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WP-12184-2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12184 OF 2017

Maroti s/o. Malappa Sawale (Halighongde) ...Petitioner

VERSUS

The State of Maharashtra and Ors. ...Respondents

Mr. V. D. Salunke Advocate for the petitioner.

Mr. S. K. Shirse, AGP for the Respondent-State.

Mr. Mukul Kulkarni, Advocate for Respondent Nos.5 to 7.

Mr. Amey Sabnis, Advocate for Respondent No.9-C.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 14th OCTOBER 2024

PRONOUNCED ON : 19th DECEMBER 2024

PC :-

1. The challenge in this petition is to an order passed by the learned Minister, Revenue and Forest Department, State of Maharashtra dated 21st June 2017 passed in Appeal-2017/Case No.94/J-7(A). The learned Minister by way of impugned judgment and order allowed the Revision filed by the present Respondent Nos.5 to 8 and deceased Annapurna Sangame (Respondent No.9), now represented by her legal heirs against petitioner. Respondent Nos.1 to 4 are the State and State Authorities.

2. The facts in short are that, Respondent No.5 approached the Deputy Director of Land Records, Aurangabad Division, Aurangabad (for short "DDLRL") - Respondent No.3 by filing an application dated 27th March 2012 seeking correction of the entries in the consolidation scheme whereby the entries in the name of Respondent No.5 was not taken. The DDLRL by communication dated 31st August 2012 communicated that, on inquiry, it is found that in land survey No.74, the consolidation scheme is properly implemented and on that basis the revenue entries are taken. There is no fault in the consolidation scheme and directed him to file an appeal before the Competent Authority.

3. The petitioner approached District Superintendent of Land Records, Latur (for short "DSLRL") by filing Appeal No.28114 of 2016 and challenged the entry in 7/12 extract in respect of land survey No.74(1) Gut No.290 from village Shelhal, Tq. Udgir, Dist. Latur.

4. It is the case of the petitioner that the petitioner was the owner of land survey No.74(1) admeasuring 6H 56R situated at village Shelhal. His father sold the land to the extent of 5H 76R to various person. As on the date of filing appeal, he was having 80R land. In consolidation

scheme, 2 acre land was shown to be less and therefore, in 2012, the application was made for correction in 7/12 extract. By order dated 31st August 2012, the learned DDLR - Respondent No.3 disposed off the appeal informing that, there is no fault for implementation of consolidation scheme. It is the Revenue Authorities, who did not properly show the entries in 7/12 extract and thus, the appeal was filed by the petitioner.

5. The dispute is thus in respect of the land survey No.74/B and 74/K from Gut No.290. The total land in possession of the present Respondent Nos.5 to 9 was 3H 28R as per 7/12 extract. However, after implementation of the consolidation scheme, the same is now shown to be 4H, 0R. It is further alleged that, in the name of respondent No.5, excess land is shown of 0H, 72R. In respect of one Prayagabai, though her area was 3H 28R, after consolidation, the area is shown to be 3H 36R. These entries are made without any change in holdings of these respondents. Thus, in short, it is stated that 80R of land is shown less in the name of the petitioner. Since the petitioner was illiterate, he could not notice this variation in the entries. When he wanted to dispose of his

land that time he came to know that the land shown in his possession is lessor than his entitlement. On that, he asked the Respondents, who happen to be cousins, they only assured that they will effect the change any time in future and therefore, he did not approach the authorities immediately. He ultimately prayed that the correction be made in the record in respect of consolidation scheme that took place in 1986-87. In alternative, he prayed for fresh inquiry of total land in the name of petitioner which is shown to be 6H 56R.

6. This application came to be opposed by the Respondent No.5 to 7. Thereafter, the authorities issued notice on 20th July 2016 and, issue corrected draft of the scheme under Section 31-A of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "Consolidation Act") and published the draft. Panchanama was drawn on 22nd July 2016. After that the DSLR submitted a report that no response was received pursuant to the notice under Section 31-A of the Consolidation Act. It was submitted in the report that 80R land is shown less in the name of petitioner. The excess area is shown in the land of Respondent No.5 by 72R and one

Prayagabai Gurappa by 08R and submitted proposal to correct the scheme. On the basis of that, necessary correction was carried out and notice was given to present Respondent Nos.5 to 9 on 1st October 2016.

7. This decision came to be challenged by Respondents before the District Superintendent of Land Records. The DSLR by order dated 1st October 2016 was pleased to reject the objection. Against the said decision, the respondents approached the DDLR, Aurangabad. The DDLR disposed off the said appeal stating that there is no provision of appeal against the correction of the consolidation scheme under Section 31-A of the Consolidation Act. It is therefore the respondents approached the learned Minister (Revenue), State of Maharashtra, by filing Revision Application No.149 of 2016. Objections were raised by the petitioner mainly about the maintainability of the revision before the Minister.

8. The learned Minister on hearing the parties held that the consolidation scheme was implemented and was made applicable on 31st March 1986. The certificate was issued showing that all the owners have received equal share in the land. It is recorded that on 13th April

1992, Naganath Maroti, Madhavrao Maroti, Mallikarjun Maroti and Sangram Maroti have sold the lands survey No.74(1) Gut No.290 in admeasuring 5H 76R to one Prashant Aute. Secondly, Nagnath Maroti and other three persons have the land in survey No.74(2) Gut No.289 showing that there is distance between land of Nagnath Maroti and others and the land Gut No.260 Virbhadra Kalappa - Respondent No.5 and there is no mistake in the consolidation scheme implemented in 1986. The objection is raised after 26 years. The petitioner is not the original owner of the land. The original land owner sold the land in 1992 itself. The learned Minister thus allowed the revision of the respondents and set aside the order passed by the District Superintendent of Land Revenue on 1st October 2016. It is against this order, the petitioner has come to this Court.

9. The learned Advocate Mr.Salunke vehemently argued that the petitioner had applied under Section 31-A of the Consolidation Act for correction. He submits that in 1996, the partition took place in the family in two parts. Each of the parties received land admeasuring 6H 96R. The mutation entries were taken bearing Nos.11 and 97 in favour

of petitioner and respondents in the year 1967. The consolidation scheme was effected in 1985-86. However, the petitioner received actual land of 5H 67R i.e. 80R less than that was come to the petitioner. Prayagabad was given her land at survey No.74(2) which is shown to be more in area. In 2012, the petitioner wanted to sale his property and it is at that time he came to know about this difference and therefore, he applied for correction on 31st August 2021. The DSLR rightly followed the procedure. He recorded the statements and drawn panchnama. He issued notification for correction calling objections and it is only thereafter, the corrected scheme was published. He thus submits that the learned Minister has committed an error in allowing the Revision of the respondents.

10. Mr.Salunke, the learned Advocate for the petitioner has relied upon the judgments in the case of ***Champabai Piraji Sonawane Vs. State of Maharashtra and Ors.***¹ and ***Kisan Bhimrao Patil and Ors. Vs. The State of Maharashtra and Ors.***²

1 [2010(7) Mh.L.J. 16]

2 2020(6) ALL MR 202

11. The learned Advocate Mr.Kulkarni appearing for respondent Nos. 5 to 7 vehemently opposes the petition. He submits that when Respondent No.5 had made an application, he was clearly informed by the authorities that there is no mistake in the consolidation scheme. He accepted the said and that attained finality. By this stand of the petitioner is falsified. He submits that in 1992 itself, the land was purchased by Prashant Aute from petitioner and other three owners of land Gut No.290. In the sale-deed, it is clearly mentioned that the entire land in possession of the vendors was sold admeasuring 5H 76R. This clearly shows that in 1992 itself, the petitioner had the knowledge, still he raised challenge for the first time in the year 2014. The report submitted by the Deputy Superintendent Land Records, Udgir to DSLR, Latur. It is clearly mentioned that no measurement could be done. It is also noted that the possession of the applicant was not seen on the land. In the said panchnama, the holdings of each of the respondents is clearly mentioned that the order was passed by DDLR in 2012 from the application of the respondents, it is seen that the said was pleased to be reopened by application dated 3rd June 2014. The matter could not have

been reopened. Reopening of the matter is itself against law. When other factual aspects are asserted, it was not open for the authorities to direct correction of the scheme. He submits that even in the law when the scheme was implemented in the year 1986, there was no scope for the authorities to interfere with the scheme after lapse of 26 years.

12. The learned Advocate Mr. Kulkarni for the Respondent has relied upon the judgments in the case of *Suresh Bapu Sankanna and Ors. Vs. State of Maharashtra and Ors.*³ and *Gunda Tuka Shinde Vs. Pandharinath Ramrao Shinde and Ors.*⁴

13. In rejoinder Mr. Salunke submits that the mistake was not in the scheme. The mistake sought to be corrected was only arithmetical mistake without effecting the scheme and thus the application was perfectly maintainable. So far as the delay is concerned, he submits that sufficient cause was shown for condonation of delay which is accepted by the authorities and caused by exercising power vested in the authorities.

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

4 1991(2) Bom CR 650

14. In the case of *Champabai Piraji Sonawane Vs. State of Maharashtra and Ors.* (supra), this Court has held that the rectification of entries in consolidation record can be effected under Section 31-A of the Act. In that case, the Court considered the nature of the order passed by the Superintendent (Land Records) that, he assumed the jurisdiction under Section 225(3) of the MLR Code. The question that was considered was as to whether he had jurisdiction to rectify the entries in respect of the consolidation scheme. It was recorded that, the authority had not acted under Section 31-A of the Consolidation Act. It is held that the Superintendent of Land Records decided the issue about rectification of the record as per provisions of the MLR Code, having jurisdiction or without having jurisdiction, the order could be challenged before the Director of Land Records or Deputy Director of Land Records in view of Schedule E appended to Section 247 of MLR Code. In that case, it was held that, the party in that case ought to have moved the Settlement Commissioner for rectification of the entries in the consolidation record. It was thus held that the Deputy Director ought to have entertained the appeal and petition was allowed.

