

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7957 OF 2019

SHESHRAO RAMRAO PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. K.P. Chaware, Advocate for the petitioners.
Mr. K.N. Lokhande, A.G.P. for respondent Nos. 1 to 6.

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CORAM : C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.

DATE : 29 JUNE 2022

ORDER :

By this petition, the petitioners, who are four in number and are agriculturists, are challenging the impugned communication dated 29 June 2016 issued by the second respondent – District Superintendent of Land Records, Jalgaon thereby refusing to carry out correction in the consolidation scheme implemented and executed in the year 1969.

2. We have heard the learned Counsel for the parties and perused record. An application was made by the petitioners to the competent authority under the Prevention of Fragmentation and

Consolidation of Holdings Act, 1947 (“1947 Act”, for short) for correction of the consolidation scheme on the ground that there is certain error in the matter of the consolidation effected and the actual possession on the spot is not according to the revenue record.

3. The second respondent, by the impugned communication, has noted the claim of the petitioners that there was exchange of certain gut numbers as set out in the said communication. Thereafter the second respondent has noted that there was no objection taken by the then land holders about the consolidation implemented and the complaint is being raised after a period of 45 years. The second respondent has also noted that any objection regarding the consolidation has to be raised within 30 days and for that purpose reliance is placed on the decision of this Court in *Gunda Tuka Shinde since deceased vs Pandharinath Ramrao Shinde and others, 1991 (1) MhLJ 669*. In that view of the matter, the complaint / representation has been rejected.

4. The learned Counsel for the petitioners submitted that the case of **Gunda Tuka Shinde** (supra) is not applicable as the present case arises out of a claim under Section 33A of the 1947 Act. It is submitted that the State Government may at any time by

notification in the official gazette revoke the scheme. Thus, it is submitted that there is no limitation provided for the State Government to take action for revoking the scheme under Section 33A of the 1947 Act.

5. The learned A.G.P. for the respondent – State has supported the impugned order.

6. We are unable to accept the contention on behalf of the petitioners based on Section 33A of the 1947 Act. Section 33A reads thus:

“33A. (1) The State Government may at any time, by notification in the Official Gazette, revoke a scheme which has been confirmed, if no person has entered into possession of any holding allotted to him under the scheme and thereupon, the amount of compensation paid or received, if any, by any person in respect of such scheme shall be referred within such reasonable period as may be prescribed.

(2) If any person fails to refund the amount in accordance with sub-section (1) it shall be recovered from him as an arrear of land revenue”.

It can thus be seen that Section 33A is an enabling provision for the State to revoke the scheme by notification in the official gazette and does not refer to any complaint or objection raised by the land holder to the consolidation scheme. The learned

Counsel has also referred to certain Government Resolutions wherein the Government has said that there are certain irregularities in the implementation of the scheme in the entire State. Reliance is also placed on the Circular dated 17 March 2004 which provides for the modalities to consider the complaints received in respect of the consolidation. We have gone through the same. No such ground was ever raised before respondent No.2 – DILR and respondent No.2 had no occasion to consider any such ground. In any event, we are unable to entertain this petition challenging the consolidation scheme after a period of 45 years, more so, when the same would involve disputed questions of fact. Thus, we decline to entertain the petition, which is accordingly rejected with no order as to costs.

7. We, however, make it clear that rejection of this petition may not come in the way of the petitioners, taking recourse to a remedy, if any, available under the provisions of the 1947 Act.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.