

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

WRIT PETITION NO.8737 OF 2021

- 1] Tulsiram s/o. Shivram Dhondkar,
Age: 75 years, Occup : Agricultural,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 2] Govindrao s/o. Shivram Dhondkar,
Age: 55 years, Occup : Agricultural,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 3] Meerabai Mahadu Dheple,
Age: 53 years, Occup : House Wife,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 4] Sakhubai Kaduba Gawre,
Age: 65 years, Occup : House Wife,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 5] Chandrabhaga Thagaji Bansod
Age: 62 years, Occup : Agri.
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 6] Kadubai Bhika Katkar,
Age: 68 years, Occup : House Wife,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 7] Karbhari s/o. Kautikrao Katkar,
Age: Major, Occup : Agri.,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.

- 8] Sonaji s/o. Sandu Katkar
Died through Lr's
- 8a. Babasaheb s/o. Sonaji Katkar,
Age : major, Occup. : Agri,
R/o. Ghatshendra, Tq. Kannad,
Dist. Aurangabad.
- 9] Sominath s/o. Dadarao Bansod,
Age: major, Occup : Agri.,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 10] Dnyaneshwar s/o. Geetaram Dhondkar,
Age: 32 years, Occup : Agri.
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 11] Vishwanath s/o. Ishram Dhondkar,
Age: 60 years, Occup : Agri.,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 12] Kashinath s/o. Ishram Dhondkar,
Age: 62 years, Occup : Agri.,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.
- 13] Geetaram s/o. Ishram Dhondkar,
Age: 60 years, Occup : Agri.,
R/o. Ghatshendra, Tq.Kannad,
Dist. Aurangabad.

.. PETITIONERS

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32.

- 2] The Deputy Director Land Record,
Aurangabad.
- 3] The District Superintendent of Land Record,
Aurangabad.
- 4] The Deputy Superintendent Land Record
Kannad, Tq. Kannad, District : Aurangabad
- 5] The Talathi, Ghatshendra,
Tq. Kannad, Dist. Aurangabad.
- 6] Parbhat s/o. Jivanrao Deshmukh,
Age: Major, Occu : Nil,
R/o. Ghatshendra, Tq. Kannad,
Dist. Aurangabad.
- 7] Bhaskar s/o. Jivanrao Deshmukh,
Died through LRS
- 7(A) Nirmalabai Bhaskar Deshmukh,
Age: Major, Occu : Nil,
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.
- 7(B) Ravindra s/o. Bhaskar Deshmukh,
Age: Major, Occup : Agri,
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.
- 7(C) Mohan s/o. Bhaskar Deshmukh,
Age: Major, Occu : Agri,
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.
- 7(D) Sachin s/o. Bhaskar Deshmukh,
Age: Major, Occu : Agri,
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.

- 7(E) Nitin s/o. Bhaskar Deshmukh,
Age: Major, Occup : Teacher,
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.
- 8] Dwarkabai Narayan Dhondkar,
Age: Major, Occup : House wife,
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.
- 9] Tulsabai Baburao Katkar
Age: Major, Occup : House wife
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.
- 10] Kesarbai Sandu Bansod,
Age: Major, Occup : House wife,
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.
- 11] Krushna s/o. Sandu Bansod,
Age: Major, Occup : Agri
R/o. Ghatshendra, Tq. Kannad,
Dist Aurangabad.

.. RESPONDENTS

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Mr.V.D.Sapkal, Senior Advocate i/b. Mr.S.R.Sapkal,
Advocate for the petitioners
Mr.K.B.Jadhavar, AGP for the respondent-State
Mr.Rajendra S. Deshmukh, Senior Advocate along with
Adv.Shriram Deshmukh i/b. Mr.R.M.Deshmukh, Advocate
for the respondent nos.6, 7A to 7E.

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 27.09.2023.

Pronounced on : 12.10.2023

JUDGMENT :

1] By the present Writ Petition, the petitioners are challenging the order dated 20.02.2020 passed by the District Superintendent of Land Records, Aurangabad and corrigendum dated 12.10.2020 and also corresponding revenue entries which are recorded on the basis of order dated 20.02.2020 and corrigendum dated 12.10.2020.

Brief facts giving rise to the present Writ Petition can be summarized as under :

2] The Survey No.178/1, 180/1, 3 and 4 situated at Ghatshendra village, Tq.Kannad were owned by the respondent nos. 6 and 7 and from the said survey numbers, some of the lands were purchased by the petitioners in the year 1973 by way of registered sale deeds. On the basis of the said sale deeds, the name of the petitioners were recorded in the revenue record and the petitioners were put in possession of the purchased lands. On the commencement of the Bombay Fragmentation and Consolidation of Holdings Act, 1947 [for short 'the Act'], the survey No.178, 179 & 180 were converted in Gat Nos.192,

193, 194, 195, 196, 197 & 198. Before formation of Gats, objections were called from the persons who were affected by the consolidation Scheme. After considering objections to the scheme from the concerned land holders, scheme was confirmed on 23.03.1977. In terms of the scheme, entries were taken into revenue record. The petitioners contend that they have received the possession of the land as per their entitlement in the confirmed scheme.

