



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

38 WRIT PETITION NO. 13540 OF 2021

1. Suryakant s/o. Ganeshlal Chandak .. Petitioners
Age. 48 years, Occ. Agri.,

2. Purushottam s/o. Ganeshlal Chandak
Age. 44 years, Occ. Agri.,

Both R/o. At Naygaon,
Tq. Kalamb, Dist. Osmanabad,
At present Murud, Tq. & Dist. Latur.

Versus

1. The State of Maharashtra .. Respondents
Through Principal Secretary
Revenue & Forest Department,
Mantralaya, Mumbai.

2. Dy. Director of Land Records,
Aurangabad.

3. Dist. Superintendent,
Land Records Office,
Osmanabad.

4. Harishchandra s/o. Bansilal Chandak
Age. Major, Occ. Agri.,
R/o. Shivranjan Towers, Flat No. 501,
Behind Hotel Rajwada, Someshwarwadi,
Baner, Tq. Dist. Pune.

Mr.M.V. Ghatge, Advocate for the petitioners.
Mr.V.S. Badakh, AGP for the respondent-State.
Mr.P.S. Koshti, Advocate for respondent No.4.

CORAM : KISHORE C. SANT, J.
DATE : 10.09.2024

ORAL JUDGMENT :-

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. The order under challenge is passed by the learned Additional Chief Secretary and Special Executive Officer (Appeal and Revision) dated 08.07.2021, by which the appeal of the present petitioners came to be rejected and the order dated 05.05.2011 passed by the District Superintendent of Land Record, Osmanabad (for short "DSLRL") came to be confirmed. The learned DSLRL had directed to correct the record/consolidation scheme on the application of respondent No.4 and directed to show the area in the name of respondent No.4, as prayed by him in his application.

03. The facts in short are that the petitioners happen to be sons of Ganeshlal-brother of respondent No.4. They were having

land at Naygaon, Tq. Kalamb, Dist. Osmanabad (Dharashiv). While implementing the consolidation scheme, certain lands were divided in both the brothers in view of partition between the families. Certificate was also issued on 18.06.1980. Respondent No.4 after more than 16 years approached the learned DSLR under section 31-A of the Prevention of Fragmentation and Consolidation of Holdings Act, by filing application on 02.12.1991, stating that since long he is staying at Pune. In 1969, there was partition between the brothers. Respondent No.4 received land to the extent of 55 Acres 26 R; whereas to the father of the petitioners-late Ganeshlal, land given was only admeasuring 26 A 34 R, while implementing the consolidation scheme. The acreage is shown less in his name and in the scheme only name of Ganeshlal was shown. This application came to be considered and change was directed to be implemented.

04. The petitioners, therefore, challenged this order by filing appeal before the Additional Secretary, State of Maharashtra. While allowing the appeal, it is specifically considered that under

section 31-A of the Act, the power is vested to correct only typographical or arithmetical mistakes. It is also considered that the application was made after 16 years i.e. beyond three years and the application of respondent No.4 was not maintainable.

05. Said order was challenged by respondent No.4 in this Court by filing Writ Petition No. 10994 of 2015. This Court by order dated 13.07.2018 remanded the matter back to the competent authority i.e. Additional Secretary for decision of the appeal afresh on merit.

06. After remand, the appeal of the present petitioners came to be rejected and thus the petitioners are before this Court. The learned Advocate for the petitioners vehemently argued that the learned DSLR has no authority to carry out corrections in the record under section 31-A of the Act. He has exceeded the jurisdiction vested in him under section 31-A of the Act. At the most he could have directed to correct clerical or arithmetic mistake under the said appeal. He has directed the change in the consolidation

scheme itself of substantial nature, which could have been done only under section 32. Looking to the application dated 02.12.1991, respondent accepted that he is in possession. He stated that he is in possession of the land even in excess to Ganeshlal, however, said land is not shown in his name; whereas in the appeal he prayed for possession of said land. He submitted that the impugned judgment and order needs to be quashed and set aside and thereby order dated 05.05.2011 passed by the DSLR also needs to be quashed in proceeding No. Consolidation/S.R./148/2003.

07. The learned Advocate for respondent No.4 vehemently argued that the respondent No.3 has rightly exercised the jurisdiction. The impugned order is therefore justified. In the meantime, there were also some civil litigations pending between the parties, wherein some share is given to respondent No.4. He prays for rejection of the writ petition.

08. The learned AGP also supports order passed by the

Additional Secretary-respondent No.1.

09. Considering the submissions and section 31-A of the Act, it is clear that under section 31-A of the Act, only clerical and arithmetical mistakes can be corrected. In the present case it is apparent that respondent No.3 has exercised jurisdiction not vested in it. Second question about the limitation also needs to be answered in favour of the petitioners, in view of the judgment of this Court in the case of **Gulabrao Bhaurao Kakade & Ors., Vs. Nivrutti Krishna Bhilare & Ors.,, 2001(4) Mh.L.J.31.**

10. In view of the discussions above, the writ petition is allowed in terms of prayer clause (B). There shall be no order as to costs.

[KISHORE C. SANT, J.]