. The learned A.G.P and learned advocates for the respondents waive service on behalf of the respective respondents. At the request of the parties the matters are heard finally at the stage of admission.

3. Shorn of verbiage the facts leading to the filing of these Writ Petitions can be summarised as under :

The scheme under Section 22 of the Act for village Takali Rajarai Tq. Khultabad was finalized on 30.10.1975. The petitioner Hanif Patel submitted an application disputing uneven and inequitable distribution of the lands with Deputy Director of Land Records Aurangabad (hereinafter 'D.D.L.R.') on 16.03.1978. By following necessary procedure, a draft modification was duly published on 15.03.1985. Since nobody raised objection the Settlement Commissioner approved the modification under Section 32 of the Act on 04.06.1985. Consequent upon such modification necessary mutations were carried out in the revenue record on 16.06.1986.

4. Being aggrieved and dissatisfied by such modification the respondent

Shaikh Nawaz preferred an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 before the D.D.L.R. Aurangabad. By the judgment and order dated 30.04.2019 the appeal was disposed of by observing that the appellant Shaikh Nawaz could prefer Revision under Section 35 of the Act. Accordingly, he preferred the Revision on which the impugned order has been passed by the learned Minister thereby condoning the delay that had occurred in challenging the modification in the scheme effected in the year 1985 and setting aside such modification.

5. Apart from such events it is also necessary to point out certain other events as well which have a bearing on the dispute. Admittedly, the respondent Nawaz claiming himself to be in possession of the land allotted to him during consolidation, filed Regular Civil Suit No. 287/1978 seeking injunction against the petitioners restraining them from obstructing his possession. The learned Civil Judge dismissed the suit on 09.04.1981. Respondent Nawaz preferred Regular Civil Appeal No. 218/1981. It was allowed by the judgment and order dated 29.09.1984 and the suit was decreed. The petitioners preferred Second Appeal No. 274/1985 but it was dismissed by this Court on 06.08.2008 thereby confirming the decree of perpetual injunction in favour of Nawaz, which reached finality.

6. There was one more round of litigation. Respondent Nawaz also filed an appeal with the D.D.L.R. objecting to implementation of modified scheme. It was dismissed on 26.02.2002 by observing that the objection raised by Nawaz would be subject to the decision in Second Appeal No. 274/1985. Respondent Nawaz challenged that decision by preferring Writ Petition No. 2824/2002. Neither of the parties have placed on record a copy of the decision of the D.D.L.R. dated 26.02.2002. However, perusal of the judgment in Writ Petition No. 2824/2002 dated 06.08.2008 mentions that the appeal of respondent Nawaz was dismissed on two grounds, firstly, that no objection was raised within the time prescribed after publication of draft modification which was accordingly finalized by following all the necessary

procedure prescribed under the Act, and secondly, in the meantime the modified scheme itself had reached finality. Accordingly the Writ Petition was dismissed and even that decision has reached finality. The respondent Nawaz made an attempt to challenge the decision of the learned Single Judge by preferring Letters Patent Appeal No. 183/2009 but subsequently he withdrew it and it was disposed on 09.12.2016.

7. Now, turning to the core issue regarding legality and validity of the impugned judgment passed by the learned Minister in the proceeding under Section 35 of the Act, the aforementioned facts and circumstances clearly demonstrate that the scheme that was modified under Section 32 in the year 1985 was sought to be challenged by preferring an objection before the D.D.L.R. who dismissed it on 26.02.2002 and the attempt to challenge it before this Court in Writ Petition No. 2824/2002 had also failed and the decision had reached finality.

