

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4332 OF 2022**

Ashok Maruti Gade and Ors	...	Petitioners
versus		
State of Maharashtra and Ors.	...	Respondents

Mr. D.V.Sutar with Mr. Kiran G. Kulkarni for Petitioners.

Mr. C.D.Mali, AGP for Respondent – State.

Mr. Girish Godbole, Senior Advocate with Ms. Aishwarya Shinde for Respondent Nos.5 to 8.

Mr. Pramod Kathane, for Respondent No.9.

CORAM: N.J.JAMADAR, J.

DATE : 13 APRIL 2023

P.C.

1. Heard Mr. Sutar, learned Counsel for the Petitioners, Mr. Girish Godbole, Senior Advocate appearing for Respondent Nos.5 to 8, Mr. Kathane, learned Counsel for Respondent No.9 and Mr. C.D.Mali, AGP appearing for Respondent Nos.1 to 4.

2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of the judgment and order dated 25 November 2021 passed by the State Minister (Revenue) whereby the Revision Application preferred by Respondent Nos.5 to 8 under Section 257 of the Maharashtra Land Revenue Code, 1966 (the Code) came to be allowed by setting aside the order dated 17 December 2020 passed by the Deputy Director of Land Records in Appeal SR 5034 of 2019,

which had affirmed order dated 31 October 2019 passed by the District Superintendent of Land Records in Consolidation Application No.4251 of 2018, and the authorities were directed to submit a proposal for modification of the Consolidation Scheme in respect of agricultural land bearing Survey No.3/2 situated at Mauje Kharpudi, Tal. Khed, District Pune (the subject land).

3. The Petitioners claimed to have acquired lands bearing Gat Nos.57/1 admeasuring 0.17 R, 57/2 admeasuring 0.18 R and 57/3 admeasuring 0.19R from the erstwhile owner Vasant G. Gundal under Registered Sale Deed dated 14 January 2019. These lands along with Gat Nos.53, 54, 55 and 56 were originally part of the lands bearing old Survey Nos.3/2/A, 3/2/B, 3/2/C, 3/2/D. A consolidation scheme was settled for Mauje Kharpudi in the year 1973. In the said consolidation scheme, the aforesaid lands were formed into Gat Nos.53, 54, 55, 56 and 57/1, 57/2, 57/3.

4. Respondent Nos.5 to 8 are the holders of Gut No.54 admeasuring 0.10R. The Petitioners assert, Respondent Nos.5 to 8 preferred an appeal being Consolidation AK 5251 of 2018 before the District Superintendent of Land Records (Respondent No.3) alleging that there was an error in settling the consolidation scheme; no notice was served on Ganpat K. Gade, father of Respondent Nos.5 to 8 and the statement of the father of Respondent Nos.5 to 8 giving consent for settling the scheme by reducing the area to 10R only, was forged. Respondent Nos.5 to 8 claimed that they were in actual possession of 35.5 R area and the Gats formed in the

consolidation scheme were not in accordance with the actual physical possession of the parties.

5. Along with the said appeal, Respondent Nos.5 to 8 preferred an application for condonation of delay. It was contended that in the month of September 2018 when Respondent Nos.5 to 8 obtained 7/12 extract of the subject land, it transpired that the area of Survey No.3/2/A was shown 10R instead of 35.5R.

6. By an order dated 30 October 2019, the District Superintendent of Land Records, Pune dismissed the application for condonation of delay opining, inter alia, that no sufficient cause was made out to condone the delay as the reasons assigned in the application were omnibus. It was further noted that the consolidation scheme having been settled with the consent of the parties, it was impermissible to reopen the same after lapse of more than 45 years.

7. Being aggrieved, Respondent Nos.5 to 8 preferred an appeal before the Deputy Director of Land Records, Pune. By an order dated 17 December 2020 the Deputy Director of Land Records, was persuaded to dismiss the appeal concurring with the findings of the District Superintendent of Land Records.

