IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.875 OF 2020

1) Jibhau Sukhdev Deore, }
Age :74 years, Occu: Agricuture, }
R/at: Nitane, Taluka-Baglan, }
District-Nashik. }

2) Shri. Ramdas Sukhdev Deore, }
(Deceased through Legal Heirs) }

2A) Shri. Prakash Ramdas Deore, }
Age :39 years, Occu: Agriculture, }
R/at: Bhakshi Road, Near Sharad Nagar }
Water Tank, Satana, Taluka -Baglan, }
District-Nashik. }

2B) Sau. Pramila Keda Hire, }
Age:42 years Occu:Housewife, }
R/at/Post: Aaghar (Budruk) Chau Fata, }
Taluka-Malegaon, District-Nashik. }

2C) Sau. Asha Sharad Suryawanshi, }
Age:36 years, Occu: Housewife, }
R/at/Post: Mungase, Taluka-Malegaon, }
District -Nashik. }

3) Shr. Gangadhar Sukhdev Deore, }
Age: 59 years, Occu:Agriculture, }
R/at: Nitane, Taluka-Baglan, }
District-Nashik. }.. Petitioners

Versus

1) Vishwas Ramchandra Dighavkar }
Age: 60 years, Occu: Agriculture }
R/at: 29-Jaijui Vasant Vihar, Plot No.34, }
Pokhran Road No.2, Thane (W). }

2)	Shri. Jagannath Sukhdev Deore, Age :61 years, Occu: Agriculture, R/at: Nitane, Taluka-Baglan, District-Nashik.	} } } }	
3)	Shri. Kakaji Sukhdev Deore, Age:57 years, Occu: Agriculture, R/at: Nitane, Taluka-Baglan, Districtr – Nashik.	} } } }	
4)	Superintendent, Land Record, Nashik Nashik.	} }	
5)	Deputy Director Land Record, Nashik Division, Nashik,	} }	
6)	Minister (Revenue) Maharashtra State, Mantralaya, Mumbai Respondent No.4 to 6 represented Through State of Maharashtra.	} } } }	Respondents

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Mr. Girish Agrawal *a/w Mr. Shubham Jangam**,** Advocates for the Petitioners.*
Mr. Rohan Mahadik *a/w Rachana Karad, Mr. Mekhala More i/by The Juris Partners**,** Advocates for Respondent No.1.*

Mr. S. D. Rayrikar*, AGP for Respondent Nos. 4 to 6.*

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CORAM	**:**	**SANDEEP V. MARNE, J.**
RESERVED ON	**:**	**16 OCTOBER 2023**
PRONOUNCED ON	**:**	**20 OCTOBER 2023**

JUDGMENT:

1. ***Rule.*** Rule made returnable forthwith and with the consent of the learned counsels for the parties, Petition is taken up for hearing.

2. By this petition, Petitioners challenge Order dated 17th July 2019 passed by the Minister-Revenue in rejecting the Revision Application. Petitioners had preferred the Revision challenging the Order dated 19th May 2016 passed by Deputy Director of Land Records, Nashik Region, Nashik, by which the appeal of Respondents was allowed and order passed by the District Superintendent of Land Records, Nashik dated 14.10.2015 came to be set aside. By his Order dated 14.10.2015, the District Superintendent of Land Records had rejected Petitioners' appeal filed under Section 31A of the Maharashtra Prevention of Fragmentation and Consolidation of Land Holdings Act, 1947 (**Fragmentation Act**) for correction of clerical and arithmetical mistakes in the Consolidation Scheme finalized on 15.11.1964.

3. Considering the narrow controversy involved in the present petition, it is not necessary to record facts in detail.

Suffice it to state that one Sukhdeo Motiram Deore owned Land bearing Survey No.205 admeasuring area of 19 Acre 4 Gunthas. Said Sukhdeo Motiram Deore sold land admeasuring 9 Acre 15 Gunthas to Kacharu Dhanaji Ahire on 1st March 1958 and retained the balance land admeasuring 9 Acre 29 Gunthas. The land admeasuring 9 Acre 15 Gunthas sold to Shri. Kacharu Dhanaji Ahire was assigned Survey No.205/1 whereas the land admeasuring 9 Acre 29 Gunthas retained by Sukhdeo Motiram Deore was assigned Survey No. 205/2. Out of the land remaining in ownership and possession of Sukhdeo Motiram Deore, land admeasuring 17 Gunthas was acquired for irrigation and he continued to retain land admeasuring 9 Acre 12 Gunthas.

4. Kachru Dhanaji Ahire sold the entire land bearing S. No. 205/1 admeasuring 9 Acre 15 Gunthas to Ramchandra Kashinath Patil in two tranches by way of Sale Deeds executed on 09.02.1959 and 06.04.1959.

5. The Consolidation Scheme in the village was implemented in the year 1964-1965 and was finalized vide Order dated 15.11.1964. The land which remained in ownership of Ramchandra Kashinath Patil (Survey No.205/1) was assigned

Gat No.128. Petitioners claim that although the area of land under Survey No.205/1 was only 9 Acre 15 Gunthas, Gat No.128 recorded area of 12 Acre 11 Gunthas (4H 9R) thereby increasing the area of land in ownership of Ramchandra Kashinath Patil by 4 Acre 5 Gunthas. Petitioners submit that on account of increase in the area of land under Gat No.128, there was corresponding decrease in Petitioners' land which was assigned Gat No.127 and as against original area of land bearing Survey No.205/2 of 9 Acre 12 Gunthas, Gat No.127 was assigned area admeasuring only 5 Acre 21 Gunthas. That there was reduction in area of land under Gat No.127 by 4 Acre 5 Gunthas which erroneously got included in the area of land bearing Gat No.128.

6. Under the above factual background, Petitioners filed proceedings before District Superintendent of Land Records on 29.03.2014 for correction in the calculations of area in Gat Nos. 127 and 128 under provisions of Section 31A of the Fragmentation Act. By Order dated 14.10.2015, the District Superintendent of Land Records rejected Petitioners' appeal. Petitioners filed further appeals before Deputy Director of Land Records, Nashik, which came to be allowed by Order dated 19.05.2016 directing the Deputy Superintendent of Land

Records to submit a proposal for correction of area of Gat No.127 and 128 under the provisions of Section 32(1) of the Fragmentation Act. Respondents filed Revision Application before Minister-Revenue, which came to be allowed by Order dated 17.07.2019 setting aside the order passed by the Deputy Director of Land Records. Petitioners have filed present petition challenging the Minister’s Order dated 17.07.2019.

7. I have heard Mr. Agarwal, the learned counsel appearing for the Petitioners. He would submit that the proceedings initiated by Petitioners are under Section 31A of the Fragmentation Act which provides for correction of clerical or arithmetical mistake or error arising from any accidental slip or omission in a Consolidation Scheme. That, there is no specific period of limitation for filing proceedings under Section 31A. Mr. Agarwal would further submit that Petitioners did not seek variation of the scheme under Section 32 for which limitation of 3 years is held to be applicable. He would submit that the present case clearly involves a mere clerical/arithmetical error while assigning area of land to Gat Nos.127 and 128. That, Respondents have no plausible explanation for sudden increase in area of land in earlier Survey No.205/1 (Gat No.128) by 4 Acre 5 Gunthas or for corresponding decrease in the area of Petitioners land in old Survey No.250/2 (Gat No. 127). That, the order passed by the Deputy Director of Land Records has merely resulted in correction of areas of land under respective Gat Nos. 127 and 128 which suffer from clerical and arithmetical errors.

8. *Per contra*, Mr. Mahadik the learned counsel appearing for the Respondent No.1 would oppose the petition and support the order passed by the Minister. He would submit that the present case is clearly covered by provisions of Section 32 of the Fragmentation Act since Petitioner sought variation in the Consolidation Scheme. Mr. Mahadik would contend that proceedings under Section 32 could not be filed beyond period of three years. That therefore the Minister had rightly set aside the order passed by the Deputy Director of Land Records. He would rely on the judgments in ***Gulabrao Bhaurao Kakade & Ors. Vs. Nivrutti Krishna Bhilare & Ors.***[1], ***Dattu Appa Patil & Ors. Vs. State of Maharashtra & Ors.***[2] *and* ***Suresh Bapu Sankanna & Ors. Vs. State of Maharashtra & Ors.***[3]

1 (2001) 4 Mh.L.J.
2 (2007) 1 Mh.L.J.
3 (2018) 4 Mh.L.J.

9. Rival contentions of the parties now fall for my consideration.

10. By initiating proceedings on 29.03.2014, Petitioners sought correction of area of Gat Nos.127 and 128 assigned by Consolidation Scheme finalized on 15.11.1964. Thus the proceedings were filed after lapse of period of 50 long years. The short issues that arises for consideration is about the exact provision of Fragmentation Act under which the proceedings initiated by Petitioners would be covered and whether any period of limitation would apply to the same.

11. It is Petitioners' case that the proceedings filed by them are under Section 31A of the Fragmentation Act. On the other hand, it is the case of Respondent No.1 that the said proceedings are in fact for variation of the Consolidation Scheme and would fall under provisions of Section 32 of the Fragmentation Act. It would be therefore necessary to reproduce Section 31 A and Section 32 which reads thus:-

> **31A. Correction of clerical ad arithmetical mistake in scheme.**
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> 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.

12. Thus, under Section 31A, the Settlement Commissioner is empowered to correct any clerical or arithmetical mistake or an error arising from any accidental slip or omission. On the contrary Section 32, the Settlement Commissioner is empowered to correct any error, irregularity or informality in the Consolidation Scheme. The error envisaged under Section 32 of the Act is otherthan the one referred to in Section 31A. In the present case, Petitioners sought area correction in respect of Gat Nos. 127 and 128. The issue is whether such correction would be covered by the expression ‘clerical and arithmetical mistake’ or ‘error arising from any accidental slip or omission’. A ‘clerical mistake’ would mean a mistake committed by a clerk or employee contrary to the intention or direction of the Settlement Commissioner. It would be like a mistake committed by a typist or stenographer or a clerk while writing or typewriting a document. On the contrary an ‘arithmetical mistake’ would be an error of calculation. The third category of ‘error arising from accidental slip or omission’ would cover omission of any particular land from a Consolidation Scheme.

13. On the contrary, Section 32 covers wide range of errors during preparation and finalization of Consolidation Scheme. While implementing the Consolidation Scheme, the lands covered by Survey numbers were assigned Gat numbers by consolidating smaller pieces of lands. Therefore, if any land is erroneously included in some other Gat number, the same would be covered by an error under Section 32. It is difficult to hold that a mistake committed by the Settlement Commissioner in including the land in erroneous Gat number would be a clerical or arithmetical mistake or an error arising out of accidental slip or omission. This is because addition of land in Gat number also results in corresponding decrease in area of that land in another Gat number. Such error would fall within ambit of Section 32 and would not be covered by Section 31A. In my view, therefore, the proceedings filed by the Petitioners before the District Superintendent of Land Records were proceedings under Section 32 of the Fragmentation Act. By now, it is well settled proposition of law that the proceedings for correction of the Consolidation Scheme must be initiated within a reasonable time. Such reasonable time has been interpreted to mean a period of three years. This law has been expounded in various judgments of this Court. A Division Bench of this Court in ***Gulabrao Bhaurao Kakade*** *(supra)* 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.

The view that the proceedings for variation in a consolidation scheme must be filed within reasonable time has been followed in ***Dattu Appa Patil & Ors.*** *(supra) and* ***Suresh Bapu Sankanna & Ors.*** *(supra).*

14. I am therefore of the view that since the proceedings were filed by Petitioners for reopening the Consolidation Scheme finalized on 15.11.1964 after period of 50 years, the same were clearly time barred and rightly rejected by the Deputy Superintendent of Land Records.

15. Even if it is assumed that the proceedings filed by Petitioners were under Section 31A, the same would again not escape the restriction of 'reasonable time'. This Court has held that even the proceedings under Section 31A are required to be filed within a reasonable time of 3 years. Reference in this regard can be made to the Judgment of this Court in ***Jalindar Sadashiv Hirde and Ors. Vs. State of Maharashtra & Ors.***[4]***,*** in which following issue was framed for an answer:

> (a) Whether Section 31A of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, which does not prescribe any limitation, would permit a competent authority to entertain an application for modification in the scheme beyond a particular period?

The learned Single Judge of this Court answered the question as under:

> 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 WP/11816/2016 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.
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> 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.

4 (2018) 4 Mh.L.J.

> 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.

16. Thus the proceedings filed by Petitioners for area correction in Gat Nos. 127 and 128 after 50 long years for finalization of Consolidation Scheme were clearly not maintainable and were rightly rejected by the District Superintendent of Land Records. The Dy. Director of Land Records erred in allowing Petitioners’ appeal, which error has rightly been corrected by the Minister-Revenue.

17. In the result, I do not find any error in the order passed by the Minister-Revenue. Petition, being devoid of merits, is dismissed without any order as to costs. Rule is discharged.

SANDEEP V. MARNE, J