15. In the case of *Kisan Bhimrao Patil Vs. The State of Maharashtra and Ors.* (supra), this Court considered that the Revenue Authorities were not prompt. It is because of that the petitioner therein was constrained to apply for variation of scheme. In the said case, there was delay of 13 years. This Court held that the said period is reasonably explained. Original scheme which was approved if allowed to be there it would amount to perpetuating the error. It was ultimately held that variation in the scheme was proper. Further held that what is reasonable time would depend upon facts and circumstances of each case. In the said case, the judgment in the case of *Gunda Tuka Shinde Vs. Pandharinath Ramrao Shinde and Anr.*⁵ was also considered which is relied upon by the Respondent.

16. So far as, the judgment relied upon by the respondent in *Suresh Bapu Sankanna and Ors. Vs. State of Maharashtra and Ors.* (supra), the Division Bench of this Court had considered the question of limitation so far as the modification in consolidation scheme was concerned. This Court held in that case that, the application was seeking modification of

5 1990 ALL MR ONLINE 1158

finalized consolidation scheme under Section 32, which has to be made within three years of finalization of the scheme. This was held by relying upon various judgment including ***Santoshkumar Shivgonda Patil and Ors. Vs. Balasaheb Shevale and Ors.***⁶

17. In the case of ***Gunda Tuka Shinde*** (supra), it was held that the objection to the scheme will have to be taken within period prescribed under Section 19(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

18. Coming to the facts of this case, it is clear that the consolidation scheme was finalized in the year 1986. The petitioner and three others sold the land in the year 1992 by way of sale-deed. In the sale deed dated 13th April 1992 it is clearly mentioned that the total land in their possession is 5H, 76R. So thus, atleast 1992, the petitioner had clear knowledge about as to how much total land was in their possession. Till 2012, no attempt was made to correct the entries. In 2012, it was communicated by the authorities that there is no mistake in this scheme that was accepted. From the prayers it is seen that the case it was

6 2010 (2) Mh.L.J. (S.C.) 150

prayed to reopen the case which again shows that in 2012 the said matter was considered by the authorities.

19. From the judgment in the case of ***Kisan Bhimrao Patil*** (supra), it is seen that delay needs to be reasonably explained which was 13 years in that case. In the present case, it is 26 years. In the present case, no sufficient reason is shown for delay and thus on facts this court finds that the judgment is not applicable in the present case.

20. In the case of ***Champabai Piraji Sonawane*** (supra), it was held that the litigant ought to have moved the Settlement Commissioner for rectification of the entries in the consolidation record. Thus, the said judgment only speaks about the remedy which is available. There was no question about the reasonable period or as to whether the delay can be condoned.

21. So far as the Division Bench judgment of this Court in the case of ***Suresh Bapu Sankanna*** (supra), it is clearly held that no application is maintainable after reasonable period i.e. three years for correction of the scheme under Section 32 of the Consolidation Act.

22. On considering these judgments, this court finds substance in the submission of respondent that the application was not within time and there is no sufficient explanation of the delay. Factually it is found that, in 1992, there was knowledge. Only reason assigned is that the petitioner is not much educated. His cousins had told him that in future, they would carry out correction. Same can hardly be believed and taken as a reasonable explanation for condoning delay. Another aspect is as to whether this application was under Section 31-A for mere correction of arithmetical mistake or was for correction of the scheme under Section 32 of the Consolidation Act.

23. From the prayers in the application before the DSLR, it is clearly seen that the appeal was for the correction of the scheme though, it is not specifically mentioned. From the prayer clause (1), it is seen that the prayer was to make fresh inquiry. There is nothing to suggest that only arithmetical mistake was to be corrected. From clause (3) also it is seen that direction was sought to make fresh inquiry and then to correct the entries.

24. Thus, the application was under section 32 of the consolidation Act. In such cases, the limitation in view of division Bench Judgment in the case of ***Suresh Babu Sankanna and Ors. Vs. State of Maharashtra and Ors.*** (supra) is squarely applicable in this case. No such appeal could have been entertained by the DSLR. No any mistake or error as such is pointed out in the judgment of learned Minister calling upon exercise of jurisdiction under Article 227 of the Constitution of India.

25. For all these reasons, this Court is not inclined to entertain the petition. Hence, the following order:

ORDER

- (i) Petition stands dismissed.
- (ii) No order as to costs.

[KISHORE C. SANT, J.]