

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

**WRIT PETITION NO. 6653 OF 2021
WITH
CIVIL APPLICATION NO. 3504 OF 2023**

Balasaheb s/o. Sampat Zagade .. Petitioner
Age. 50 years, Occ. Agriculturist,
R/o. Takli Lonar, Tal. Shrigonda,
District Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
Through : Principal Secretary
Department of Revenue, M.A.
Mantralaya, Mumbai – 32.
2. The Hon'ble Minister (Revenue)
M.S. Mantralaya, Mumbai – 32.
3. The Deputy Director of Land Records,
Nasik Region, Nasik,
District Nasik.
4. The District Superintendent of
Land Records, Ahmednagar,
District Ahmednagar.
5. Bhagwan Motiram Mehatre
Age. 75 years, Occ. Agri.,
6. Maruti Motiram Mehatre
Age. 72 years, Occ. Agri.,
7. Manohar Dadasaheb Mehatre
Age. 25 years, Occ. Agri.,

8. Sadashiv Motiram Mehatre
Age. 67 years, Occ.Agri.,,
9. Housaram Motiram Mehatre
Age. 60 years, Occ. Agri.,

Respondent Nos.5,7,8 and 9
All R/o. Takli Lonar, Tal. Shrigonda,
District Ahmednagar.

Mr.Anjali Dube (Bajpai), Advocate for the petitioner.
Mr.K.N. Lokhande, AGP for the respondent Nos. 1 to 4.
Mr.D.P. Palodkar, Advocate for respondent Nos. 5 to 9.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	04.07.2023
PRONOUNCED ON	:	01.09.2023

J U D G M E N T :-

01. Rule. Rule made returnable forthwith and the petition is taken up for final disposal by consent of the parties.

02. The petitioner in this petition happens to be original applicant who initiated proceedings in 2016 by moving application before the Dy. Director, Land Records, Nashik Division, Nashik by filing application on 05.07.2016. Respondent Nos. 5 to 9 though were not parties to the said application, were made parties in the appeal before the District

Superintendent of Land Records, Ahmednagar (for short “DSLRL”) in consolidation appeal. The petitioner filed an application in respect of land Survey No.152/1A, admeasuring 1 Acre 33 Gunthas and barren land 37 Gunthas, thus total land admeasuring 2 Acres 30 Gunthas. In the said land, the petitioner allegedly has his residence. Till the consolidation scheme was implemented, name of his father was shown in said land in 7/12 extract. After implementation of the consolidation scheme, land Survey No. 152/1A was given Survey Number as 152/1/1 and was converted in to Gat No.330. After the division of the land, Gat No.242 came to be given to the said land. It is further case of the applicant that when the scheme was implemented, the entire land stood in the name of Manubai Patilbuva Zagade. Thakubai Mhetre then succeeded the land, who happens to be mother of respondent Nos. 5 to 9, whose names are presently appearing on 7/12 extract. It is stated in the application that the petitioner has right to the extent of 1 Ana 10 Paisa in the said land as successor of ancestral property. Thus, total 11 acres land falls in Survey No.152/1A. It is case that at the time of implementation of the scheme, however, name of father of the petitioner was not shown in land Gat No.330. The application was thus moved to enter name of the petitioner in 7/12 extract. It is stated that the petitioner lost father in 2010. There is

already name of the petitioner entered into Grampanchayat record. The petitioner came to know that his name is not appearing in 7/12 extract recently. Prayer is, thus, ultimately made to enter name of the petitioner in 7/12 extract in land Gat No. 242.

03. The DSLR by letter dated 07.07.2016 communicated that no any mistake appears to have occurred in the scheme and the petitioner was directed to approach the Office of the DSLR under section 247 of the Maharashtra Land Revenue Code (for short “MLR Code”), instead of filing application under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (for short “Consolidation Act”).

04. The petitioner, in view of this, filed appeal before the DSLR under section 247 of the MLR Code with these facts. This is for the first time respondent Nos.5 to 9 came to be shown as respondents. The petitioner also filed application for condonation of delay as there was delay of 52 years in filing the appeal.

05. The respondents filed say to the application for condonation of

delay. It is clearly denied that the appellant is having residence on the said land. No reason for delay is assigned. The consolidation scheme was properly implemented in the year 1964. Even father of the petitioner has signed the document and had never objected to the implementation of the scheme. The DSLR after considering the appeal came to a conclusion that father of the petitioner had given statement on 26.12.1964. The predecessor in title of the respondents also had given statements and thereafter, the lands were transferred. He came to a conclusion that the lands were transferred and were given in possession by following proper procedure. If at all there was any grievance, same should have been raised within 30 days in view of section 19(1) of the Consolidation Act and rejected the application for condonation of delay, though he considered the matter even on merits by order dated 31.03.2007.

06. The petitioner, thereafter, filed an appeal before the Dy. Director (Nashik Division). The Dy. Director, however, allowed the appeal, quashed and set aside order passed by the DSLR and directed to take entry in the name of the petitioner in 7/12 extract in other rights column.

07. The respondents, aggrieved by the order, filed a revision before the State Government. The learned Minister allowed the revision by quashing and setting aside order passed by the Dy. Director, Land Records and confirmed the order passed by the DSLR. It is held that the Dy. Director has committed error by allowing the appeal holding that after the consolidation scheme is finalized, no correction can be made. It is held that the Dy. Director has ignored this important aspect. The petitioner is, thus, before this Court.

08. It is a submission of the petitioner that in-fact the application was not for correction or modification of the scheme. What was sought to be done was only that while taking entry in the 7/12 extract inadvertently an entry is not taken in the name of father of the petitioner and no question of delay arise. It is submitted that as regards 11 Gunthas land, till deceased Manubai was alive and was residing, no objection was taken by any of the respondents. It is only after Manubai i.e. mother of the respondents died, the respondents started obstructing possession of the petitioner. It is only, thereafter, the petitioner made inquiry about the entries and on that came to know that the entry is not taken. By taking entry in the 7/12 extract, there would be no change in the scheme. The Dy. Director had in-fact sent report to the learned

Minister. However, said report is not properly considered. It is submitted that the learned Minister has wrongly observed that making any change would amount to modifying the scheme. On the count of delay, she submits that the application was not under section 32 of the Consolidation Act but was under section 31-A of the Consolidation Act, where there is no limitation provided for correction of clerical or arithmetical mistake in the scheme. It is vehemently argued that by taking entry in the 7/12 extract, it is only clerical mistake sought to be corrected and no variation in the scheme is sought and therefore limitation under section 32 of the Consolidation Act would not be attracted.

09. The learned Advocate for respondent Nos. 5 to 9 Mr. Palodkar vehemently opposes the petition. He submits that the authorities have rightly declined to take entry in the name of the petitioner. He submits that the correction can be done only under section 31-A or under section 32 of the Consolidation Act. When section 31-A of the Consolidation Act provides for correction of clerical and arithmetical mistake, section 32 of the Consolidation Act provides for modification/verification/amendment of the scheme. There is no provision to resolve any other dispute. He submits that Chapter III of the

Consolidation Act provides procedure for implementation of consolidation scheme that starts with section 15, whereby the Government declares intention to make scheme for consolidation of holdings. Section 19 of the Consolidation Act provides for publication of draft scheme and amended draft scheme, thereby objections are called within 30 days. Section 24 of the Consolidation Act provides for grant of certificate of transfer. Such certificates are granted only in cases of alteration or exchanges and thereafter Gat numbers are given. Thus, the scheme is finalised after following the procedure. No objection was ever raised by the petitioner or his father and it is for the first time after 52 years, objections are taken. He submits that the moment section 19 scheme is published under the Act, the land to the extent of 11 Gunthas was adjusted. Once the land is adjusted, everything would be changed. Now to reverse the position or to modify the position will have cascading effect.

10. The learned AGP appearing for respondent Nos. 1 to 4 supports the impugned order.

11. In rebuttal the learned Advocate for the petitioner submits that

the original application was filed under section 31-A of the Consolidation Act. She further submits that statements were prepared under Clause iii of Rule 9 and Khata No.88 was given to Manubai, by recording statement No.34 dated 26.12.1964. In the said statement, there is an endorsement of the officer that in the said Gat, right of residence (Vasti-wael) is shown, wherein name of the petitioner appears. Though in the statement said right is mentioned, however in 7/12 extract, said is prima facie not taken. She submits that even though it is held by the Dy. Director that while implementing the scheme, no mistake was committed, still held that right of the petitioner appears to be in Gat No.330. She thus submits that it is accepted by the Dy. Director that right of residence is inadvertently not taken in 7/12 extract only.