3] After 40 years of scheme being confirmed, the respondent nos. 5 and 6 filed an application with the Deputy Superintendent of Land Record on 24.02.1998 for making the correction in area recorded in 7/12 extract of Gat No.192 to 195. It is the contention of the respondents that less area was sold to the petitioners, however, more area has been shown in the name of the petitioners in the consolidation scheme.

4] In pursuance of the application dated 24.04.1998, the District Superintendent of Land Record had directed the respondent nos. 6 and 7 to deposit the fees for

measurement of Gat Nos.192 to 198. The respondents failed to deposit the fees for measurement. The respondents were also not interested to pursue their application, therefore, the application of the respondents was disposed of by the District Superintendent of Land Record and the decision was communicated to the respondents on 14.10.2010.

5] On 05.10.2016, the respondents filed an application with the Deputy Director of Land Record for setting aside the order dated 14.10.2010 passed by the District Superintendent of Land Records and prayed for restoration of application dated 24.02.1998. By communication dated 15.11.2016, the Deputy Director of Land Record intimated to the respondent nos. 6 and 7 that their application has been forwarded to the District Superintendent of Land Records, Aurangabad. The petitioners filed say before the Deputy Superintendent of Land Record, Kannad to the application submitted by the respondents. It was specifically contended by the petitioners that the District Superintendent of Land Record has no

jurisdiction to make corrections in the consolidation scheme. It was also contended that the scheme cannot be varied after 40 years once it has been approved by the Settlement Commissioner.

6] The District Superintendent of Land Records, thereafter, allowed the application of the respondents and in exercise of powers under Section 31 (A) of the Act directed that the corrections be made in the scheme. Thereafter, the corrigendum under Section 31 (A) of the Act has been prepared on 12.10.2020. In view of the order passed by the District Superintendent of Land Records and corrigendum, the mutation entries are recorded in the revenue record. The petitioners have, thus, filed the present Writ Petition challenging the order passed by the District Superintendent of Land Records.

7] The learned counsel Mr.V.D.Sapkal, Senior Advocate for the petitioners submits that the primary contention of the petitioners is that once the scheme is confirmed, the same cannot be varied after long period of

time and in any case not beyond 3 years and in the instant case, the scheme is varied after a period of 40 years and thus the order passed by the District Superintendent of Land Record is without jurisdiction. The learned counsel for the petitioners has relied upon the judgments in the cases of **Dattu Appa Patil & others Vs. State of Maharashtra & others** reported in 2007 [1] Mh.L.J. 393, in the case of **Jalindar Sadashiv Hirde and others Vs. The State of Maharashtra & others** reported in 2018 [2] ALL MR 795, in the case of **Padmabainarayan Chaudhary & others Vs. Deputy Director of Land Records, Aurangabad & others** reported in 2020 [2] ALL MR 30, in the case of **Limbraj Waman Yede Vs. The State of Maharashtra & others** reported in 2004 [1] Mh.L.R. 492 and in the case of **Bapu Gunda Mirje Vs. The State of Maharashtra** reported in 2015 [1] ALL MR 697.

8] *Per contra*, the learned counsel appearing for the respondent nos. 6 and 7 Mr.Rajendra Deshmukh, Senior Advocate submits that the petitioners have alternate remedy of revision available and that the Writ Petition is not

maintainable. In support of the same, the learned counsel for the respondents relies upon the judgments in the case of **Dattu Appa Patil & others Vs. State of Maharashtra & others** reported in 2007 [1] Mh.L.J. 393 and also in the case of **Jalindar Sadashiv Hirde and others Vs. The State of Maharashtra & others** reported in 2018 [2] ALL MR 795.

9] The learned counsel for the respondents also submits that all the judgments which are relied upon by the petitioners are the cases where the alternate remedy has already been exhausted. Thereafter, the parties have approached this Court by filing Writ Petition and this Court should not directly exercise its writ jurisdiction without the petitioners exhausting the alternate remedy available.

10] Having heard the learned counsel for the parties. The moot question that arises for determination is whether the writ petition can be entertained where the alternate remedy of revision is available. In the case of **Radha Krishan Industries Vs. State of Himachal Pradesh & others** reported in [2021] 6 SCC 771, the Hon'ble Supreme

Court has laid down following principles for exercise powers under Article 226 of the Constitution of India by this Court at para nos.25, 26 and 27 :

25.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(emphasis supplied)

26. Following the dictum of this Court in

Whirlpool, in Harbanslal Sahnia v. Indian Oil Corpn. Ltd., this Court noted that : (Harbanslal Sahnia case, SCC p. 110, para 7)

*"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks*.) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating*

arbitration proceedings"
(emphasis supplied)

27. *The principles of law which emerge are that:*

27.1. *The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

27.2. *The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*

27.3. *Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

27.4. *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure*

for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

11] Thus, in the case of **Radha Krishan Industries** [supra] this Court has held that the rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion and this Court can exercise its jurisdiction under Articles 226 and 227 of the Constitution of India if the order passed by the authority is wholly without jurisdiction. It is the contention of the petitioners that the consolidation scheme being finalized in the year 1977, the same cannot be altered after period of 40 years. The petitioners contend that undisputed facts is that remedy is invoked after 40 years. There is no point in relegating the parties to avail

alternate remedy. On the face of it, exercise of jurisdiction is barred by law of limitation. This Court has categorically held in large number of matters that exercise of powers under Section 31A of the Act is not permissible after period of 3 years of the finalization of scheme.

