

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.- 12877 OF 2022

M/s. Aluwid Architectural Private Ltd and ...Petitioners
Others

Vs.

Housabai Jagannath Gavhane and Others ...Respondents

Mr. Vivek V. Salunke, for Petitioners.

Mr. V. S. Kapse i/b Mr. Shailesh Chavan, for Respondent
Nos. 1 to 7.

Mr. P.P. Pujari, AGP for State/Respondent Nos.8, 9 and 10.

CORAM:- N. J. JAMADAR, J.

RESERVED ON : 20th JULY, 2023.

PRONOUNCED ON:- 4th OCTOBER, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2) This Petition under Articles 226 and 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 6th September, 2022, passed by the

District Superintendent of Land Records, Pune on an application for condonation of delay in preferring an Appeal, purportedly under Section 247 of Maharashtra Land Revenue Code, 1966 ("the Code, 1966"), whereby the Superintendent of Land Records was persuaded to condone the delay of more than 50 years in preferring the Appeal.

3) Shorn of superfluities, the background facts can be stated in brief as under:-

(a) Hausabai Gavhane, respondent No. 1, is the owner of agricultural land bearing Gat No.369 situated at Mauje Koregaon Bhima, Tal. Shirur, Dist. Pune, admeasuring 58 R. The petitioner Nos. 1 to 3 and respondent Nos. 2a to 2e and 3 to 5 are the co-holders of the land bearing Gat No. 374 admeasuring 86 R. The respondent Nos.6 and 7 are the owners of the land bearing Gat No. 373 admeasuring 58 R.

(b) Respondent No. 1 claims that Gat No. 369, 373 and 374 were originally numbered as Survey Nos. 124/4A, 124/4B and 124/4C. Each of the above survey numbers was admeasuring 1 acre and 24 Gunthas. However, when the Consolidation Scheme was implemented in the village Koregaon Bhima, area of the land bearing survey No. 124/4A was incorrectly shown as 87R and that of 124/4B and 124/4C was reduced to 57R only. In fact,

there was a mistake on the part of the revenue authorities in carving out the Gat numbers out of the survey numbers on the basis of the Falnibara. Mutation Entry Nos 4584 and 4579 were wrongly certified on account of the arithmetical mistake in the conversion of the land from acre and gunthas into hectare and R. No area was added to or subtracted from any of the survey numbers in the Consolidation Scheme.

(c) Respondent No. 1 continued to occupy and cultivate 68 R land throughout. It was only in the year 2012, respondent No. 1 realised that the incorrect area of the land was shown in the record of rights of Gat No. 369. Thereupon respondent No. 1 filed an application before the Deputy Director of Land Records, Pune to correct the record. By a communication dated 7th November, 2012, the District Superintendent Land Recordss informed the respondent No. 1 that the Consolidation Scheme had been fully implemented and, if desired, the respondent No. 1 can resort to the remedy of Appeal under Section 247 of the Code, 1966.

(d) Respondent No. 1 preferred an application on 11th June, 2016 before the Settlement Commissioner, seeking rectification of the arithmetical mistake in the area of the land bearing Gat No. 369 (old Survey No.124/4C) under Section 31A of the

Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("the Consolidation Act, 1947").

(e) Vide communication dated 7th April, 2017, respondent No. 1 was informed that there was no defect in the Consolidation Scheme and third-party interests have been created in the land in the nature of non-agricultural use, sale, transfer and succession and, therefore, the application was disposed.

(f) Respondent No. 1 preferred an Appeal under Section 247 of the Code, 1966, assailing the legality and correctness of ME No. 4584 dated 21st December, 1969. Since there was delay in preferring the Appeal, the respondent No. 1 preferred an application for condonation of delay.

(g) In the application for condonation of delay, after adverting to the circumstances in which, according to respondent No. 1, an incorrect area was shown in the record of rights of Gat No. 369 by unjustifiably and unlawfully adding 10 R area each from Gat Nos. 369 and 373 to Gat No. 374, Respondent No. 1 asserted that she learnt about the mistake in mutating the area qua survey No. 369 in the year 2012 only. However, since the respondent No. 1 is an illiterate and rustic lady and had no knowledge about the procedure to be adopted to get the mistake rectified, there was delay in preferring the Appeal.

(h) The petitioner Nos. 2 and 3 and respondent Nos. 6 and 7 contested the application by filing written submissions. Petitioner Nos. 1A to 1C also resisted the application.

