

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12785 OF 2017

Ganpati Maruti Shinde

...Petitioner

Versus

Kachrusing Rasing Pardeshi & Others

...Respondent

Mr. Shubham Jayabhar h/f. Mr. D.R. Jayabhar, Advocate for the
Petitioner.

Mr. Prashant Nangare Advocate for respondent no. 1.

Mr. S.W.Munde, AGP for State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th SEPTEMBER, 2022

ORDER :

1. By this petition filed under Article 227 of the Constitution of India, the petitioner challenges the order dated 11.04.2017 passed by respondent No. 6 under section 257 of Maharashtra Land Revenue Code, 1966 (for short 'the Code') and section 35 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'Act of 1947').

2. Facts which are not disputed are that, the consolidation scheme of village Dulechandgaon, Taluka- Pathardi, District- Ahmednagar was sanctioned on 31.03.1990 and has come into force on 30.04.1990.

3. It appears from the impugned order that there was corrigendum issued to the said final scheme on 27.02.1997. The respondents challenged the said corrigendum by filing appeal before respondent no. 6. After hearing the appeal, respondent no. 6 allowed it. This order is impugned in the present petition.

4. Having heard the learned advocate for the petitioner, learned advocate for the respondent no. 1 and learned Assistant Government Pleader for the State, this Court is of the considered view that the impugned order cannot be sustained on the ground of jurisdiction.

5. The corrigendum which is issued on 27.02.1997 is challenged by the respondent no. 1 by filing appeal on 07.08.2014. Respondent No. 6 after hearing the parties has allowed the appeal and set aside the corrigendum dated 27.02.1997 and confirmed the mutation entry no. 341 dated 10.12.1994, by exercising powers under section 257 of the Code and section 35 of the Act of 1947.

6. In Santoshkumar Shivgonda Patil and Ors. v. Balasaheb Tukaram Shevale and Ors [AIR 2009 SC (Supp)

2471], relied upon by the petitioner, the learned Division Bench of this Court has held that '*there is no time limit prescribed for exercise of revisionary powers, ordinarily, reasonable period within which power of revision may be exercised would be three years.*'

7. The learned advocate for the petitioner has relied on unreported decision of the learned Single Judge of this Court in Writ Petition No. 3815/1998, which is rendered in the similar facts. This Court has held that '*the revisional authority committed a jurisdictional error in purportedly invoking the provisions of section 257 of MLR Code.*' This decision supports the case of the petitioner.

8. Since, respondent No. 6 has exercised powers under section 257 of the Code and 35 of the Act of 1947, after a period of more than 17 years, the impugned order suffers from the vice of jurisdictional error and therefore, impugned order cannot be sustained.

9. The learned advocate for the respondent no. 1 strenuously submitted that corrigendum was issued at the

instance of the petitioner without hearing the respondent, who is affected party. After said corrigendum was noticed by the respondent he earlier approached Settlement Commissioner and thereafter, to the State Government. He therefore submits that since the corrigendum is issued without hearing the respondent, said corrigendum is unsustainable in law and facts of the case. He further submits that correction sought by the petitioner was also beyond limitation.

10. This Court is not going into the merits of the matter at this stage, since, the order impugned in the present petition is found to be without jurisdiction. In the result, writ petition is allowed.

11. The impugned order dated 11.04.2017 passed by respondent No. 6 in Appeal No. 3315/6470 PK 818/J-6, is hereby quashed and set aside.

12. The respondents are at liberty to avail appropriate remedy in law. All the contentions of the parties are kept open.

13. At the time of availing remedy, time spent by the respondent no. 1 in prosecuting the proceeding before the Settlement Commissioner, if any, before the State Government and the present petition, shall be taken into consideration for delay condonation.

[NITIN B. SURYAWANSHI, J.]