12] To invoke the jurisdiction of this Court the petitioners have also relied upon the judgment in the case of **Suresh Bapu Sankanna & others Vs. State of Maharashtra & others** reported in 2018 [4] Mh.L.J. 331, wherein the Division Bench of this Court at para nos.12, 13, 19 has held as under :

12. It is evident from the portion quoted above that any application seeking modification of finalised consolidation scheme under section 32 of the said Act has to be made within three years of finalisation of the scheme. This position of law has been followed consistently by this Court.

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 and ors. vs. Balasaheb Shevale and ors., 2010(2) Mh.LJ. (S.C.) 150 = (2009) 9 SCC 352. 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.

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 vs. Executive Engineer, Jalgaon Medium Project and anr. (2008) 17 SCC 448 as follows:

13] In view of the submission made by the learned counsel for the petitioners that the scheme is sought to be altered after 40 years and the law as discussed above that it is not permissible to alter the scheme after 40 years of its finalization, this Court can entertain writ jurisdiction and the restriction in exercise of writ jurisdiction on the face of availability of alternate remedy of revision is a self imposed-restraint, I have proceeded to entertain this Writ Petition and examine the case of the petitioners on merits.

14] It is well settled that the scheme enforced under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act cannot be varied after long period i.e. ordinarily beyond 3 years of scheme coming into force under Section 22 of the Act. However, in order to ascertain the date from which the period of limitation would commence to challenge the scheme, it is necessary to ascertain the date on which the consolidation scheme comes into force under Section 22 of the Act and for that purpose the consolidation scheme of the Act needs to be examined.

SCHEME OF THE CONSOLIDATION OF FRAGMENTATION AND CONSOLIDATION OF HOLDINGS ACT :

15] The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act is enacted for preventing fragmentation of agricultural holdings and to provide for the consolidation of agricultural holdings for the purpose of the better cultivation of agricultural lands. In terms of Section 3 of the Act, the State Government may, after such inquiry as it deems fit, by notification in the *Official*

Gazette, specify a village, mahal or taluka or any part thereof as a local area for the purposes of the Act. In terms of Section 5 (3) of the Act, the State Government shall, by notification in the *Official Gazette*, and in such other manner as may be prescribed, give public notice of any standard area determined under sub-section (1) or revised under sub-section (2). In terms of Section 6 (1) of the Act, on notification of a standard area under sub-section (3) of section 5 for a local area all fragments in the local area shall be entered as such in the Record of Rights or where there is no Record of Rights in such village record as the State Government may prescribe.

16] In terms of Section 8 of the Act, no land in any local area shall be transferred or partitioned so as to create a fragment. Section 8AA provides for restriction on partition of land. Section 9 provides for penalty for transfer or partition contrary to provisions of Act. Section 14 prohibits sale of fragment at Court sale or to create a fragment by such sale.

17] Chapter III deals with procedure for consolidation. With the object of consolidating holdings in any village, mahal, taluka or tehsil or any part thereof for the purpose of better cultivation of lands therein, the State Government may declare by a notification in the official gazette and by publication in the prescribed manner in the village or villages concerned its intention to make a scheme for the consolidation of holdings in such village or villages or part thereof as may be specified. On such publication in the village concerned, the State Government may appoint a Consolidation Officer who shall proceed to prepare a scheme for the consolidation of holdings in such village or villages or part thereof.

18] Section 16 provides for compensation. The scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of compensation from any owner who is allotted a holding of greater market value

than that of his original holding.

19] Section 19 provides for publication of draft scheme and of amended draft scheme. When a scheme of consolidation is ready for publication, the Consolidation Officer shall publish a draft scheme in the prescribed manner in the village or villages concerned. Any person likely to be affected by such scheme, may, within thirty days of the date of such publication, communicate in writing to the Consolidation Officer any objections relating to the drafts scheme. After considering the objections, the Consolidation Officer submit a draft scheme and objections to the Settlement Commissioner for confirmation of the scheme.

20] Section 20 of the Act provides for confirmation of draft scheme or amended draft scheme. If on receipt of a draft scheme or an amended draft scheme under sub-section (3) of section 19, the Settlement Commissioner, after considering the objections, confirms the draft scheme.

21] Section 21 of the Act provides for publication of confirmed scheme and enforcement of scheme. Section 21 (1) Upon the confirmation of any scheme under section 20, a notification stating that the scheme has been confirmed shall be published by the Settlement Commissioner in the Official Gazette, and the scheme as confirmed shall be published in the prescribed manner in the village or villages concerned. Section 21 (2) provides that within one year from the date of publication of the notification in the Official Gazette under sub-section (1), the owners from whom compensation is recoverable under the scheme shall deposit the amount of compensation in the prescribed manner. Section 21 (3), the Consolidation Officer shall, from the commencement of the agricultural year next following the date of publication of the notification in the official gazette under sub-section (1) and in the prescribed manner, put the owners in possession of the holdings to which they are entitled under the scheme and for doing so may, in the prescribed manner, evict any person from any land which he is not entitled to occupy under the scheme.