(i) By the impugned order, the Deputy Superintendent of Land Records was persuaded to allow the application holding, inter alia, that documents on record indicated that re-examination of the issue was warranted and the reasons ascribed by respondent No. 1 for condonation of delay merited acceptance and, therefore, the delay was condoned in conformity with the principles of natural justice.

4) Being aggrieved the petitioners - original respondent Nos. 1A to 1C and 5 and 9 have preferred this Petition.

5) I have heard Mr. Vivek Salunkhe, the learned Counsel for the petitioner, and Mr. V. S. Kapse, the learned Counsel for respondent No. 1 and the learned AGP for Respondent Nos. 8, 9 and 10. The learned Counsel took the Court through the pleadings, documents on record and the various communications issued and orders passed by the authorities after respondent No. 1 raised a grievance about the mutation of an incorrect area.

6) Mr. Salunke would submit that the impugned order suffers from the vice of blatant disregard to the settled position of law.

The Superintendent of Land Records has condoned the delay of more than 50 years without adverting to the aspect of power to vary the scheme settled under the Consolidation Act, 1947. The resultant effect of condonation of delay in entertaining a purported Appeal is the process of embarking upon an enquiry to vary the scheme settled under the Act, 1947. By a catena of decisions, Mr. Salunke would urge, it has been settled that such power to vary the scheme cannot be exercised after an inordinately long period and in the absence of the period of limitation having been prescribed for the same, such power must be exercised within a period of three years.

7) In the case at hand, according to Mr. Salunke, what accentuates the situation is the fact that initially respondent No. 1 - Hausabai sought the correction of clerical or arithmetical mistake in the scheme under Section 31A of the Act, 1947. However, the averments in the application and the Appeal Memo indicate that respondent No. 1 is seeking the variation of the scheme under Section 32 of the Act, 1947 on substantive grounds and that is legally impermissible after half a century of the settlement of the scheme. To buttress the aforesaid submissions, Mr. Salunke placed reliance on the Division Bench judgments of this Court in the cases of **Gulabrao Bhaurao**

kakade Vs. Nivrutti Krishna Bhilare and Others¹, Dattu Appa Patil Vs. State of Maharashtra and Others², Suresh Babu Sankanna and Others Vs. State of Maharashtra and Others³. Reliance was also placed on a judgment of this Court in the case of **Sanjeev Babaram Vichare and Others Vs. Hon'ble State Minister for Revenue and Others⁴.**

8) Mr. Salunke would further urge that even if the application for correction in the Consolidation Scheme is construed to be one under Section 31A of the Act, 1947, it could not have been entertained after 50 years of the settlement of the scheme and the principles which govern the variation of the scheme under Section 32 also apply to the correction of the scheme under Section 31A of the Act, 1947 with equal force. To this end, attention of the Court was invited to the judgments of the learned Single Judges of this Court in the cases of **Martand Sopan Jagadale and Others Vs. Vishnu Maruti Vidhate and Others⁵** and **Jalindar Sadashiv Hirde and Others Vs. State of Maharashtra and Others⁶**.

1 2001 (4) Mh. L. J 31

2 2007 (1) Mh. L.J. 393

3 2018 (4) Mh. L. J. 331

4 (2022) 1 AIR Bom R 262

5 2014 SCC Online Bom 3012

6 2018 (4) Mh. L.J. 200.

9) Mr. Kapse, the learned Counsel for respondent No.1 controverted the submissions on behalf of the petitioners by submitting that the legal position as regards the period within which power to vary the scheme settled under the Consolidation Act, 1947, can be resorted to under Section 32 of the Act, 1947, cannot be disputed. However, the substance of the matter, Mr. Kapse would urge, cannot be lost sight of. It has been the consistent stand of respondent No. 1 Hausabai that there was an arithmetical mistake in converting the area in Acres and Gunthas into Hectare and R and resultantly sans any addition and/or subtraction of the area in the Consolidation Scheme, 10R area from Gat Nos.369 and 373 each came to be added to Gat No. 374.

10) In the application which preceded the Appeal in question as well as in the Appeal Memo, respondent No. 1 had adverted to this principal fact and, in addition, referred to the substance of the matter. Therefore, the corrections in the scheme sought by respondent No. 1 can only be said to be on account of clerical or arithmetical mistake; for the correction of which, no period of limitation has been designedly prescribed by the legislature as it is the duty of the authorities to correct their own clerical or arithmetical mistake. Thus, the prayer of respondent No. 1 all

along retains the character of an application under Section 31A of the Act, 1947.

