

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

902 WRIT PETITION NO.7081 OF 2018

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| 1. | Babasaheb Trimbak Dighe,
Age- 40 years, Occu-Agriculture,
R/o. Dhanore, Tq. Rahuri,
Dist. Ahmednagar | ...PETITIONERS |
| 2. | Asha W/o. Sopan Kanwade,
Age- 42 years, Occu-Household,
R/o. Dhanore, Tq. Rahuri,
Dist. Ahmednagar | |
| 3. | Kalyani Chandrakant Gaikwad,
Age-38 years, Occu-Household,
R/o. Dhanore, Tq. Rahuri,
Dist. Ahmednagar | |

VERSUS

- | | | |
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| 1. | The State of Maharashtra
through the Chief Secretary
Revenue and Forest Department,
Mantralaya, Mumbai | |
| 2. | The Deputy Director,
of Land Records,
Nashik Division, Nashik | |
| 3. | The District Superintendent
of Land Records,
Ahmednagar | ...RESPONDENTS
[Formal Parties] |
| 4. | Dada Dhondiba Dighe,
Age-Major, Occu-Agriculture
R/o. Dhanore, Tq. Rahuri, | ...RESPONDENT
[Ori. Applicant] |

Dist. Ahmednagar

Mr. Shyam C. Arora, Advocate for the petitioners
Mr. R. R. Karpe, Advocate for the respondent No.4
Mr. S. P. Tiwari, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 14th JUNE, 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioners have challenged the order dated 20-03-2018 passed by the learned Special Executive Officer whereby the appeal of the petitioner came to be rejected by confirming the order passed by the Deputy Director of Land Record Nashik dated 20-07-2015 and District Superintendent of Land Record, Ahmednagar dated 30-12-2013.

3. The Deputy Director had rejected the appeal challenging the order passed by the District Superintendent of Land Records, Ahmednagar. The order passed by the District

Superintendent of Land Record had allowed the appeal of respondent No. 4 and directed the authorities to conduct survey in respect of land survey No.32 and to correct the entry in respect of survey No. 32/1 from the village Dhanora, Tq. Rahuri, Dist. Ahmedagar on the appeal by respondent No.4. The main ground raised by the petitioner are as below:

- (1) whether the revenue authority has jurisdiction to rectify entries taken pursuant to the scheme under the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947.
- (2) Whether exercise done by the authorities was within limitation; and
- (3) Whether action is barred by principles of res-judicata.

4. In support of the submission Mr. Arora submits that earlier the proceeding was taken by one Radhabai Dighe before the Additional Commissioner, Nashik Division, Nashik. The learned Additional Commissioner by the judgment dated 14-07-1999 had allowed the revision of Radhabai Dighe and orders

passed by the authorities below were set aside. The order was passed considering that enquiry under MLRC in respect of form No. XIV and Rule 30 and 31 in respect of crop entries and in that case the form No. XIV was not sent by the Talathi.

5. He submits that the appeal was filed in 2012 i.e. much after the Additional Commissioner had decided the appeal and after finalization of the scheme after 40 years. Since the scheme was finalized in 1962. The earlier round of litigation was going on from 1982 to 2002. He submits that even after 10 years the respondents started this proceeding in the year 2012 when the earlier application was rejected on 30-01-2002 by the Secretary and Special Executive Officer (appeals) Revenue and Forest Department.

6. Learned advocate Mr. Karpe for the respondent submits that land Survey No. 32/1 his land is to the extent of 4-R that was already shown as Vastipad and entry on that land was wrongly deleted and therefore, it was necessary to correct

the scheme only to that extent. Though respondent had approached before revenue authorities, at the first instance the revenue authority ultimately held that he has to approach the consolidation authority and accordingly he has rightly approached the consolidation officers under the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 by filing an appeal. The appeal filed by the mother of the petitioner was also rejected in 1990 and thereafter by order dated 10-12-1997 the Additional Commissioner also dismissed the appeal and ultimately revision also came to be dismissed. However, said order was not passed on merits and therefore present proceeding cannot be taken to be hit by principles of res-judicata. So far as limitation he submits that the separate application for condonation of delay was filed in appeal No.494/2012. The delay condonation application was allowed and it is only thereafter the appeal was entertained. Order condoning delay was not challenged by the petitioner. So, in view of this limitation is not now open for challenge. By the impugned order what is directed is only to conduct fresh survey

and the petitioner can always take objection at the relevant time. Since scheme will have to be corrected only after following the procedure under the Act and not otherwise.

7. Learned AGP supports the order.

8. The learned advocate for the petitioner in re-joinder submits that in view of section 31-A of the Consolidation Act it is only clerical or arithmetical that can be corrected making any other correction would amount to vary the consolidation scheme itself and it cannot be permitted after such a gap of many years. He further submits that there has to be a satisfaction recorded before passing such an order.