8. Respondent Nos.5 to 8 invoked the revisional jurisdiction of the State Government. By the impugned judgment and order, the State Minister (Revenue) was persuaded to interfere with the the orders passed by the authorities below. It was, inter alia, observed that the authorities below fell in error in over-emphasizing the

aspect of delay. In fact, according to the State Minister, the spot inspection carried out pursuant to the order of the District Superintendent of Land Records on 11 September 2019 indicated that the actual possession at site differed from the area shown in the consolidation scheme. Thus, the claim of Respondent Nos.5 to 8 that the scheme was settled on paper without giving actual effect at site appears to carry substance. Hence, the Revision Application was allowed and the orders passed by the authorities below were set aside.

9. Mr. Sutar, learned Counsel for the Petitioners endeavoured to impress upon the Court that the learned Minister committed a grave error in law in interfering with the orders passed by the authorities below. It was urged that it is well settled that a scheme settled with the consent of the land holders cannot be later on reopened. Mr. Sutar would urge that the State Minister was not justified in condoning the delay of 45 years in preferring the appeal against the settlement of the Scheme in the absence of any sufficient cause.

10. Section 32 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, empowers the Settlement Commissioner to vary the scheme after it has come into force if the scheme is found to be defective on account of an error, other than that referred to in Section 31A, irregularity and informality after publishing a draft of such variation in the prescribed manner and making an enquiry as he may think fit. No period of limitation has been prescribed

under Section 32 to exercise the power of rectification and modification of the consolidation scheme. It is well recognized that even in the absence of a period of limitation prescribed for exercise of the statutory power, such power must be exercised within a reasonable period. Ordinarily, three years is considered to be a reasonable period where there is no statutory prescription of time for exercise of the power.

11. In the case at hand, the State Minister considered it appropriate to direct processing of the proposal for variation of the scheme which was settled in the year 1973. Mr. Sutar made an effort to assail the impugned order on this count alone. However, when confronted with the reasons ascribed in the impugned order that the consolidation scheme was a paper scheme and the actual cultivation was allegedly contrary to the area shown in the consolidation scheme, as borne out by the site inspection carried out pursuant to the direction of the District Superintendent of Land Records, Mr. Sutar initially attempted to assail the probative value of the said panchnama, but, later on, on instructions of the Petitioners, submitted that the matter may be remitted back for afresh decision to the District Superintendent of Land Records by construing the impugned order as that of one condoning the delay only.

12. Mr. Godbole, learned Senior Advocate appearing for Respondent Nos.5 to 8 submitted that Respondent Nos.5 to 8 are not averse to the said proposal.

13. The aforesaid course also appears necessary as the District Superintendent of Land Records had not at all adverted to the site inspection report,

though it was ordered to be carried out during the pendency of the appeal before him. The consideration by the State Minister (Revenue) in revision thus assumed the character of a fact finding exercise by the authority at the first instance. Since the authorities below had declined to consider the prayers for modification primarily on the count of delay, the District Superintendent of Land Records can be directed to decide the appeal preferred by Respondent Nos.5 to 8 afresh after considering the entire material on record and providing an effective opportunity of hearing to the parties. The Petition, thus, stands disposed in the following terms :

(a) The impugned order passed by the State Minister (Revenue) shall be construed as an order only condoning the delay in preferring the appeal before the District Superintendent of Land Records.

(b) The Appeal No.4251 of 2018 stands restored to the file of the District Superintendent of Land Records, Pune.

(c) The District Superintendent of Land Records, Pune shall hear and decide the said Appeal afresh after considering the entire material on record and providing an effective opportunity of hearing to the parties.

(d) All contentions of all the parties are kept open for consideration by the District Superintendent of Land Records, except the ground of delay in seeking the modification of the Scheme. He shall not be influenced by the observations made by the State Minister (Revenue).

(e) It is hereby made clear that this Court has also not delved into the merits of the matter and the District Superintendent of Land Records shall decide the Appeal without being influenced by any of the observations by this Court.

(N.J.JAMADAR, J.)