8. It is quite apparent that the respondent Nawaz made another attempt to challenge the self-same modified scheme in the second round of litigation initially by preferring an appeal under Section 247 of the Maharashtra Land Revenue Code and realising the error in invoking the remedy, had preferred the Revision under Section 35 of the Act on which the impugned order is passed. It is thus abundantly clear that he sought to challenge the scheme that was modified under Section 32 of the Act in the year 1985, through an appropriate remedy under Section 35 of the Act in the year 2019. As laid down in catena of decisions, though no limitation is prescribed for invoking the revisional powers under Section 35 of the Act, a party is expected to avail the remedy within a reasonable time. A Division Bench of this Court in the case of **Gulabrao Bhaurao Kakade (Smt.) since deceased by his heirs and legal representatives Vs. Nivrutti Krishna Bhilare and others; 2001(4) Mh.L.J. 31** has held that normally in such matters the remedy should be availed within three years, to challenge either the scheme finalized under Section 22 or a scheme modified under Section 32 of the Act. It has been

further held that exercising such a power on the ground of error after 15 years is grossly unjustified. Following are the observations which clearly lay down the law applicable to the facts of the matter in hand :

“6. The power given to the Settlement Commissioner for variation of the scheme is on account of an error other than that referred to in section 31A, irregularity or informality after following the procedure prescribed. Though there is no time limit prescribed u/s 32(1) for the Settlement Commissioner to vary the scheme which has come into force, but obviously even in the absence of any period prescribed u/s 32, the said power can only be exercised within reasonable period in any case. What would be the reasonable period for exercise of power u/s 32(1) by the Settlement Commissioner may depend on facts and circumstances of each case and we do not intend to lay down any specific period for exercise of that power by Settlement Commissioner but ordinarily exercise of such power after three years of finalisation of scheme u/s 22 may not be Justified. In the facts and circumstances of the present case, the exercise of power by Settlement Commissioner for variation of scheme which has come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within reasonable time. The fact is and that is not disputed that the earlier scheme was finalised in the year 1973 under the Act of 1947 to the knowledge of all the parties concerned. Nobody was aggrieved by the said scheme finalised under the Act of 1947 and the scheme came into force u/s 22. The said scheme which had been finalised in accordance with law and came into force and continued to be in force, could not have been unsettled by initiating the proceedings for variation u/s 32 on

the purported ground of error, irregularity or informality after a lapse of about 15 years. Thus, the exercise of power by Settlement Commissioner u/s 32 for variation of the scheme in the facts and circumstances of the present case is grossly unjustified.

9. *We find that the procedure contemplated under Rule 29 has not been followed and as a result thereof, the petitioner was deprived of filing objections. Rule 29 mandates that a draft variation of scheme under subsection (1) of Section 32 shall be published by affixing a copy of the scheme together with notice in Form IX for 30 days at the Chavdi and if there is no Chavdi, at the office of the Village Panchayat and if there is no Village Panchayat for such village, then at any other conspicuous public place in each of the villages concerned in the regional language of such notice and it shall also be announced in each village by beat of drum that the draft variation has been so published and a copy of the notice in Form IX shall also be affixed for thirty days at the Taluka or Tahsil Kacheri of the Taluka or Tahsil concerned in the regional language of the Taluka or Tahsil. Since it is stated in the affidavit in reply that the draft notice was published through the Talathi in the village by beat of drum on 14.10.1988, and placed on Taluka Notice Board on 21.10.1988, we have no reason to disbelieve the said statement. However, mere publication of the varied scheme by beat of drum and Taluka Notice Board is not the compliance of Rule 29. It is mandatory for the Settlement Commissioner that the draft variation of the scheme u/s 32(1) is published by affixing a copy of the same together with notice in Form IX for 30 days at the Chavdi of village*

and if there is no Chavdi, at the office of Village Panchayat and if there is no Village Panchayat then at one other conspicuous public place in the concerned village in the regional language of such village. In the affidavit in reply, it is not even stated nor any material is placed that the draft of variation of scheme under sub-section (1) of Section 32 was affixed together with notice in Form IX in the regional language of the said village at any of the requisite places. It is also not stated that since there is no Chavdi in the village and no Village Panchayat, it was published at any other conspicuous public place in the said Village. Publication of notice on Taluka/Tahsil Kacheri of the Taluka or Tahsil in the regional language is an additional mode to the mandatory mode of publication by affixing copy of the scheme together with notice in Form IX at the Chavdi of the village and in its absence at the office of Village Panchayat and in that absence at the conspicuous public place of the concerned village. We find that mandatory procedure of publication of draft of variation of the scheme under sub-section (1) of the Section 32 as required under Rule 29 was not followed and that vitiates the order dated 2.1.1989.”

