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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12313 OF 2017

DADABHAU DEVIDAS TELURE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr ,B. A. Darak Advocate for petitioners;
Mr K. B. Jadhavar, A.G.P. for respondents/State
Mr S. B. Gastgar, Advocate for respondent No.5

CORAM : SMT. BHARATI DANGRE, J.

DATE : 28th January, 2022

PER COURT:

1. Heard the learned Counsel Shri. Darak for the petitioners, the learned Counsel Shri. Gastgar for the contesting respondent No.5 and the learned AGP for State authorities.

The facts in the present petition reveal that the State of Maharashtra prepared a scheme for village Shirala, Tq. Georai, Dist. Beed, under Section 15-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as 'the 1947 Act') after duly noticing the land owners in the said village. The said scheme for fragmentation and consolidation of holdings was finalized in the year 1975-76.

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2. The dispute in the present petition revolve around the land at Survey No.40 belonging to one Ganpati Telure and during the sanction of the scheme, it was divided into three Guts i.e Gut Nos.128, 129 and 130, of which, the land at Gut No.128, area admeasuring 3H 2R came to be allotted to Jija Ganpati Telure, Gut No.129 area 4R was shown in the name of Jija Ganpati Telure and Devidas Ganpati Telure and land in Gut No.130 admeasuring 4H 44R was shown in the name of Devidas Ganpati, the original owner. Since the date of allotment of the land and formation of Gut Numbers, the father of the petitioners and father of the respondent continued with possession in respect of the said properties. The father of the petitioners partitioned the property and allotted equal share of land out of 129 and 130, to which the respondent No.5 did not object. The partition effected in the year 1984, the petitioner's name came to be entered in the land records and they continued to exercise their physical possession over the said property.

3. For the first time in the year 2013 and to be precise on 29/08/2013, respondent No.5 submitted an application for correction of the lands in Survey No.40, Gut No.128 to 130 in the office of the Deputy Director of Land Records i.e. respondent

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No.2 and the enquiry was directed to be conducted upon the said application by the District Superintendent, Land Records, Beed, who on perusal of the report, recorded that respondent No.5 ought to have submitted the appeal in the office of the respondent No.3. Accordingly, the respondent No.5 carried the proceedings to respondent No.3 on 21/06/2014 and the matter came to be investigated as per the measurement held on 18/12/2013 and a map was prepared under proviso to Section 32(1) for draft variation of the said scheme on 11/09/2015 and the said scheme was sent for its publication. Upon the publication of the said scheme, the present petitioner objected by submitting detail objection on the ground that the scheme once being finalized, cannot be reopen by the circulation of the draft variation scheme, but it is this objection came to be rejected under the impugned order, passed on 04/11/2016 and it is this order, which is assailed in the present petition.

4. Pertinent to note that on the very first date of hearing, i.e. on 16/01/2018, this Court, noting an important aspect that the application for correction of record is being entertained by respondent No.3 at the instance of respondent No.5 after gap of 31

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years, the effect of the impugned order came to be stayed and the interim relief continue till date.

5. The learned Counsel for the petitioners, by relying upon the scheme contained in the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, would submit that once the scheme was finalized, on being published in the Government Gazette, leading to modification of the mutation entries, it cannot be disturbed or modified at any point of time and though the Section 32 of the 1947 Act prescribe power to vary the scheme only on the grounds limited in the said Section, being on account of any error, irregularity or informality, the application filed after lapse of 31 years of the finalization of scheme and it's publication, ought to be rejected and the powers conferred to vary or revoke the scheme, cannot be exercised at the belated stage in this Court after expiry of 31 years.

6. The learned Counsel has placed reliance on the decision of this Court in case of **Suresh Babu Sankanna & others Vs. State of Maharashtra & others, reported in 2018 (4) Mh.L.J. 331**, wherein in paragraph Nos. 13 and 14, their Lordships have held as under :-

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“13. The said position of law, which lays down that when a statute does not prescribe period of limitation, then a reasonable time, ordinarily a period of three years has to be read into such a statute, has been laid down by the Hon'ble Supreme Court in the case of Santoshkumar Shivgonda Patil & Ors. Vs. Balasaheb Shevale & Ors.. Thus, even if there is no specific period prescribed in [Section 32](#) of the said Act as regards limitation, an application for modification or correction of finalised consolidation scheme can be made only within three years of such finalisation of the scheme.

14. Applying the said position of law to the facts of the present case, it is evident that consolidation scheme was finalised in the instant case on 4.3.1971, on being published in the Government Gazette, leading to modification of the mutation entries on 9.2.1973. If the period of three years limitation is applied, even from 9.2.1973, any application for modification or correction of the consolidation scheme in the present case could have been made upto 9.2.1976. It is the case of the petitioners that respondent No. 5 submitted such an application on 22.12.2015, which was hopelessly barred by limitation, while respondent No. 5 has claimed that first such application, raising objection, was submitted in the year 1981. The documents on record referred to different dates as regards the said application moved in

the year 1981. At one place the date appears as 30.10.1981 and at another place as 3.11.1981.”

Further by relying upon the policy underlying the Statutes prescribing limitation, in paragraph No.19, the Division Bench has made the following observations :-

“19. The law of limitation is a matter of public policy, which lays down that stale claims cannot be agitated, and there has to be time limit, within which an aggrieved person can successfully raise his grievance. The Hon'ble Supreme Court has held in the case of Pundlik Jalam Patil (Dead) by LRS., Appellant Vs. Executive Engineer, Jalgaon Medium Project & Anr., as follows:

"26. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England, 4th Edn., Vol. 28, p. 266, para 605, the policy of the [Limitation Acts](#) is laid down as follows:

***"605. Policy of the Limitation Acts.--**The Courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to disprove the stale claim, and (iii) that persons with good causes of actions should pursue them with reasonable diligence."*

27. Statutes of limitation are sometimes described as 'statutes of peace'. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This

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court in [Rajender Singh and Ors. v. Santa Singh and Ors.](#) (1973) 2 SCC 705 has observed : (SCC p. 712, para 18)

"18. The object of law of Limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches".

28. In [Tilokchand Motichand v. H. B. Munshi](#), AIR 1970 SC 898, this court observed that this principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of Limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

29. It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

Thus, it is clear that aggrieved person, like Respondent No. 5 in the instant case, ought to raise his grievance within the period of limitation."

7. In the wake of the above, the attempt on part of respondent No.5, to raise an objection to the scheme which was finalized in the year 1975-1976 for the first time in the year 2013/2014 has been wrongly entertained, in the wake of exercise of powers to

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vary the said scheme by publishing the draft. The belated approach of respondent No.5 cannot be entertained without any justification for entertaining the claim, either on the ground that it suffers from a grave error or perversity. Particularly when it is the normal procedure to effect variation in respect of the scheme, which is granted under Section 15-A after giving due notices to the land owners of the said village.

In the wake of the above, impugned order passed by respondent No.2 as well as notification published on 04/11/2016, being against the scheme under the Bombay Prevention of Fragmentation and Consolidation Act, 1947, is quashed and set aside.

Writ Petition is made absolute in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)

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