

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

**WRIT PETITION NO. 11345 OF 2015**

Rangnath s/o. Nivrutti Dhavalshank  
Age- 74 years, Occ- Agril.,  
R/o. Shingoli, Tq. & Dist. Osmanabad.

...Petitioner

Versus

1. The State of Maharashtra  
Through Principal Secretary,  
Revenue & Forest Department,  
Mantralaya, Mumbai-32.
2. The Deputy Director of Land Record,  
Aurangabad Division, Aurangabad,  
Tq. & Dist. Aurangabad.
3. The Superintendent of Land Record,  
Osmanabad, Dist. Osmanabad.
4. Santosh s/o. Vasant Pakale,  
Age- 41 years, Occ- Agril., & Service,  
R/o. Singoli, Tq. & Dist. Osmanabad.
5. Laxman s/o Vasant Pakale,  
Age- 38 years, Occ- Agril., & Service,  
R/o. Singoli, Tq. & Dist. Osmanabad.
6. Nishant s/o Shivaji Dhavalshank,  
Age- 39 years, Occ- Agril.,  
R/o. Singoli, Tq. & Dist. Osmanabad.
7. Sameer s/o Tanaji Dhavalshank  
Age- 45 years, Occ- Agril.,  
R/o. Singoli, Tq. & Dist. Osmanabad.
8. Keshav s/o. Dattatraya Dhavalshank,  
Age- 65 years, Occ- Agril.,  
R/o. Singoli, Tq. & Dist. Osmanabad.

9. Narayan s/o Bandu Waghmare  
Age- 60 years, Occ- Agril.,  
R/o. Singoli, Tq. & Dist. Osmanabad. ...Respondents

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Mr. M.B Kolpe, Advocate for the petitioner.  
Mr. S.N. Kendre, AGP for respondent Nos. 1 to 3.  
Mr. S.S. Choudhary for Respondents No. 4 & 5.  
Mr. N.K. Tungar, Advocate for Respondents No. 6 to 8.

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**[CORAM : NITIN B. SURYAWANSHI, J.]**

**RESERVED ON: 26<sup>th</sup> JULY, 2022**

**PRONOUNCED ON: 21<sup>st</sup> SEPTEMBER, 2022**

**ORDER:**

. This petition filed under Article 227 of the Constitution of India, takes an exception to the order dated 09.10.2015, passed by the Secretary, Revenue and Forest Department, Mantralaya, Mumbai, in Appeal No. 2014/F.N.75/J-7A/F.No. 1080(10)/2014/F & CS.

2. The petitioner claims to be a owner of land survey no. 41/3, admeasuring 16 Acres 25 Ghunta, situated at Singoli, Taluka & District- Osmanabad. According to the petitioner, mother of respondents No. 4 and 5 was owner of land survey no. 41/1, admeasuring 2 Acres. Respondent No. 8 is owner of land survey no. 41/2, admeasuring 14 Acres and land survey no. 41/4, admeasuring 2 Acres, was owned by Dyanoba Koshti.

3. In the year 1976, land survey no. 41/1, admeasuring 2 Acres, owned by respondents No. 4 and 5, was declared surplus by Collector, Osmanabad. Accordingly, public notice was issued to Dagdubai Kosti, mother of respondents No. 4 and 5. Panchnama was conducted on 19.05.1976, and said land was allotted to respondent No. 9 by Tahsildar, Osmanabad. Accordingly, certificate of allotment of said land was issued in favour of respondent No. 9.

4. It is the case of the petitioner that taking benefit of pencil entry in revenue record, mother of respondents No. 4 and 5 moved revenue authorities claiming partition of land survey no. 41/1, admeasuring 7 Acres 16 Ghunta. On the basis of said application, mutation entry no. 556 was effected, which according to the petitioner is wrongly effected.

5. In the year 1986, consolidation scheme was implemented in the village. In the said scheme, land survey no. 41/3 and other land owned by petitioner is converted in land gut no. 336, total admeasuring 13 Hectare 37 Are. According to the petitioner, under consolidation scheme land survey no. 41/3 is shown as 3 Hectare 38 Are, which in fact should have been 6

Hectare 37 Are. Therefore, the petitioner contends that 2 Hectare 99 Are less land was shown.

6. By application dated 05.10.1999, petitioner applied for correction in area which was reduced in consolidation scheme. Said application was rejected by respondent No. 3 on 04.01.2002. The petitioner challenged this order by filing revision before the State Government, bearing No. Con 4302/647/CR-84/L-1/Cr-96(9)/2003/A&R. The revision was allowed and the matter was remanded back for fresh hearing to respondent No. 2. After remand, after hearing the parties, respondent No. 2 allowed the application filed by the petitioner by order dated 30.01.2012. This order was challenged by respondents No. 4 and 5 by filing Writ Petition No. 3521/2012, which was subsequently withdrawn, with liberty to avail alternate remedy.

7. Thereafter, respondent No. 4 and 5 preferred revision before Principal Secretary, challenging the order passed by respondent No. 2 dated 30.01.2012. The revision is allowed by respondent No. 1. The petitioner is aggrieved by this order.

8. Heard the learned advocate for the petitioner, learned advocates for the respondents and learned Assistant Government Pleader for State.

9. The learned advocate for the petitioner submits that consolidation scheme was finalized in the year 1986. The certificate under section 24 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'the said Act'), was issued in the year 2001, even prior to that on 05.10.1999, application for correction was moved by the petitioner. He further submits that after first remand by respondent No. 1, vide order dated 22.07.2004, respondent No. 2 has failed to follow procedure prescribed under section 15 to 24 of the said Act and there was no publication in terms of Rules 10 and 11. According to him, application filed by the petitioner in the year 1999 was within reasonable time and issue of limitation would not come in the way of the petitioner. He submits that on the basis of pencil entry, 8 Acres land is given to the respondents, which is wrong. He therefore submits that the impugned decision is unsustainable in view of peculiar facts of the present case. According to him, respondent No. 1 has committed an error in allowing the revision filed by the

respondents, on the ground of limitation. In support of his submissions, he relied on Hemdas Premdas Ranbakuda and others vs. Surajbai Dhansao Sahu (Smt.) and others [2008 (4) Bom.C.R. 669], Gulabrao Bhaurao Kakade (Smt.) since deceased by his heirs and legal representatives vs. Nivrutti Krishna Bhilare & others [2001 (Supp.) Bom. C.R. 688] and Bansrajidevi Bhuval Singh vs. Byramjee Jeejeebhoy Pvt. Ltd. & ors. [2006 (6) Bom.C.R. 51].

10. The learned advocate for respondents No. 4 and 5 on the other hand vehemently opposed the prayer of the petitioner. According to him, Settlement Commissioner has power to vary consolidation scheme. In the present case, application was made to the Deputy Director, who had no jurisdiction to entertain the same. By relying on the decision in Jalindar Sadashiv Hirde & others vs. State of Maharashtra and others [2018 (4) Mh.L.J. 200] he submits that, limitation for applying for variation of the scheme is to be counted from finalization of scheme. Application has to be submitted within reasonable time. In the present case application is made by the petitioner belatedly after more than 12 years, after finalization of scheme, and therefore, same was not maintainable. In support of his submissions, he also placed

reliance on *Babhutmal Raichand Oswal vs. Laxmibai R. Tarta* [1975 (1) SCC 858].

11. The learned advocate for respondents No. 6, 7, and 8 adopted the arguments of respondents No. 4 and 5.

12. The learned Assistant Government Pleader supported the impugned order. He has produced the original record and proceeding.

13. In reply, the learned advocate for the petitioner submits that by notification dated 23.02.1971 powers of Settlement Commissioner are delegated to Deputy Director of land record. Therefore, there is no substance in the arguments of respondents that Deputy Director of land record had no jurisdiction to entertain the application filed by the petitioner.

14. Heard the learned advocate for the petitioner, learned advocates for the respondents and learned Assistant Government Pleader, at length. Perused the record.

15. Admittedly, consolidation scheme of mauje Singoli, Taluka & District- Osmanabad was finalized in the year 1987. The petitioner applied for correction in the said scheme by application dated 05.10.1999. It is therefore clear that the petitioner has applied for correction of the scheme belatedly after 12 years, after the finalization of said scheme.

16. In Gulabrao Kakade (supra), the Division Bench of this Court has held that '*limitation for variation of accepted consolidation scheme though is not prescribed, it has to be done within a reasonable time. What is reasonable time would depend on the facts of each case. Ordinarily, exercise of such powers after three years from finalisation of scheme may not be justified. Exercise of power on the ground of error after 15 years is grossly unjustified.*' This ratio is being consistently followed by this Court, which is still holding the field. The same is also followed by the learned Single Judge of this Court in Jalindar Hirde (supra).

17. It is further clear from the record that application made by the petitioner after 12 years of finalization of scheme, was entertained by respondent No. 2 and by order dated

30.01.2012, he directed for submitting a proposal for block correction of survey no. 41. It is therefore clear that 25 years of the finalization of consolidation scheme, respondent No. 2 has passed said order directing submission of proposal for correction in the final scheme, which is not permissible in law. Said order was contrary to the legal position settled by this Court in *Gulabrao Kakade (supra)* and *Jalindar Hirde (supra)*.