11) As a Second limb of the submission, Mr. Kapse would urge that, by the impugned order, the Superintendent of Land Records has merely condoned the delay in preferring the Appeal. The petitioners would have an efficacious opportunity in the Appeal to put forth all the contentions including the grounds which are sought to be urged before this Court. Therefore, this Court may not interfere with the exercise of discretion to condone the delay, especially when the condonation of delay advances the object of decision on merit.

12) The aforesaid submissions now fall for consideration.

13) To start with it, may be necessary to note that if the matter is construed to fall in the realm of testing the legality and propriety of the order condoning the delay, enquiry would be rather limited. However, if the Court finds that the impugned order of condonation of delay in preferring the Appeal also touches upon the jurisdiction of the authorities under the Consolidation Act, 1947 to correct or vary the Consolidation Scheme settled under the Consolidation Act, 1947, the scope of this Petition gets enlarged.

14) On first principles, if it is a matter of justifiability of exercise of discretion to condone the delay, where the Court of first instance has leaned in favour of condonation of delay, this Court, in exercise of supervisory jurisdiction, may not interfere with the said finding unless it is perverse. There is a subtle yet significant difference in the approach of the Superior Court in the matter of condonation of delay where the Court of first instance condones the delay and where it declines to exercise the discretion to condone the delay. In the former case, the supervisory Court would not be justified in interfering with the exercise of discretion to condone the delay lightly, as the Courts lean in favour of condonation of delay to advance the cause of substantive justice and decide the matter on merit rather than on technicalities. In the latter case, where the Court of first instance refuses to condone the delay, the entire matter is open before the Court exercising the supervisory/revisional jurisdiction and such Court can independently assess the justifiability of the reason and sufficiency of cause ascribed for the condonation of delay. A profitable reference in the context can be made to the judgment of the Supreme Court in the case

of **N. Balakrishnan Vs. M. Krishnamurthy**⁷. The observations in paragraph No. 9 read as under:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

15) The primary question which thus crops up for consideration is whether the impugned order can be construed as one of mere condonation of delay in preferring the Appeal or one that has the implication on the exercise of jurisdiction by the authorities under the Consolidation Act, 1947 to correct or vary the Scheme settled under the Consolidation Act, 1947. To this

7 (1998) 7 SCC 123

end, it may be necessary to have a brief resume of the relevant provisions of the Act, 1947.

16) Under Section 2 (2) of the Act, 1947, “consolidation of holdings” means the amalgamation and where necessary the re-distribution of holdings or portions of holdings in any village, mahal or taluka or any part thereof so as to reduce the number of plots in holdings. Chapter-III of the Act, 1947 contains a fasciculus of provisions under the heading, “Procedure for Consolidation”. Sub Section (3) of Section 20 provides for confirmation of draft scheme or amended draft scheme of consolidation by the Settlement Commissioner. Section 21 provides for enforcement of scheme. Under Section 22 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. Under Section 24, the Consolidation Officer is required to issue certificate to every owner to whom a holding has been allotted and every person to whom a right is allotted under Sub Section (6) of Section 21. The Consolidation Officer is further enjoined to prepare a new record of rights in respect of the holdings so transferred.

17) As the controversy revolves around the correction or variation of the Scheme settled under the Act, 1947, it may be expedient to extract the provisions contained in Section 31 A and 32 of the Act, 1947:-

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.

18) Under section 31A, the Settlement Commissioner has the authority to correct the clerical or arithmetical mistake or error arising in the Consolidation Scheme, from any accidental slip or omission. No authority except the Settlement Commissioner has the power to remove the defect arising on account of any clerical or arithmetical mistake or error on account of my accidental slip or omission.

19) Under Section 32, the Settlement Commissioner is empowered to vary the scheme, after notifying the draft of variation, in the prescribed manner, receiving objections thereto, and making an appropriate enquiry in that regard, if it appears to the Settlement Commissioner that the scheme is defective on account of an error [other than the clerical and arithmetical mistake which he is otherwise empowered to correct under Section 31A], irregularity or informality.

20) Evidently, neither under Section 31A nor Section 32 any time limit is prescribed for the Settlement Commissioner to vary the scheme. Nonetheless, it does not imply that the Settlement

Commissioner has unfettered authority to correct or vary the scheme at any point of time.

21) It is trite, even in the absence of a statutory prescription of time limit, the power can only be exercised within a reasonable period. In the very nature of things, the reasonability of the period for exercise of the power would hinge upon the attendant facts and circumstances of the case. However, where no period of limitation is stipulated, ordinarily, the reasonable time to exercise the power is construed to be of three years.

22) A profitable reference, in this context, can be made to a judgment of the Division Bench of this Court in the case of **Gulabrao Kakade**, (supra), wherein, after adverting to the provisions contained in section 32 of the Consolidation Act, 1947, the Division Bench enunciated the position, inter-alia, 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."