Section 21 (5) If the owner from whom the compensation is recoverable fails to deposit it within the period specified in sub-section (2) or (4) or within such further period not exceeding one year as may be extended by the Consolidation Officer, it shall be recovered from him as an arrears of land revenue. Section 21 (6) further provides that in the event an owner refuses to accept possession of the holding to which he is entitled under the scheme, his rights in such holding may be allotted to any other person who pays the value of the holding, which is used to compensate the owner or other person having interest in the holding.

22] Section 22 of the Act provides for coming into force of scheme. As soon as the persons entitled to possession of holdings under the Act have entered into possession of the holdings respectively allotted to them, the scheme shall be deemed to have come into force.

23] Section 31A of the Act provides for correction of clerical and arithmetical mistakes in scheme. If, after a

scheme has come into force, it appears to the Settlement Commissioner that the scheme is defective on account of any clerical or arithmetical mistake or error arising therein from any accidental slip or omission, and he is satisfied that the correction of such mistake or error would not vary the scheme in any material particular, he may by order in writing correct such mistake or error and publish his order in the prescribed manner.

24] Section 32 of the Act provides power to vary scheme on ground of error, irregularity, informality. Section 32 (1) If after a scheme has come into force it appears to the Settlement Commissioner that the scheme is defective on account of an error other than that referred to in section 31A, irregularity or informality the Settlement Commissioner shall publish a draft of such variation in the prescribed manner. The draft variation shall state every amendment proposed to be made in the scheme. Section 32 (2) Within one month of the date of publication of the draft variation any person affected thereby may communicate in

writing any objection to such variation to the Settlement Commissioner. Thereafter, following the process available under Section 32 of the Act, the Settlement Commissioner may vary the scheme.

25] Rule 17 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1959 provides for publication of confirmed scheme. Rule 18 provides manner of depositing compensation and Rule 18A provides manner of putting owners in possession of holdings under sub-section (3) of Section 21. Rule 19 provides manner of eviction of persons from lands under sub-section (3) of section 21. Rule 28 provides for publication or order under section 31A. Rule 29 provides for publication of draft variation under sub-section (1) of section 32.

The provisions of the Act and Rules relevant for the purpose of consolidation, correction and variation are as under :

26] Sections 16, 20 (1), 21 (1), 21 (3), 22, 31A and 32 of the Maharashtra Prevention of Fragmentation and

Consolidation of Holdings Act are as under :

16. *Scheme to provide for compensation*

(1) The scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding.

*(2) The amount of compensation shall be determined, so far as practicable in accordance with the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894. [***]*

20. *Confirmation of draft scheme or amended draft scheme*

(1) If on receipt of a draft scheme or an amended draft scheme under sub-section (3) of section 19, the Settlement Commissioner, after considering the objections, if any, and the remarks of the Consolidation Officer thereon and after being otherwise satisfied about the correctness of procedure followed by the Consolidation Officer and the allotment of holdings and compensation or about there being no clerical or arithmetical mistake or error arising accidental slip or omission, approves of the draft scheme or, as the case

may be, amended draft scheme, he shall confirm it.

(2) If the Settlement Commissioner does not approve of the draft scheme or the amended draft scheme forwarded by the Consolidation Officer and considers it necessary to amend it, he shall further amend it and publish it as amended in the prescribed manner in the village or villages concerned. Any person likely to be affected by the draft scheme as so published may, within thirty days of the date of such publication, communicate his objections in writing to the Settlement Commissioner.

(3) If no objections are received within the period specified in sub-section (2), the Settlement Commissioner shall confirm the draft scheme as published under that sub-section. If any objections are received within the said period, the Settlement Commissioner shall after considering the objections confirm the draft scheme as published under sub-section (2) without any modification therein or with such modifications therein as he may consider necessary.

21. Enforcement of scheme

(1) Upon the confirmation of any scheme under section 20, a notification stating that the scheme has been confirmed shall be published by the Settlement Commissioner in the Official Gazette, and the scheme as confirmed shall be published in the prescribed manner in the

village or villages concerned.

(2) Within one year from the date of publication of the notification in the Official Gazette under sub-section (1), the owners from whom compensation is recoverable under the scheme shall deposit the amount of compensation in the prescribed manner.