12. The petitioner by way of application for permission to construct/repair the house has produced on record certain photographs to show that the petitioner is residing in the land. During the course of hearing, she also produced on record transfer certificate of Khata No.88 issued under section 24(1) by the Consolidation Officer. She also produced on record copy of record of right pursuant to mutation entry No.1306, pursuant to which in 7/12 extract name of Manubai is shown in land Gat No.330. However, these

documents were not placed before the Authorities and were also not considered as appears from the record.

13. The learned Advocate for the petitioner relied upon judgment in the case of **Uttam Namdeo Mahale Vs. Vithal Deo reported in AIR 1997 (SC) 2695**, wherein the Hon'ble Apex Court has considered the question of limitation, holding that the power can be exercised within a reasonable time, if limitation period is prescribed.

14. The learned Advocate for the petitioner further relied upon judgment of this Court at Principal Seat at Mumbai in the case of **Shri Namdeo Narayan Kadam & Anr. Vs. State of Maharashtra & Anr, (W.P. No.13506 of 2018)**. In the said judgment it is held that when there is no modification of alteration in the consolidation scheme as such, mere correction would fall under section 31-A of the Consolidation Act. In that case the Authorities had followed Rule 28 of the Rules and effected correction under section 31-A of the Consolidation Act. In that case Court found it fit not to interfere with the impugned order.

15. As against that, the learned Advocate for the respondents relied upon judgment in the case of Ganpati Dadu Mali, since deceased through LRs & Ors. Vs. State of Maharashtra & Ors., reported in 2012(1) Mh.L.J.341. In the said case this Court considered that the scheme was introduced in the year 1971 and final scheme was published in 1971 itself, as no objection was received. In 1983 one of the Authorities invoked powers under section 32 of the Consolidation Act and varied the scheme. The land was directed to be deleted from Khata of the petitioners and that was retained in joint Khata belonging to respondent No.4 therein. It was held that such variation was not permissible after a period of 12 years.

16. In another judgment in the case of Jalindar Sadashiv Hirde and Ors. Vs. State of Maharashtra and Ors., reported in 2018(4) Mh.L.J. 200, correction was sought after 43 years of the scheme under the pretext of correcting clerical and arithmetical mistake. It is held that proceedings under section 31-A of the Consolidation Act cannot be entertained by any other Revenue Officer except the Settlement Commissioner and in that view of the matter the petition was allowed. The order passed by the Minister was set aside and the application was filed and the petition was allowed.

17. Considering the submissions and the judgments, this Court finds that admittedly, the scheme was implemented and finalized in the year 1965. Since thereafter no application was ever made by any of the parties to this petition. For the first time in 2016 the petitioner filed an application and moved the Authorities. First Authority had rightly considered the aspect of the delay and rejected the application/appeal of the petitioner. The Dy. Director, however, under the pretext of correcting the mistake has entertained the appeal of the petitioner. This Court finds that the learned Minister has rightly considered all the aspects involved in the matter and has passed the order. This Court finds substance in the submission of the learned Advocate Mr. Palodkar that the application was not referable to any of the section i.e. section 31-A or section 32 of the Consolidation Act. It is not clear as to under what other provision, such application was maintainable. No sufficient explanation coming from the petitioner for delay in making an application. Though the petitioner has placed on record Khata Certificate under section 24(1) and copies of mutation entry No.1306, this Court finds that even considering these documents, there would not be any change in the legal position. Once it is held that the application/appeal was not maintainable as

not referable to any of the section, no application could have been entertained. The learned Dy. Director has committed error in passing order. This aspect is rightly considered by the learned Minister and has rightly passed order. This Court finds that no case is made out to call for interference in the impugned order. The petition, thus, deserves to be dismissed.

18. During the course of arguments, the learned Advocate for the petitioner has produced on record certain documents, which were not before the Authority and also before the learned Minister. Since those documents are produced for the first time before this Court, this Court finds that it would not be proper to consider the same if those were not produced before the Authority and learned Minister. No case is made out that these documents were not available inspite of due diligence. However, if the petitioner can maintain the claim on the basis of those documents, it shall be open for the petitioner to seek remedy as admissible in law on the basis of those documents.

19. Accordingly, the writ petition is dismissed. Rule discharged.

20. In view of dismissal of the writ petition, connected civil application bearing No.3504 of 2023 does not survive and is disposed off accordingly.

[KISHORE C. SANT, J.]