23) A profitable reference can also be made to the judgment of the Supreme Court in the case of **Santoshkumar Shivgonda Patil & Ors. Vs. Balasaheb Tukaram Shevale & Ors.**⁸, wherein it was enunciated that when a statute does not prescribe a particular period of limitation, ordinarily a period of three years is required to be read into such a statute. The observations in Para Nos. 11 and 12 are instructive and, hence, extracted below :

8 2009 (9) SCC 352

"11 It seems to be fairly settled that if a statute does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.

12. Ordinarily, the reasonable period within which power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of Tehsildar passed on March 30, 1976 is flawed and legally not correct."

24) A Division Bench of this Court in the case of **Suresh Sankanna** (supra), after adverting to the aforesaid pronouncements, expounded the legal position to the effect that even if there is no specific period prescribed in Section 32 of the Consolidation Act, 1947, 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.

25) On the aforesaid touchstone, reverting to the facts of the case, it is pertinent to note that, initially, vide application dated 7th September, 2012, the respondent No. 1 sought correction in the area of the land bearing Gat No. 369. The said application was filed by the District Superintendent of Land Records vide communication dated 7th November, 2012, holding that the scheme which came to be settled on 11th February, 1970 had been fully implemented.

26) In an application dated 11th June, 2016, the respondent No.1 sought correction in the scheme specifically under Section 31A of the Consolidation Act, 1947 asserting that an incorrect area was mentioned in the record of rights of Gat No. 369 on account of clerical and arithmetical mistake. The said application was not entertained on the ground that there was no clerical or arithmetical mistake in the scheme settled under the Consolidation Act, 1947. The communication dated 17th April, 2017 addressed to respondent No. 1 in terms records that there was no such arithmetical or clerical error and there was no error, as such, in the Consolidation Scheme and, in the intervening period, the third party rights have been created and, therefore, the application of respondent No. 1 dated 16th June, 2016 was filed without any action thereon.

27) In contrast, if the grounds in the Appeal Memo and the application for condonation of delay in preferring the Appeal, purportedly under Section 247 of the Code, 1966, are considered, it becomes abundantly clear that respondent No. 1 has now assailed the legality and validity of the Consolidation Scheme qua the subject lands by asserting that while settling the scheme, no opportunity of hearing was given to respondent No. 1 or her predecessor in title; neither notice was served on them nor they were otherwise informed. The entries in the record of rights pursuant to the settlement of the scheme were thus made in violation of the principles of natural justice. The area of land which came to be mutated to Gat Nos.369, 373 and 374 was on the basis of incorrect Falnibara without carrying out actual measurements.

28) The grounds in the Appeal Memo and the application for condonation of delay, if compared and contrasted with the application for correction of the scheme dated 11th June, 2016 purportedly under Section 31A of the Act, 1947, lead to an inescapable inference that the challenge now sought to be raised by the respondent No. 1 falls under Section 32 of the Act, 1947. Respondent No. 1 is assailing the legality and validity of the

scheme on the grounds of substantive errors, other than clerical or arithmetical mistake, and irregularity of the procedure aswell.

29) In this view of the matter, I am impelled to hold that the remit of this Petition is not restricted to testing the legality, propriety and correctness of the order of condonation of delay simpliciter. The impugned order, in my considered view, touches upon the jurisdiction of the authorities under the Consolidation Act, 1947, to vary the scheme under Section 32 of the Act, 1947.

30) As noted above, the said exercise to vary the scheme can only be carried out within a reasonable period of the settlement of the scheme. This Court has consistently held that the Settlement Commissioner has no unbridled power to vary the scheme at any time. This Court has repetively ruled that such power, ordinarily, ought to be exercised within a period of three years. In the absence of any special or compelling circumstances, the exercise of the power after an inordinately long period cannot be countenanced as it entails unsettling of the settled claims.

31) There can be no duality of opinion that with the passage of time, third-party rights are created and equities intervene. Like in other walks of life, the proprietary and possessory title to the properties do not remain constant forever. If the settled claims

are unsettled after half a century, it has the propensity to affect the rights and interests of the persons, who enter into the transactions on the faith of the claims settled under the Consolidation Act, 1947.

32) It is imperative to note that in the communication dated 17th April, 2017, the Superintendent of Land Records expressly adverted to those factors and noted that the scheme was finalised long back and, in the intervening period, third party rights have been created in the nature of non-agricultural use, sale, transfer and succession.

