

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 9042 OF 2017**

Dinkar Vitthal Gore and ors. ...Petitioners

Versus

State of Maharashtra and anr. ...Respondents

.....

Mr. Shailesh Chavan i/b Mr. Ashok Pandire for the Petitioners.

Mr. S. D. Rayrikar, AGP for the Respondent No. 1 - State.

Mr. Ashok Tajane for Respondent No. 2.

.....

CORAM : N.R. BORKAR, J.

DATED : 12 JULY 2023

P.C. :-

1. The petitioners herein had filed an appeal before the District Superintendent of Land Records (DSLRL) and sought rectification of consolidation scheme. The rectification was sought in respect of land bearing Gat No. 245 at village Mavadi, Taluka Dindori, District, Nashik.

2. According to the petitioners, prior to the implementation of consolidation scheme in question, 94 R land was recorded in the name of their common ancestor viz. Ganpat Gore. It is alleged that during implementation of the consolidation scheme, inadvertently, only 65 R land came to be recorded in the name of common ancestor.

3. The DSLRL by order dated 22 May 2012 directed the Dy. Superintendent of Land Records to remeasure entire old Survey No.86

and if necessary, to take action in accordance with Section 32 (1) of Bombay Prevention of Fragmentation and Consolidation of Holdings Act.

3. The respondent No.2, being aggrieved by the said order of District Superintendent of Land Records, filed an appeal before the Deputy Director of Land Records, and the same was dismissed.

4. The State Government has however, allowed the appeal filed by the respondent No.2 in view of the judgments of this Court in *Gunda Tuka Shinde*¹ vs. *Pandharinath Ramrao Shinde and Gulabrao Bhaurao Kakade vs. Nivrutti Krishna Bhilare*². Hence, this petition.

5. There is no dispute that the consolidation scheme in question was finalised in the year 1967. This Court in *Gulabrao Kakade (supra)* has held

“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

1 1991 MH.L.J.669

2 2001(4) Mh.L.J.31

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.”

6. In view of above, the District Superintendent of Land Records was not justified in entertaining the appeal filed by the petitioners in the year 2011, i.e., after 44 years. Apart from it, if really there would have been any error, then the common ancestor of the petitioners would have certainly objected to it after publication of draft consolidation scheme. It appears from the finding of the State Government that no such objection was raised. Considering the overall facts and circumstances, no interference is called for in the impugned order. The Petition is dismissed.

(N.R. BORKAR, J.)