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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.103 OF 2014

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| 1. | Lakshman s/o Dashrath Wakle
Age – Major, Occ – Agriculture | PETITIONERS |
| 2. | Rameshwar s/o Dashrath Wakle,
Age – Major, Occ – Agriculture | |

Both R/o At Beduk-Chi-Wadi,
Po : Pimpalner, Taluka and District – Beed

VERSUS

- | | | |
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| 1. | The State of Maharashtra
Through Principal Secretary,
Revenue Department,
Mantralaya, Mumbai | RESPONDENTS |
| 2. | Dy. Director of Land Records, Aurangabad | |
| 3. | Dy. Superintendent Land Records Office, Beed | |
| 4. | Shahabai s/o Vishwanath Pawar
Age – Major, Occ – Agriculture | |
| 5. | Mahadev s/o Vishwanath Pawar
Age – Major, Occ – Agriculture | |
| 6. | Kashinath s/o Vishwanath Pawar
Age – Major, Occ – Agriculture | |

Respondents No. 4 to 6 R/o At Beduk-chi-Wadi
Po : Pimpalner, Taluka & District - Beed

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Mr. Mahesh V. Ghatge, Advocate for the petitioners
Mrs. V. S. Chaudhari, AGP for respondent - State
Mr. S. S. Jangada h/f Mr. S. S. Deshmukh, Advocate for R-6

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th NOVEMBER, 2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

2. This petition takes exception to order dated 4th October, 2013 passed by Hon'ble Minister for Revenue, State of Maharashtra, thereby partly allowing appeal of respondents No. 4 to 6.

3. In the year 1976, consolidation scheme was implemented, in which lands were exchanged between the petitioners' father and respondent No.4 by mutual consent. Father of the petitioners and respondent No. 4 and others, whose lands were consolidated, have signed document, wherein they have agreed to form the blocks as set out therein and lands survey No. 63/5 and 63/9 belonging to the petitioners' father was exchanged with lands survey No. 63/1, 63/3A (Part) and 67/2 of respondent No.4. Accordingly, orders were passed by the Consolidation Officer and Settlement Commissioner under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short "the said Act"). Petitioners' father and respondent No. 4 were put into the possession of their

respective lands after consolidation and possession receipts were accordingly issued.

4. By filing application dated 5th December, 2006 before respondent No. 2, respondent No.4, challenged consolidation scheme / proceedings, contending that she got less share in the land in the consolidation scheme of 1976-77.

Respondent No. 2 rejected the said application filed by respondent No. 4 holding that as per section 19 (1) of the said Act, complaint / objection has to be lodged within thirty days from the date of publication of the consolidation scheme, however, respondent No. 4 failed to do so, hence, her application / complaint is not within limitation. It is further held that Bombay High Court in "***Gunda Tuka Shinde V/s Pandharinath Ramrao Shinde and Another***" and "***Krushna Bhallu Sindgoda V/s Settlement Commissioner and Director Lands Records***" has held that after consolidation scheme is published under section 19 (1) of the said Act, objections should be raised within thirty days and if no such objection is raised within stipulated time, then the objection lodged after some years need not be entertained. Respondent No. 2 rejected the said application of respondent No. 4 on these grounds.

5. Respondent No. 4, thereafter, filed revision petition No. 345 of 2007, before Hon'ble Minister for Revenue, challenging decision of respondent No. 2. The revision came to be partly allowed by order dated 4th October, 2013 and the matter was remanded back to respondent No. 2 to take action in terms of section 31 (1) of the said Act. This order is impugned in present petition.

6. Heard learned advocate for the petitioners, learned advocate for respondents No. 4 to 6 and the learned AGP for the State.

7. Learned advocate for the petitioners submitted that no personal hearing was given to the petitioners before deciding the revision. A specific statement is made by the petitioners that they were not heard at the time of final decision of the revision. Learned advocate for the petitioners submitted that the petitioners filed say to the revision on 28th May, 2012 and thereafter they were not heard on merits. Say of the petitioners is not properly appreciated. Learned advocate for the petitioners, by relying on judgment of this court in the case of **"Gunda Tuka Shinde V/s Pandharinath Ramrao Shinde and Another"** reported in **1991 (1) Mh.L.J. 669**, submitted that once the parties, by mutual consent have divided lands into unequal areas because of

differences in the quality and yield of the land, there cannot be said to be any error or irregularity in the said division. The division bench of this court, set aside the order passed by the Settlement Commissioner, thereby amending the consolidation scheme at the instance of person who was party to earlier scheme and had consented on the ground that he got less area complaining after gap of two years, it was held by this court that order of the Settlement Commissioner was without jurisdiction. He, therefore, submitted that the impugned order is unsustainable and the same is liable to be quashed and set aside.

8. Learned advocate for respondents No. 4 to 6 and learned AGP, on the other hand supported the impugned order.

9. Since this court is inclined to allow the petition on the sole ground that no opportunity of hearing was given to the petitioners at the time of rendering decision in the revision, the matter is not being considered on merits.

10. Though, in the impugned order it is mentioned that the matter was heard on two dates i.e. 28th May, 2012 and 6th August, 2013, taking into consideration the specific averment of the petitioners that no personal hearing was given to them,

which is not contraverted, I am inclined to allow the writ petition.

11. In the result, the writ petition is allowed. Impugned order dated 4th October, 2013 passed by the Hon'ble Minister for Revenue in Case No. Appeal/2013/PK/260/J-7(A) is hereby quashed and set aside. The matter is remanded to the Hon'ble Minister for Revenue for consideration afresh on merits. The matter shall be decided by the Hon'ble Minister in accordance with law, after affording opportunity of hearing to all the concerned. It is expected that the matter will be disposed of expeditiously.

12. Rule is made absolute in above terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE