

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

WRIT PETITION NO.5939 OF 2018

Sakharam Tukaram Dhormare,
Age: 78 years, Occu.: Agri
R/o.: Mangrul, Tal. Sillod,
District. Aurangabad.

... Petitioner

Versus

1. State of Maharashtra
Through Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. Deputy Director of Land Record,
Office of Land Record, Aurangabad.
3. Anjana w/o Parshuram Dhormare,
Age: 50 years, Occu: Agri.,
R/o Mangrul, Tq: Sillod,
Dist: Aurangabad.
4. Gajanan s/o Parshuram Dhormare,
Age: 35 years, Occu: Agri.,
R/o Mangrul, Tq: Sillod,
Dist: Aurangabad.
5. Parshuram s/o Tukaram Dhormare,
Age: 65 years, Occu: Agri.,
R/o Mangrul, Tq: Sillod,
Dist: Aurangabad.
6. Prabhakar s/o Parshuram Dhormare,
Age: 38 years, Occu: Agri.,
R/o Mangrul, Tq: Sillod,
Dist: Aurangabad.

... Respondents

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Mr. D. P. Palodkar, Advocate for Petitioner.

Mr. Y. G. Gujarathi, AGP for Respondent Nos. 1 and 2 – State.

Mr. V. D. Sapkal, Senior Advocate i/b Mr. S. R. Sapkal, Advocate for
Respondent Nos. 3 to 6

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 03rd MARCH, 2022

PRONOUNCED ON : 25th MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.
2. This petition impugns the order dated 24-08-2010, passed by the Hon'ble Minister (Revenue), Mantralaya, Mumbai, in Revision No.221/2017, thereby allowing revision filed by the respondent Nos. 3 and 4.
3. The petitioner and respondent No.5 are the real brothers i.e. sons of Tukaram Dhormare. The property original Survey No.79 is their ancestral property. The said land Survey No.79, in consolidation scheme was converted in two Gut numbers i.e. Gut Nos. 243 and 244. Land Gut No.244 has fallen to the share of respondent No.5, whereas the land Gut No.243 has come to the share of petitioner. Respondent No.3 is wife of respondent No.5. Respondent Nos. 4 and 6 are sons of respondent Nos. 5 and 3.
4. It is admitted position on record that the land original Survey No.79 is ancestral property of Tukaram Dhormare and after

death of Tukaram there was partition between petitioner Sakharam and respondent No.5 Parshuram, on 03-12-1965. Accordingly Mutation Entry No.271 was registered on 03-12-1965. As per the 7/12 extract respondent No.5 Parshuram and petitioner Sakharam are shown as owners and possessors of 8 Annas share equally.

5. The petitioner filed application on 31-01-2004 seeking correction in the consolidation scheme. According to the petitioner land Gut Nos. 243 and 244 were partitioned by East-West boundary and the petitioner and respondent No.5 are in possession of their respective shares. However, in consolidation scheme the land is shown to be divided by North-South boundary. Hence, necessary correction be made in the consolidation scheme showing partition of the land by East-West boundary.

6. According to the petitioner, pursuant to the application the Taluka Inspector of Land Records issued notices to the petitioner and respondents for remaining present for inquiry, spot inspection and verification of actual possession of the parties over the suit property. Notices were duly served on the respondents. Inquiry was made, spot inspection was conducted and statements of occupants of the lands were recorded on 06-01-2007. Respondent Nos. 5 and 6 signed the statements

recorded by the Taluka Inspector of Land Records and consented for correction in the record. By notice dated 08-01-2007 the Taluka Inspector of Land Records called objections of all the parties in respect of correction to be made. The said notice was also served on all the parties. Thereafter, on 02-04-2007 the Taluka Inspector of Land Records, Sillod submitted a detail report to the District Superintendent of Land Records, Aurangabad, mentioning that all the holders of land Gut Nos. 243 and 244 have given consent for carrying out correction in the record and because of the said correction no change would occur in the total number of holders, Gut numbers and their areas. Respondent No.2 thereafter approved the correction. On 27-06-2007, notice of correction was published by affixing the notice on the notice board of the village Panchayat. The Panchanama to that effect was carried out. Respondent No.4 has signed the panchanama as a Panch. Since nobody objected to the correction, the correction was sanctioned by respondent No.2 by order dated 24-08-2010. The correction was acted upon and nobody objected to it for several years.

7. After seven years the respondent Nos. 1 and 2 filed revision before the Hon'ble Minister challenging the correction. Along with the revision delay condonation application was filed. The petitioner opposed the application as well as the revision. However, the Hon'ble Minister

simultaneously condoned the delay and allowed the revision. Hence, the present petition.

8. Heard the learned advocate for petitioner, learned advocate for respondent Nos. 3 to 6 and the learned Assistant Government Pleader for respondent Nos. 1 and 2 – State.

9. The learned advocate for petitioner strenuously submits that in partition, shares of the petitioner and respondent No.5 were divided by East-West *Bandh*. However, in the consolidation scheme map the division is shown as North-South. This mistake in the consolidation scheme was realised by the petitioner in the year 2004. Hence, he filed application seeking correction in the consolidation scheme. The correction is carried out after issuing notices to the respondents, after carrying out the measurements, conducting panchanama and after recording the statements of the concerned parties as well as of the adjacent land owners. Since the correction is carried out with the consent of the parties and it was not objected by the respondents for almost a decade the Hon'ble Minister ought not to have interfered with the same. He further submits that by the correction neither Gut number is changed nor the area. According to him, due to a family dispute in the year 2016 the petitioner filed R.C.S. No.110/2017 seeking perpetual

injunction against the respondents. With a view to give counter-blast to the same the respondents belatedly preferred appeal before the Hon'ble Minister. The Hon'ble Minister has committed an error in simultaneously deciding the delay condonation application with revision which is contrary to the ratio in **Shankar Ramrao Rangnekar Vs. Narayan Sakharam Sawant and Others**, reported in (2013) 1 Mh.L.J. 706 and **Pandharinath Rambhau Kavitke Vs. Shaikh Hamaja Shaikh Husen**, reported in (2001) 4 Mh.L.J. 43. On this ground alone the impugned decision is liable to be quashed and set aside.

10. By relying on the decision in **P. K. Vasudeva and Others Vs. Zenobia Bhanot**, reported in (1999) 7 SCC 377, he submits that when the correction was carried out with the consent of the respondents and since the correction was acted upon, the respondents were not entitled to challenge the correction, as nothing remained there to challenge, the order having exhausted itself. Further submission is that since the respondents were heard and they have consented to the correction, they are now estopped from questioning the legality of the same.

11. Per contra, the learned senior advocate Mr. Sapkal for respondent Nos. 3 to 6 submits that the correction was not permissible as the correction was sought after 45 years of finalisation of the

consolidation scheme. The order passed by respondent No.2/D.D.L.R., Aurangabad, is therefore, without jurisdiction. In support of his submissions he relied on **Dattu Appa Patil and Others Vs. State of Maharashtra and Others**, reported in 2007 (1) Mh.L.J. 393, **Suresh Bapu Sankanna and Others Vs. State of Maharashtra and Others**, reported in 2018 (4) Mh.L.J. 331, **Limbraj Waman Yede Vs. State of Maharashtra and Others**, reported in 2004 (1) Mah.L.R. 492 and **Padmabai Narayan Chaudhary and Others Vs. The Deputy Director of Land Records and Others**, reported in 2020 (2) ALL MR 30. He submits that the notices issued at the time of correction were not served on all the respondents. The land was partitioned in the year 1965 between the petitioner and respondent No.5 and they both were having their respective lands in their possession. The partitioned land Survey No.79 was equally divided between the petitioner and respondent No.5 towards North-South direction. He supported the impugned order passed by the Hon'ble Minister. He, therefore, submits that there is no substance in the petition and the same is liable to be dismissed.

12. The learned Assistant Government Pleader has produced the record of the Hon'ble Minister before this Court and has supported the impugned order. According to him the correction was not permissible after a delay of 45 years.

13. It appears from the record that even before the consolidation scheme was implemented the land survey No.79 was equally divided between the petitioner and respondent No.5 towards North-South direction. After consolidation scheme the same position continued. If there is some mistake in the consolidation scheme, then correction can be sought within a reasonable time. In the case in hand, there does not appear any mistake in the consolidation process or scheme which is finalised. Therefore, there was no occasion for the petitioner to approach respondent No.2 for correction, that too after 45 years.

14. In **Dattu Appa Patil and Others** (supra) the Division Bench of this Court has held that correction in the consolidation scheme can be sought within a reasonable period of time i.e. within three years of finalisation of the scheme, but the power of correction cannot be exercised beyond that period. Ratio in all the other decisions relied upon by the learned senior advocate is same. In **Suresh Bapu Sankanna and Others** (supra), **Limbraj Waman Yede** (supra) and **Padmabai Narayan Chaudhary and Others** (supra) this Court has held that though no specific period is prescribed under Section 32 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, however, the application for correction needs to be filed within a reasonable time and

the reasonable time is held to be three years.

15. Admittedly, in the present case the correction was sought by the petitioner after 45 years which is allowed by respondent No.2. The order passed by respondent No.2 is, therefore, without jurisdiction.

16. In the peculiar facts of the present case, since the order passed by respondent No.2 permitting correction is held to be without jurisdiction, it is not possible to accept the contention of the petitioner that since respondents consented to the correction and as the correction is acted upon, they are not entitled to challenge the same by filing revision before the Hon'ble Minister.

17. The learned advocate for petitioner was right in arguing that in the light of ratio in **Shankar Ramrao Rangnekar** (supra) and **Pandharinath Rambhau Kavitke** (supra) the Hon'ble Minister has erred in simultaneously deciding the delay condonation application and revision. However, I am not inclined to set aside the impugned order on that ground. In the light of ratio in **Champalal Binani Vs. Commissioner of Income Tax, West Bengal and Others**, (1971) 3 SCC 20, wherein it is held that "even if the impugned order is found to be illegal in given case the High Court or the Supreme Court may refuse to interfere if it amounts to revival of another illegal order". The above ratio is

applicable to the facts of the present case, as setting aside the impugned order will revive the illegal order passed by respondent No.2. While exercising the writ jurisdiction this Court is not sitting as the Court of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense.

18. For the aforestated reasons, there is no merit in the writ petition and the same is dismissed. Rule is discharged. No costs.

19. At this stage the learned advocate for petitioner prays for continuation of stay granted to the petitioner vide order dated 19-06-2018. The interim stay granted by this Court to continue for a period of four weeks from today.

(NITIN B. SURYAWANSHI, J.)