18. As per Section 19(1) of the said Act, the Consolidation Officer has to publish a draft consolidation scheme in the prescribed manner in the concerned village and any person likely to be affected by such scheme has to take objection in writing to the Consolidation Officer within 30 days of the date of such publication. In the present case, consolidation scheme has been finalized in the year 1987. There is nothing on record that any objection was raised to the draft scheme by mother of respondents No. 4 and 5. In this view of the matter, the petitioner's argument that on the basis of pencil entry in 7/12 extract, 8 Acres land was wrongly given to respondents is liable to be rejected.

19. Respondent No. 1 has dealt with all the submissions of the parties and by relying on the decision in Gulabrao Kakade (supra) has held that application is submitted by the petitioner belatedly after 12 years after finalization of the consolidation scheme of Village Singoli and respondent no. 2 has erred in directing to submit proposal for correction in the scheme, after 25 years, after finalization of the scheme and same are contrary to decision in Kakde (supra). Therefore, respondent No. 1 was justified in allowing the application filed by the respondents No. 4 and 5.

20. In Bansrajidevi Singh (supra) learned Single Judge of this Court in the facts of that case held "*under the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules 1971 and Rule 10 thereunder gives form of register of mutations. Rules 11 is regarding making entries in register of mutations. Rule 12 is regarding recording mutations in certain cases, Rules 13 states that whenever an entry is made in the register of mutations under sub-section (1) of section 150 in relation to any land, the Talathi shall indicate, in pencil the number of that mutation entry against the entry relating to that land appearing in the record of rights with the remark that the*

*mutation entry has not been duly certified. \_ \_ \_ \_ When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it is well settled, it has to be done in that manner alone and it was necessary for the Tahsildar to ensure that the requirements of the Code were satisfied by the petitioners' predecessor."* This ruling is of no assistance to the petitioner in the facts of the present case.

21. In Hemdas Ranbakuda (supra), learned Single Judge of this Court was considering the provisions of the said Act along with Section 34 to 36 of the Specific Relief Act. Considering the provisions of section 24 in respect of certificate of transfer, this Court has held that "*duty is cast upon the Consolidation Officer to issue certificate to every owner to whom holding has been allotted in pursuance of the scheme of Consolidation. The further language clearly shows that the certificate can be issued to a person to whom holding has been transferred in pursuance of the Consolidation scheme. The transfer envisaged is on account of adjustment of areas with adjacent owners, so as to prepare a viable and workable agricultural plot of land. Thus certain portion of adjacent land owner may be required to be given to other owners for the purpose of such scheme and therefore only*

*provisions has been made by the legislature to issue a certificate to such owner to whom the adjacent land has been transferred under the scheme with a provision for registration of such certificate under the Indian Registration Act, . There is also a provision under sub-section (2) which exempts such certificate from payment of stamp duty or registration fee. The Consolidation Officer has not allotted or transferred any land to Chudaman while implementing the Consolidation scheme. Such allotment or transfer is possible only in favour of a person who is already a owner before such scheme is undertaken."*

22            This citation is rendered in different facts and cannot be said to be applicable in support of petitioner's case.

23.            In Babhutmal Oswal (supra), relied upon by the respondents, it is held:

*7.    The Special Civil Application preferred by the appellant was admittedly an application under Article 227 and it is, therefore material only to consider the scope and ambit of the jurisdiction of the High Court under that Article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the, District*

*Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath, 1954 SCR 565 (AIR 1954 SC 215) that the:*

*"..., power of superintendence conferred by Article 227 is as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee, AIR 1951 Cal 193 (S.B.) to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors." This statement of law was quoted with approval in a subsequent decision of this Court in Nagendra Nath Bora v. The Commr. Of Hills Division 1958 SCR 1240= (AIR 1958 SC 398) and it was pointed out by Sinha, J. as he then was, speaking on behalf of the Court in that case:*

*"It is thus, clear that the powers of judicial interference under Art. 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Art. 226 of the Constitution. Under Art. 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art. 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."*

*It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Art. 227, interfere with findings of fact recorded by the*

*subordinate court or tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it. What Morris, L.J., said in Rex v. Northumberland Compensation Appeal Tribunal (1952-1 ALL ER 122) in regard to the scope and ambit of certiorari jurisdiction must apply equally in relation to exercise of jurisdiction under Art. 227. That jurisdiction cannot be exercised:*

*"as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings."*

*If an error of fact, even though apparent on the face, of the record, can not be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Art. 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Art. 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.*

8. Here, when we turn to the judgment of the High Court, we find that the High Court has clearly

*misconceived the scope and extent of its power under Article 227 and overstepped the limits of its jurisdiction under that Article. It has proceeded to reappreciate the evidence for the purpose of correcting errors of fact supposed to have been committed by the District Court. That was clearly impermissible to the High Court in the exercise of its jurisdiction under Article 227. The District Court was the final court of fact and there being no appeal provided against the findings of fact reached by the District Court it was not open to the High Court to question the propriety or reasonableness of the conclusions drawn from the evidence by the District Court. The High Court could not convert itself into a court of appeal and examine the correctness of the findings of fact arrived at by the District Court. The limited power of interference which the High Court possessed under the Art. 227 was to see that the District Court functions within the limits of its authority and so far as that was concerned, there was no complaint against the District Court that it transgressed the limits of its authority. It is true that the High Court claimed to interfere with the findings of the fact reached by the District Court on the ground that the District Court had misread a part of the evidence and ignored another part of it but that was clearly outside the jurisdiction of the High Court to do under Art. 227. This is precisely what the High Court did in Nagendra Nath Boras case, 1958 SCR*

*1240= (AIR 1958 SC 398) (supra) while setting aside the orders of the Appellate Authority under the Excise Act and that was disapproved by this Court in clearest terms. The exercise of the power of interference in that case was sought to be justified by reference both to Articles 226 and 227. So far as the exercise of jurisdiction under Art 226 is concerned, this Court pointed out that a writ or order of Certiorari could be issued by the High Court only if there was an error of law apparent on the face of the record and no error of fact, howsoever apparent on the face of the record, could be a ground for interference by the High Court exercising its jurisdiction. It was observed by this Court, while applying this principle to the facts of appeals before it:*

*"In the judgments and orders impugned in these appeals, the High Court has exercised its supervisory jurisdiction in respect of errors which cannot be said to be errors of law apparent on the face of the record. If at all they are errors, they are errors in appreciation of documentary evidence of affidavits, errors in drawing inference or omission to draw inferences. In other words, those are errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected."*

*"The High Court, in its several Judgments and orders has scrutinised, in great detail, the order passed by the excise authorities under the Act. we have not*

*thought it fit to examine the record or the orders below in any detail, because, in our opinion, it is not the function of the High Court or of this Court to do so. The jurisdiction under Art. 226 of the Constitution is limited to seeing that the judicial or quasi-judicial tribunals or administrative bodies exercising quasi-judicial powers, do not exercise their powers in excess of their statutory jurisdiction but correctly administer the law within the ambit of the statute creating them or entrusting those functions to them. The Act has created its own hierarchy of officers and appellate authorities as indicated above, to administer the law. So long as those Authorities function within the letter and spirit of the law the High Court has no concern with the manner in which these powers have been exercised. In the instance cases, the High Court appears to have gone beyond the limits of its powers under Art. 226."*

*This Court also held that the High Court was not justified in interfering with the orders of the Appellate Authority in exercise of its jurisdiction under Article 227. since this jurisdiction was limited only to seeing that the District Court functions within the limits of its authority and did not extend to correction of mere errors. What his Court said in that case applies with equal force in the present case and we must hold that the High Court acted beyond the limits of jurisdiction under Art. 227 in interfering with the findings of fact reached by the District Court. Even if*

*the Special Civil Application had been under Art. 226 that would have made no difference and the High Court would still have had no jurisdiction to disturb these findings of fact. Now, if these findings of fact stand, as they must, it is obvious that the dominant or primary user of the shop by the appellant was for business and not residence and there was accordingly no change of user of the shop, and if that be so, the respondents were not entitled to recover possession of the shop from the appellant either under clause (a) or clause (k) of sub-section (1) of Section 13."*

24. In view of above ratio, this Court cannot interfere in the findings of fact recorded by the authority and cannot correct the mere error of fact by examining the evidence and reappreciating it. This Court cannot convert itself into a Court of appeal while exercising jurisdiction under Article 227 of Constitution of India.

25. There is no illegality or perversity in the order impugned in the present petition. While passing the impugned order, respondent No. 1 has correctly appreciated the facts and has rightly applied the legal provisions and was justified in allowing the appeal by relying on decision in Gulabrao Kakade

(supra). There is no substance in the challenge raised in the writ petition. The writ petition being devoid of merit is dismissed.

**[NITIN B. SURYAWANSHI, J.]**