(3) The Consolidation Officer shall, from the commencement of the agricultural year next following the date of publication of the notification in the Official Gazette under sub-section (1) and in the prescribed manner, put the owners in possession of the holdings to which they are entitled under the scheme and for doing so may, in the prescribed manner, evict any person from any land which he is not entitled to occupy under the scheme :

Provided that, *if two-thirds or more of the owners affected by the scheme agree to enter into possession of the holdings to which they are entitled under the scheme, the Consolidation Officer may put them in possession of such holdings from such earlier date as may be decided upon by such owners.*

(4) If the Consolidation Officer is satisfied that any standing crops, trees, embankments or similar other improvements which were not taken into consideration at the time of determining the compensation payable by an owner of any holding under the scheme are found on such holding at the time of putting

the owner in possession of such holding, or that any such standing crops, trees, embankments or similar other improvements which were taken into consideration at the time of determining the compensation payable by an owner of any holding have ceased to exist or are substantially damaged at the time of putting the owner in possession of such holding, he shall by order determine in the prescribed manner the additional compensation payable by the owner or, as the case may be, the reduction to be made in the compensation payable to the original owner of such holding. Where additional compensation is to be paid, it shall be deposited in the prescribed manner by the owner from whom it is recoverable, within one year from the date of order passed by the Consolidation Officer for determining the additional compensation.

(5) If the owner from whom the compensation is recoverable fails to deposit it within the period specified in sub-section (2) or (4) or within such further period not exceeding one year as may be extended by the Consolidation Officer, it shall be recovered from him as an arrear of land revenue.

(6) If an owner refuses to accept possession of the holding to which he is entitled under the scheme, his rights in such holding may be allotted in the prescribed manner by the Consolidation Officer to any other person who pays the value of the holding, and in such case the value realised after deducting the expense

(hereinafter called "the net value") shall be paid to the owner and any other person having an interest in the holding.

7) If no person forthcoming to pay the value of the holding, the State Government may recover from the owner the compensation recoverable from him under the scheme as an arrear of land revenue or the State Government may itself purchase the holding after paying the net value of the holding to the owner and any other person having an interest in the holding.]

22. Coming into force of scheme

As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them, the scheme shall be deemed to have come into force.

[31A. Correction of clerical and arithmetical mistakes in scheme

If, after a scheme has come into force, it appears to the Settlement Commissioner that the scheme is defective on account of any clerical or arithmetical mistake or error arising therein from any accidental slip or omission, and he is satisfied that the correction of such mistake or error would not vary the scheme in any material particular, he may by order in writing correct such mistake or error and publish his order in the prescribed manner.]

32. Power to vary scheme on ground of error, irregularity, informality

(1) *If after a scheme has come into force it appears to the [Settlement Commissioner] that the scheme is defective on account of an error [other than that referred to in section 31A)], irregularity or informality the [Settlement Commissioner] shall publish a draft of such variation in the prescribed manner. The draft variation shall state every amendment proposed to be made in the scheme.*

(2) *Within one month of the date of publication of the draft variation any person affected thereby may communicate in writing any objection to such variation to the [Settlement Commissioner].*

(3) *After receiving the objections under sub-section (2) the [Settlement Commissioner] may, after making such enquiry as [he may] think fit, [***] make the variation with or without modification or may not make any variation.*

[(3A) If the scheme is varied under sub-section (3), a notification stating that the scheme has been varied shall be published in the Official Gazette and the scheme so varied shall be published in the prescribed manner in the village or villages concerned.]

(4) *From the date of the notification*

[stating that the scheme has been varied] the variation shall take effect as if it were incorporated in the scheme.

27] In the case of **Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhilare and others** reported in 2001 [4] **Mh.L.J. 31**, the Division Bench of this Court considered the scope of power of the Settlement Commissioner under Section 32 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and held that ordinarily exercise of such power after three years of finalization of scheme under Section 22 of the Act may not be justified. The Division Bench at para 6 of the said judgment has held as under :

6. The power given to the Settlement Commissioner for variation of the scheme is on account of an error other than that referred to in section 31A, irregularity or informality after following the procedure prescribed. Though there is no time limit prescribed under section 32(1) for the Settlement Commissioner to vary the scheme which has come into force, but obviously even in the absence of any period prescribed under section 32, the said power can only be exercised within reasonable period in any case. What would be the reasonable period

for exercise of power under section 32(1) by the Settlement Commissioner may depend on facts and circumstances of each case and we do not intend to lay down any specific period for exercise of that power by Settlement Commissioner but ordinarily exercise of such power after three years of finalisation of scheme under section 22 may not be justified. In the facts and circumstances of the present case, the exercise of power by Settlement Commissioner for variation of scheme which has come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within reasonable time. The fact is and that is not disputed that the earlier scheme was finalised in the year 1973 under the Act of 1947 to the knowledge of all the parties concerned. Nobody was aggrieved by the said scheme finalised under the Act of 1947 and the scheme came into force under section 22. The said scheme which had been finalised in accordance with law and came into force and continued to be in force, could not have been unsettled by initiating the proceedings for variation under section 32 on the purported ground of error, irregularity or informality after a lapse of about 15 years. Thus, the exercise of power by Settlement Commissioner under section 32 for variation of the scheme in the facts and circumstances of the present case is grossly unjustified.

28] The Division Bench of this Court in the case of
Dattu Appa Patil and others Vs. State of Maharashtra &

others reported in **2007 (1) Mh.L.J. 393** while applying the law laid down in the case of **Gulabrao** [supra] at para no.18 has held as under :

18. We feel that these observations are clearly attracted to the present case. We have already noted that the Consolidation Scheme came to be applied to the Village Asurle in the year 1962. The lands were exchanged by consent of the parties in the year 1962 after recording statements of the parties. Possession receipts were executed. Accordingly, changes were introduced in the village revenue records and parties continued to cultivate their respective allotted lands. This arrangement was accepted by the parties without any demur. The father of respondent 3 was alive till 1988. He made no complaints about any fraud having been committed. It is only in the year 1989 that respondent 3 for the first time made an application for variation. The application for variation is made nearly after about 27 years. Therefore, the Settlement Commissioner erred in exercising his power under section 32(1) of effecting variation in the Scheme. Period of 27 years can certainly not be called reasonable period. Besides, serious allegations of fraud could not have been decided by him in such a manner.

29] The above two judgments i.e. **Gulabrao & Dattu**

Appa Patil [supra] indicate that the power of Settlement Officer to vary the scheme in exercise of its power under Section 32 of the Act are available to him ordinarily until 3 years from the date when the scheme under Section 22 of the Act has come into force. The consolidation passes through the stage of publication of the draft scheme, confirmation of the final scheme and publication of the same in the official gazette and thereafter the scheme is implemented / enforced and on completion of enforcement in view of Section 22 of the Act, the scheme is deemed to have come into force.

30] In the instant case, the scheme is confirmed under Section 21 (1) of the 1950 Act on 23.03.1977. However, there is no date known when the scheme came into force under Section 22 of the Act qua the present petitioners. The scheme comes into force individually and the entire scheme does not come into force at once, it comes into force partially when in compliance of Section 21 a person entitled to the holding is put in possession of the

holding i.e. the date when the possession of the holding is handed over to each of the entitled person. The power under Section 32 of the Act to vary the scheme has been consistently held by this Court has to be exercised ordinarily within 3 years from the date of scheme coming into force and thus limitation does not commence from the date of confirmation of the scheme, which is published in the official gazette. The date on which the consolidation scheme comes into force would depend on the possession of each individual holding being handed over to the entitled person after following due process. If the Settlement Commissioner is of the view that further process as contemplated under Section 21 in respect of deposit of compensation and grant of compensation, eviction of the occupant and transfer of possession has not taken place and only confirmation of the entire scheme has taken place under Section 21 (1), the Settlement Commissioner is entitled to exercise jurisdiction under Section 31A and 32 of the Act.

31] The scheme cannot be varied after three years

from the date of the scheme having come into force. However, while applying settled law, the learned counsel of petitioners has submitted that the date of publication of confirmation of the scheme under Section 21 (1) is the date from which the limitation is to be considered. The submission of the learned counsel for the petitioners that the scheme being published in the official gazette, three years has to be counted from the date of publication of the confirmation of the scheme is erroneous in law. The date on which the scheme comes into force under Section 22, is the relevant date and that there is no publication of the date on which the scheme comes into force as it comes into force partially in each individual case when the land holding is put in possession in favour of the person entitled to such possession. Correspondingly the entitled person has to deposit compensation for the excess land received by him and the same is payable to the person who loses the land. In the event the compensation is not deposited by the entitled person, the same can be recovered as land revenue. Any person losing land i.e. gets a land of lesser value has

to be compensated for loss of land and any person entitled to receive the land of higher value has to deposit the compensation.

32] Coming to the facts of the present case, the status of revenue record as mentioned in the impugned order indicates that sale transactions which had taken place in the year 1973 before the implementation of the consolidation scheme [1977-78] in the village are as follows :

Isram Nabaji by virtue of sale deed dated 5th November, 1973 has purchased 4 Acres 20 Gunthas land from Survey No.178 from Bhaskar Jivanrao.

Shivram Nabaji has purchased 3 Acres 20 Gunthas of land from Survey No.179 by a sale deed dated 05.11.1973 from Parbhat Jivanrao.

Kautaki Sandu has purchased 3 Acre 20 Gunthas of land from Survey No.180 by a sale deed dated 05.11.1973 from Parbhat Jivanrao.

Bhika Sayaji has purchased 4 Acres land from Survey No.180 by a sale deed dated 06.11.1973.

33] As per the sub-division [Pot hissa] measurements at the time of consolidation in Survey Nos.178, 179 and 180 of village Ghatshendra, Taluka Kannad, District Aurangabad, the implementation of consolidation scheme for Gat Nos.192, 193, 194 and 195 is as under :

i] Ishram Nabaji is allotted under the scheme 9 Acres 8 Gunthas of land from survey No.178 [as against original land holding of 4 Acres 20 Gunthas].

ii] Shivram Nabaji is allotted under the scheme 5 Acres 16 Gunthas [as against original holding of 3 Acres 20 Gunthas]

iii] Kautik Sandu is allotted 5 under the scheme Acres 39 Gunthas [as against original holding of 3 Acres 20 Gunthas]

iv] Bhika Sayaji is allotted under the scheme 9 Acres 35 Gunthas [as against original holding of 4 Acres].

34] Thus, the petitioners are shown to have received under the consolidation scheme land holdings far in excess than their original holdings. The petitioners have not received different lands in exchange but have received much larger lands in its original place in the consolidation scheme.