9. He submits from looking to the order it is clear that no such satisfaction is appearing on the face of record. The learned advocate for the petitioners relies upon the judgment in the case of Sanjeev Babaram Vichare and others Vs the Hon'ble State Minister for Revenue and others reported in 2021 DGLS

(Bombay) 1180. In the said judgment this court at principal seat at Bombay held that Settlement Commissioner is empowered to vary the scheme after notifying the draft of the variation, in the prescribed manner, receiving objections thereto and making an appropriate enquiry in that regard, only if it appears to the Settlement Commissioner that scheme is defective on account of error other than the clerical and arithmetical mistake which he is otherwise empowered to correct under Section 31(A). The court also considered that there is no time limit is prescribed under Section 32 for the Settlement Commissioner to vary the scheme. However, the parties are expected to approach within reasonable period i.e. three years.

10. He relies upon the judgment in the case of Dattu Appa Patil and Ors Vs State of Maharashtra and others reported in 2006 (6) Bombay Cr 246. He relies upon para Nos. 17 and 22. This court by relying on earlier case held that power under Section 32 can only be exercised within reasonable period in any case and said reasonable period would depend upon the facts

and circumstances of the each case and it would normally be three years. In that case it was held that variation sought after 27 years was totally unjustified and in that case the petitioner had not made out any case of error, irregularities or infirmities. Thus, scheme was considered in the facts of that case and also a finding was recorded that there were no irregularities or infirmities in the scheme for exercise of power under Section 32(1).

11. In the third judgment relied in the case of Jalindar Sadashiv Hirde Vs State of Maharashtra and ors reported in 2018 (2) BCR 320 this court has held that power needs to be exercised within a reasonable period. It was further held that power under Section 31(A) cannot be entertained by any other Revenue Officer. Their scheme was settled in 1970. Respondent in that case had moved the Deputy Director of Land Records by making an application on 09-03-2013 i.e. after 43 years by invoking powers under Sections 247 of the MLRC. It is observed that revenue authority cannot usurp the powers of the

Settlement Commissioner under the Act of 1947 and had interfered with or correcting or modifying a consolidation scheme under Section 31(A).

12. Judgment on the count of limitation as well as power vested with the authorities. The petitioners further relied upon the judgment in the case of Padmabai Narayan Chaudhari & Ors Vs The Deputy Director of Land Records and Ors reported in 2020 (2) ALLMR 30 wherein this court in para No. 31 has held that exercise of power under Section 32 of the Act was not within reasonable period and on that ground alone the order was quashed and set aside and action initiated pursuant to the order impugned in that petition including mutation entries were also quashed and set aside. It is the submission of the learned counsel for the petitioner that even in this case if any action is taken that deserves to be quashed and set aside by submitting that now the entry is also taken in the name of respondent in the 7/12 in 2017. He also relied on the judgment in the case of Syed Yakoob Vs K. S. Radhakrishnan and others reported in AIR

1964 SC 477 wherein the Hon'ble Constitution bench has held that writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals these are cases where orders are passed by inferior courts or tribunals without jurisdiction or is in excess of powers vested.

13. On considering these judgments this court finds that in this case, this court does not find that the authorities have any way exceeded their jurisdiction. Considering the order it is seen that what is directed is only a fresh measurement for the purpose to assert the easementary right of the respondent as he is having land to the extent of 4-R as Vastipad. Though the learned advocate for the petitioners submits that in 1989 when the authorities was moved under MLRC, case of the respondent was about crop entries whereas in the second round started in 2012 under Consolidation Act he is coming with the case that the land was used as residence. This court finds that ultimately what is sought is to follow the proper procedure and to correct the scheme. So far as limitation is concerned the delay

condonation application was filed and that was allowed. In view of that now no grievance can be made about limitation. So far as the res-judiceta is concerned this court finds that earlier Additional Divisional Commiserations has held that the authorities had no power to decide the issue. Thus, issue was not finally decided by the court of competent jurisdiction as expected under Section 11 (8) of CPC. Since there was no adjudication by the authorities having any jurisdiction to decide the issue. The present case therefore, will not be hit by the principle of res-judiceta. So far as the authorities of the revenue this court finds that there is no substance in the submission. Considering all the facts and orders this court finds that no case is made out to call for interference while exercising the jurisdiction under Article 227.

14. Needless to say that it is open for the petitioners to raise objection in the further proceeding as provided under law. As on today no substantive right of the petitioner is affected.

15. In view of above, this court finds that the petition deserves to be dismissed and same is dismissed. Rule stands discharged.

[KISHORE C. SANT, J.]

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