33) The situation which thus emerges is that the Consolidation Scheme was fully implemented prior to half a century, and the lands changed hands. In this backdrop, the exercise of the power to embark upon an inquiry to vary the scheme after lapse of 50 years of the settlement of the scheme, inevitably entails the consequence of unsettling the settled claims.

34) The matter can be looked at from another perspective. The course resorted to by the Superintendent of Land Records to entertain an Appeal against the certification of ME No. 4584 as regards the area mutated qua Gat Nos. 369, 373 and 374 is nothing but an indirect way of varying the scheme settled under

the Consolidation Act, 1947. The source of power to vary the scheme can only be traced to Section 32 of the Act, 1947. Though an Appeal is sought to be entertained under Section 247 of the Code, 1966 against certification of ME No. 4584, the said exercise cannot be said to be justifiable as the very certification of ME No. 4584 draws support and sustenance from the settlement of the scheme under the Consolidation Act, 1947. Any other view would lead to an undesirable consequence of the scheme settled under the Act, 1947 being varied in an indirect manner by entertaining an Appeal against the Mutation Entry in the record of rights of the land, which was made to give effect to and implement the scheme under the Consolidation Act, 1947. If this core issue is kept in view, the impugned order becomes legally unsustainable, *de hors* the justifiability of the reasons ascribed for the condonation of delay.

35) The submission of Mr. Kapse that the prayer of respondent No. 1 still retains the character of an application under Section 31A of the Consolidation Act, 1947 does not advance the cause of respondent No. 1. It would suffice to note that even for correction of an arithmetical or clerical error amenable to correction under Section 31A of the Consolidation

Act, 1947, the principle of reasonability of time governs with equal force.

36) In the cases of **Martand Jagadale** (supra) and **Jalindar Hirde** (supra), this Court had held that even where no limitation is prescribed under Section 31A, the said power could only be exercised within a reasonable time. The decision of this Court in the case of **Jalindar Hirde** (supra) appears to be on all four with the facts of the case at hand. The observations in paragraph Nos. 5 and 6 are material and, hence, extracted below:-

"5. It is, therefore, obvious that besides the Settlement Commissioner, the proceedings under Section 31-A cannot be entertained by any other Revenue Officer. In the instant case, the consolidation scheme has been settled in 1970. Respondent No.5 has moved the Deputy Director of Land Records, Nasik Division, Nasik by making an application on 9.2.2013, which is after 43 years. Though he has invoked Section 247 of the Maharashtra Land Revenue Code 1966, it is apparent that the said authority cannot usurp the powers of the Settlement Commissioner under the 1947 Act for interfering with or correcting or modifying a Consolidation Scheme under Section 31A. The said proceedings were entertained by the authority, which was legally incompetent to do so. As such, on the first issue, the petitioners succeed.

6. In so far as the second issue pertaining to limitation is concerned, it requires no debate that Section 31-A does not prescribe any limitation. However, the learned Division Bench of this Court in the matter of Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhilare and others [2001 (4) Mah. L.J. 31], has concluded that after taking into account the various provisions of the 1947 Act, a

prayer for correction in the scheme only to be done by the Settlement Commissioner, can be permitted within a reasonable period. While dealing with the facts in the Gulabrao's case (supra), it was concluded that when the consolidation scheme was finalized in 1973, ordinarily, exercising the power under Section 31-A, after three years, may not be permissible and justified under Section 32. It was, therefore, held, on the facts, that the Settlement Scheme of 1973 cannot be disturbed in 1988, notwithstanding whether it suffers any clerical or arithmetical errors."

(emphasis supplied)

37) This Court has held in no uncertain terms that the Superintendent of Land Records cannot invoke the provisions contained in Section 247 of the Code, 1966 so as to usurp the power of the Settlement Commissioner under Section 31A of the Act, 1947. Likewise, even if a resort to Section 31A was to be made by the Settlement Commissioner, it must be made within a reasonable time.

38) The conspectus of aforesaid consideration is that the impugned order is legally unsustainable as by resorting to power under Section 247 of the code, 1966, the Superintendent of Land Records professes to vary the scheme under Section 32, or for that matter under Section 31A of the Consolidation Act, 1947, which is clearly without jurisdiction. Resultantly, the petition deserves to be allowed.

39) Hence, the following order.

ORDER

- i)** The Petition stands allowed.
- ii)** The impugned order passed by Superintendent of Land Records stands quashed and set aside.
- iii)** Rule made absolute in the aforesaid terms.
- iv)** In the circumstances of the case, there shall be no order as to costs.

[N. J. JAMADAR, J.]