



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4898 OF 2022

- 1 Tukaram Gundappa Darekar,
Age 52 yrs., Occ. Agri.,
R/o Arali (Kh), Tq. Tuljapur,
Dist. Osmanabad.
- 2 Mahesh Tukaram Darekar,
Age 24 yrs., Occ. Agri.,
R/o Arali (Kh), Tq. Tuljapur,
Dist. Osmanabad.
- 3 Mukesh Tukaram Darekar,
Age 22 yrs., Occ. Agri.,
R/o Arali (Kh), Tq. Tuljapur,
Dist. Osmanabad.
- 4 Pushpa w/o Tukaram Darekar,
Age 47 yrs., Occ. Household,
R/o Arali (Kh), Tq. Tuljapur,
Dist. Osmanabad.

... Petitioners

... **Versus** ...

- 1 The State of Maharashtra
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 400 032.
- 2 The Deputy Director of Land Records,
Damdi Mahal, Near Panchayat Samiti,
Ganesh Colony, Aurangabad.
- 3 The District Superintendent of Land Records,
Osmanabad, Tq. & Dist. Osmanabad.

- 4 Shivaji Tatya Darekar (**Died**)
Since deceased through his legal representatives -

4/1) Vishwanath Shivaji Darekar,
Age 65 yrs., Occ. Agri.,
R/o Arali (Kh), Tq. Tuljapur,
Dist. Osmanabad.

4/2) Mainabai w/o Shivaji Darekar,
Age 61 yrs., Occ. Agri.,
R/o Arali (Kh), Tq. Tuljapur,
Dist. Osmanabad.

- 5 Gorakh Shivaji Darekar,
Age 56 yrs., Occ. Agri.,
R/o Arali (Kh), Tq. Tuljapur,
Dist. Osmanabad.

... **Respondents**

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Mr. K.K. Kulkarni, Advocate for petitioners

Mr. A.S. Shinde, AGP for respondent Nos.1 to 3

Mr. V.V. Ingale, Advocate for respondent Nos.4(1), 4(2) and 5

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 20th JUNE, 2024

PRONOUNCED ON : 04th JULY, 2024

JUDGMENT :

- 1 Rule. Rule made returnable forthwith. Heard learned Advocates
for the parties finally, by consent.

2 The petitioners have approached this Court under Article 227 of the Constitution of India impugning order dated 28.03.2022 passed by Deputy Director of Land Records, Aurangabad in Consolidation/Appeal/SR.1330/18/2022.

3 The private respondents i.e. respondent Nos.4 and 5 claims that they are owners of land situated at village Arali (Kh), Tq. Tuljapur, Dist. Osmanabad. Their forefather viz. Dhondiba Tatya Darekar had the land in Sy.No.79/5. The consolidation scheme implemented at village Arali and finally sanctioned on 03.04.1977. After implementation of the scheme the mutation entry is effected. The land owned by Dhondiba was allotted Gat No.93, however, the area possessed by him has been reduced by 03 Acres 37 Gunthas. Prior to implementation of the consolidation scheme Dhondiba had excess land in his ownership and possession that has been wrongly reduced. The private respondents approached District Superintendent of Land Records, Osmanabad in Appeal and challenged Mutation Entry No.412 recorded pursuance to consolidation scheme. An application seeking condonation of delay of almost 40 years was accompanied with the appeal. The District Superintendent of Land Records rejected the appeal/application of the respondents holding that the delay of more than 40 years cannot be condoned and any challenge to the consolidation scheme, finalized in the

year 1977 cannot be re-opened.

4 It appears that the private respondents then approached Deputy Director of Land Records, Aurangabad assailing order dated 06.11.2017 passed by District Superintendent of Land Records, Osmanabad. In pursuant of directions by said authority petitioners were served with a notice of measurement of land. The petitioners had raised objections for such measurement and also challenged the notice before this Court in Writ Petition No.1703 of 2019, which came to be disposed of with direction to Deputy Director of land Records to consider and decide the objection on its own merits. It appears that the appeal filed by the respondents as well as the objection raised by the petitioners was considered by respondent No.2 and issued directions to respondent No.3 to hear and decide the Appeal/SR/79/2016 afresh.

5 Mr. K.K. Kulkarni, learned Advocate appearing for the petitioners vehemently submits that the proceedings for correction in consolidation record has been initiated after 40 years. The District Superintendent of Land Records had rightly refused to condone the delay of 40 years. However, the Deputy Director of Land Records, Aurangabad erroneously entertained the appeal and remanded the proceedings for re-hearing to the District Superintendent of Land Records, Osmanabad i.e. respondent No.3. He would

submit that the respondent authorities have no jurisdiction to entertain any such challenge or application for variation in the scheme after inordinate delay. In support of his contention he relies upon the Division Bench Judgments of this Court in cases of **Dattu Appa Patil since deceased by LRs Ananda Dattu Patil and others vs. State of Maharashtra and others** [2007 (1) Mh.L.J. 393], **Suresh Bapu Sankanna and others vs. State of Maharashtra and others** [2018 (4) Mh.L.J. 331], **Jalindar Sadashiv Hirde and others vs. State of Maharashtra and others** [2018 (4) Mh.L.J. 200], **Padmabai Narayan Chaudhary and others vs. Deputy Director of Land Records, Aurangabad Region, Aurangabad and others** [2020 (2) Mh.L.J., 861] and **M/s. Aluwid Architectural Private Limited and others vs. Housabai Jagannath Gavhane and others** [Writ Petition No.12877 of 2022] decided on 04.10.2023.

6 Per contra, Mr. V.V. Ingale, learned Advocate appearing for respondent Nos.4(1), 4(2) and 5 raises preliminary objection that petitioners have alternate efficacious remedy to challenge impugned order before State Government. Barring such alternate remedy the writ petition cannot be entertained. He would further submit that land standing in the name of Dhondiba Tatya Darekar has been reduced without any basis. Because of illiteracy grievance could not be raised within limitation period of 30 days. The valuable rights of the respondents need adjudication on merits.

7 Having considered submissions advanced and after going through the record tendered into service, it can be gathered that the consolidation scheme has been implemented at village Arali (Kh), Tq. Tuljapur, Dist. Osmanabad under Section 19(1) of the Consolidation Act and same has been finally sanctioned on 03.04.1977. As observed by Deputy Director of Land Records, Aurangabad, Sy.No.79/2, merged in part of Gat Nos.89 and 93. The statements of land holders were recorded before finalization of scheme and such statements are part of record. It is, therefore, apparent that the area in respective Gat numbers has been recorded after obtaining consent of all concerned. It is not disputed before this Court that the scheme has attained the finality in the year 1977.

8 In similar set of facts while considering matter pertaining to variation of the scheme made after 27 years, Division Bench of this Court observed that settlement Commissioner can exercise his powers under Section 37(1) for effecting variation of the scheme, only when it is made within reasonable period. Relying upon earlier Judgment in the case of **Gulabrao Bhaurao Kakade vs. Nivrutti Krishna Bhillare** [2001 (4) Mh.L.J., 31] belated challenge was disapproved. The similar view is consistently reiterated by this Court in catena of Judgments, particularly referred above. Considering the aforesaid legal position, belated challenge raised by

respondents, invoking Section 32 of the Consolidation Act, 1947 cannot be entertained.

9 So far as the objection of the respondents as to alternate remedy to raise challenge to the impugned order before the Hon'ble Minister, it can be observed that the order impugned depicts the exceptional circumstances. The jurisdiction is sought to be exercised by consolidation authority ignoring inordinate delay of 40 years to unsettle scheme which has attained finality. Consequently, the writ petition deserves to be allowed.

10 Hence, the writ petition is allowed in terms of prayer clause 'C'.

11 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR)
JUDGE

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