9. If such is the legal frame work, the learned Minister while passing the impugned order and condoning the delay ought to have borne in mind such legal impediment before deciding to condone the delay and quashing and setting aside the scheme that was modified under Section 32 after lapse of more than 35 years.

10. True it is that no formal application for condonation of delay is necessary to be preferred and no prejudice can be said to have been caused to the petitioners in as much as an opportunity of being heard even on the ground of delay was accorded to them. But the fact remains that ignoring

the aforementioned legal principles the learned Minister has proceeded to condone the delay by observing that the scheme that was modified under Section 32 of the Act itself was erroneous and was finalised by causing serious prejudice to the respondent Nawaz.

11. In the reasoning given by the learned Minister, he has referred to the decision of the Civil Court in Regular Civil Suit No. 287/1978 that had reached finality in the form of dismissal of Second Appeal No. 274/1985 preferred by the petitioners. In doing so the learned Minister has clearly erred in drawing an inference that the decision in the civil suit has the effect of pointing out the illegality in the modified scheme. At the cost of repetition it is necessary to bear in mind that it was a suit for perpetual injunction simplicitor and the question regarding legality or otherwise of the scheme that was modified under Section 32 was not directly and substantially in issue. Merely because the decision in the civil suit had the effect of confirming the fact that respondent Nawaz was in exclusive possession of the property in dispute, the finding recorded in that proceedings could not have been regarded as having any bearing on the legality of the modified scheme. The impugned judgment demonstrates that the learned Minister has proceeded to draw such an inference which is grossly erroneous and not at all sustainable.

12. The learned Minister has assigned one more reason by observing that such original scheme was finalised by following due procedure and no objection was raised by the petitioners within the stipulated period of 30 days before it was finalised under section 22. Thus according to him, since the petitioners had not raised any objection for finalization of the original scheme, it could not have been modified at their instance beyond the prescribed period. It is true that the petitioner did not object to the finalization of the scheme under Section 22 within the stipulated period of 30 days, but it is a matter of record that they did file the objection on 16.03.1978 i.e. within reasonable time i.e. three years as laid down in the

case of **Gulabrao Bhaurao Kakde (supra)**. Besides, if there was any such illegality in modifying the scheme under Section 32 beyond time prescribed by the Act, the respondent Nawaz is equally guilty in sleeping over his rights in not raising any objection to the draft modification which was published in the year 1985. At least the petitioners had taken care to challenge the original scheme by raising an objection within a reasonable time. As against which, the respondent Nawaz has taken more than 35 years to question such modification.

13. If such is the state of affairs, approach of the learned Minister while passing the impugned order is quite injudicious in observing that the objection having not been raised by the petitioner within stipulated time is more serious than the lapse on the part of the respondent Nawaz in sleeping over his right for more than 35 years in questioning the modification. I therefore, find no hesitation in concluding that the learned Minister has clearly erred in appreciating the facts and circumstances discussed herein above and in proceeding to revise the modified scheme after a lapse of enormous time that too without sufficient reason. The impugned judgment and order is clearly erroneous and illegal.

14. Apart from the above state of affairs, it is also pointed out by the learned advocate for the petitioners that the respondent Nawaz is simultaneously seeking to challenge the modified scheme but at the same time deriving a benefit under it in as much as, in such modification he received a land Gat No. 647 and has even sold it by a registered sale-deed dated 18.02.2012 (page 133 in Writ Petition No. 9764/2021). If such is the state of affairs, the attempt of the respondent Nawaz to challenge the modified scheme but simultaneously disposing of a land allotted to him under such modification would be an additional ground to allow the Writ Petition.

15. In the result, the impugned order passed by the learned Minister is

liable to be quashed and set aside.

16. The Writ Petitions are allowed. The impugned order is quashed and set aside.

17. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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