35] By the impugned order dated 20.02.2010, the District Superintendent of Land Records, Aurangabad on examination of the revenue and consolidation record has recorded the following conclusions (original document is in Marathi) :

Conclusions :

- 1. The applicant owned separate survey no. i.e. S. No. 178, 179 and 180 at village Ghatshendra, Tq. Kannad. Consolidation Scheme was initiated in the village and under the same Gut. Nos. 192 to 198 were allotted.*
- 2. Area of 4 acres and 20 gunthas from total area of 21 acres and 26 gunthas out of survey no. 178 has been sold to Shri. Isaram Nabaji Dhondkar vide sale deed no. 547 dated 05/11/1973. Accordingly, entry vide mutatuion no. 741 in 7/12 extract of survey no. 178 has been taken in the name of Shri. Isaram Nabaji*

Dhondkar. Field book has been prepared according to 7/12 extract under Consolidation Scheme. From the total area of 8 H. 76 R out of survey no. 178, area of 17 acres and 6 gunthas has been shown in the name of Bhaskar Jivanrao and area of 4 acres and 20 gunthas has been shown in the name of Ishram Nabaji and it is correct.

3. Area of 3 acres and 20 gunthas from total area of 21 acres and 37 gunthas out of survey no. 179 has been sold to Shivram Nabaji Dhonkar vide sale deed no. 544 dated 05/11/1973. Accordingly, entry vide mutation no. 738 in 7/12 extract of survey no. 179 has been taken in the name of Shivram Nabaji in the year 1974.

4. Area of 3 acres and 20 gunthas from total area of 22 acres and 10 gunthas out of survey no. 180 has been sold to Kautik Sandu Katkar vide sale deed no. 545 dated 05/11/1973. Accordingly, mutation has been sanctioned vide mutation no. 739 and entry in the name of Kautik Sandu Katkar has been taken in 7/12 extract of survey no. 180. Similarly, area of 4 acres has been sold to Bhika Sayaji Bansod on 06/11/1973 vide sale deed no. 546 and accordingly, entry vide mutation no. 740 in 7/12 extract of survey no. 180 has been taken in the name of Bhika Sayaji Bansod. Field book has been prepared according to 7/12 extract under Consolidation Scheme. From the total area of 21 acres 26 gunthas out of survey no. 180, area of 12 acres and 30 gunthas has been

shown in the name of Parbhatrao Jivanrao, area of 3 acres and 20 gunthas in the name of Kautik Sandu and area of 4 acres has been shown in the name of Bhika Sayaji and it is correct.

5. *While executing Consolidation Scheme at village Ghatshendra, Tq. Kannad, Dist. Aurangabad in relation to survey nos. 178, 179, 180 excess area of the land has been allotted to Ishram Nabaji, Shivram Nabaji, Kautik Sandu, Bhika Sayaji who are owner/purchaser in said survey no., instead converting their original area of land in Gats as per sale deed/purchase. It is the conclusion that, said execution of the then Assistant Consolidation Officer is breach of the notification (In any circumstances, while executing the Scheme or taking execution on complaint application, no power is vested in the Consolidation Officer to reduce or increase the rule regarding anewari, possession, other rights, inherent rights etc. as per old rights records) as mentioned in para no. 4 of point no. 2 in the circular no. Con/L.R/34/O-1/93, dated 25/08/1993 issued by the Settlement Commissioner and Director, Land Records, Maharashtra State, Pune.*

6. *Non-applicant has submitted his say that, the Gats are formed after field visit/physical inspection, panchnama of area of survey no. and field visit of superior-inferior land. Though, arguments on ratio of superior inferiority can be presumed for the holders of same family but in the said matter they are holders vide sale deed/purchase, therefore, their said argument*

can not be presumed.

7. Non-applicant in support of his say/contention submits that, the actual 7/12 extract is correct as per actual survey number. But it can not be assumed that, the area is shown less in registered sale deed to the objectioners as the non-applicants were illiterate. On the other hand I am at the conclusion that, non- applicant does not have right to get excess area in his possession than as mentioned in his sale deed.

8. Non-applicant has submitted that, the applicant has made entry of non-applicant in 7/12 extract as per actual area but it does not appear to be like that upon verification of the records.

9. Gat nos. 192, 193, 194 and 195 have been converted in the name of purchaser under Consolidation Scheme and I am at this conclusion that, Gat no. 192 holds total 4 H.R. area out of which the applicant has sold 1.62 H.R. area but 4.00 H.R. area has been entered/ mutated in the name of non-applicant. The said execution is defective. Area of 1.62 H.R. out of gat no. 192 is in the name of non-applicant and remaining area of 2.38 H.R. is in the name of real owner Parbhat Jivanrao, gat no. 193 holds total 2.42 H.R. area and the applicant has sold area of 1.41 H.R. out of the said gat number and area of 2. 42 H.R. has been entered/mutated in the name of non-applicant.

Said execution is defective. Area of 1.41 H.R. out of gat no. 193 is in the name of non-applicant and remaining area of 1.01 H.R. is in the name of real owner Parbhat Jivanrao, gat no. 194 holds total 2.19 H.R. area and the applicant has sold area of 1.41 H.R. out of it but 2.19 H.R. area has been entered/mutated in the name of non-applicant. Said execution is defective. Area of 1.41 H.R. out of gat no. 194 is in the name of non-applicant and remaining area of 0.78 H.R. is in the name of real owner Parbhat Jivanrao, gat no. 195 holds total 4.11 H.R. area and the applicant has sold area of 1.82 H.R. out of it but area of 4.11 H.R. has been entered/mutated in the name of non-applicant. Said execution is defective. Area of 1.82 H.R. out of gat no. 195 in the name of non-applicant and remaining area of 2.29 H.R. in the name of real owner Bhaskar Jivanrao is required to be entered/mutated.

10. As there is no merit in the say and arguments of the non-applicant and he has no legal rights to demand for excess area than the sale deed, I am at this conclusion that, it would be just and proper in law and order for the Deputy Superintendent, Land Records, Kannad to reject objection application raised by non-applicant and to order the submission of a corrigendum letter under section 31 (A) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 as per the existing Record of Rights in respect of Gat nos. 192, 193, 194 and 195 in village Ghatshendra, Tq. Kannad, Dist. Aurangabad.

36] Thus the authority on examination of relevant record has rendered a finding that the land purchased by the petitioners is far less than what they are shown to be entitled to under the consolidation scheme. The excess lands are not put in possession of the petitioners in compliance of the procedure under Section 21 of the Act. It is also relevant to note that to put the petitioners in possession of the additional as shown in the confirmed scheme, the respondents owners of land, who were in possession ought to have been evicted from the land before handing over the possession of the excess land. In absence of physical eviction of the respondents owners of the land, it cannot be said that the petitioners are put in possession of the excess land. There is no evidence of eviction of respondents – owners from the excess land. Mere mutation entry on the basis of confirmed scheme does not confer right to the petitioners on the excess land which is not put in possession in enforcement of the scheme under Section 21 of the Act.

37] It is to be noticed that under Section 16 of the Act whenever a person is granted land / holding of the larger value under the consolidation scheme then the person who loses the land has to be compensated by computing compensation by applying the principles of the Land Acquisition Act. After the scheme is finalized and confirmed under Section 21 (1), the scheme has to be enforced. The person, who gets the excess land, is required to deposit the amount as determined under Section 16 of the Act. The amount deposited has to be paid to the person who loses the land. Although the person entitled to larger holding can be put in possession prior to the deposit of compensation, it is held by the impugned order that there is no evidence that the petitioners are put in possession of the larger holding.

38] The authority has in the impugned order held that the petitioners are not put in possession of the additional land as shown in the confirmed scheme under Section 21 of the Act and thus the petitioners are merely

holding the excess land on paper. For the excess land, compensation is not determined and deposited and paid and thus the record indicates that the process as contemplated under the Act qua the determination and payment of compensation for the excess land has not been initiated and completed. Thus, the Authority constituted under the Act has arrived at a finding that there is clerical error of showing excess land in the name of purchasers and has invoked its powers under Section 31A of the Act and has directed for rectification / correction in the entries.

39] In the instant case, the changes are made, on account of clerical mistakes in noting the area, as such there is no corresponding change in the consolidation scheme and there is no change in the gat numbers. It is only the areas mentioned qua respective owners i.e. found to be defective and sought to be rectified. Section 32 of the Act would come into play when at the time of making correction, the gats are to be re-organized and there is variation in the scheme. In the instant case, the authority has rightly come

to the conclusion that powers under Section 31A of the Act needs to be exercised to correct the clerical errors as there is no variation in the scheme but mere recording of correct ownership of the respective owners, in the existing gat numbers.

40] In the instant case, the consolidation scheme is not enforced under Section 21 of the Act with respect to the petitioners qua the excess lands mentioned in the scheme. The respondents are not evicted from the excess land after payment of compensation as such there is no delay in filing the application for correction of scheme. It cannot be presumed that the respondents lost their land without payment of compensation, so also the lands are not exchanged. Non payment of compensation to the respondents would violate the constitutional right to property of the respondents under Article 300A of the Constitution of India. There is no assertion made by the petitioners that the petitioners have deposited compensation for the excess land granted to them under the

scheme. The excess land in favour of the petitioners is merely shown in the confirmed scheme.

41] In the cases of **Gulabrao Bhaurao Kakade** and also in the case of **Dattu Appa Patil** [supra], the parties were put in possession of their respective holding under Section 21 and the scheme had come into force under Section 22 of the Act and the same was sought to be reopened after a huge delay and thus in the fact situation this Court had not permitted exercise of powers under Section 32 of the Act after a long period of delay of more than 3 years after the consolidation scheme had come into force under Section 22 of the Act.

42] The Authorities have exercised the powers correctly since much larger lands are shown in the record of the purchaser under the consolidation scheme than what was purchased by them before implementation of the consolidation scheme and that the process as contemplated under Section 21 of the Act is not undertaken. Compensation is also not computed in terms of Section 16

of the Act and thus no compensation is deposited in terms of Section 21 of the Act and there is no handing over of the possession of the excess land to the petitioners under Section 21 of the Act .

43] Thus, as there is no merit in the Writ Petition and the same is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC