AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1709 OF 2020

Babu Anna Bhopate, deceased
through LHRs & Ors. … Petitioners

V/s.

Mahadev Tatya Bhopate, deceased
through LHRs & Ors. … Respondent

Mr. Dhananjayrao D. Rananaware for the petitioners.
Mr. Rajaram V. Bansode for respondent No.1.
Mr. P.G. Sawant, AGP for respondent Nos.3 to 5/State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 12, 2024

P.C.:

1. **Rule**. Rule is made returnable forthwith.

2. This is a writ petition where respondent No.1 filed an application before the authorities under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 for modification of scheme implemented in the year 1974.

3. Respondent No.1 on 27 July 2004 applied for restoration of 25 gunthas of land out of Survey No.140 shown in the consolidation scheme.

4. The Deputy Director of Land Records by order dated 12 October 2006 rejected the application relying on the judgment of this Court holding that any objection as regards implementation of consolidation scheme needs to be raised within 30 days from the date of its completion.

5. Respondent No.1 thereafter approached the State Government by way of revision. However, the State Government by order dated 29 February 2008 directed petitioners to approach Deputy Director of Land Records. The Deputy Director of Land Records confirmed order dated 12 October 2006.

6. Thereafter, respondent No.1 approached respondent No.4 who submitted report to the respondent No.3. The respondent No.3 considering the report submitted by respondent No.4 by order dated 20 June 2015 rejected application of respondent No.1 holding that consolidation scheme in relation to Survey No.140/1B was completed after notice to all parties and recording their statements. Respondent No.1 has signed on the possession receipt and, therefore, it cannot be modified.

7. Respondent No.1 thereafter approached the State of Maharashtra under Section 35. The State Minister (Revenue) by the impugned order allowed revision application of the petitioner by subscribing one line reason. Effect of allowing such application by the State Minister is that the application for modification of the consolidation scheme completed in the year 1974 has been modified in the year 2019 without even referring or considering facts of the case. No reasons are assigned by the State Minister as to why delay of more than 35 years was condoned and the compelling reason for interfering with the finalized scheme.

8. It needs to be noted that the State Minister while exercise of revisional powers acts as a quasi judicial authority. As has been held by the Constitution Bench of the Apex Court in **S.N. Mukherjee v. Union of India** reported in (1990) 4 SCC 564, the distinction between quasi judicial orders and administrative orders has been obliterated and the authorities acting as quasi judicial authority needs to assign reasons for exercise of such power. Supplying reasons in the order has been held to be part of principles of natural justice, so that the party challenging such order is made aware of the reasons as to why the decision is passed against such person.

9. Moreover, this Court has consistently held that while exercising power for modification of finalized consolidation scheme, the application needs to be filed within reasonable period. In no case, such reasonable period can extend beyond period of three years. In the facts of the case, the scheme was implemented in the year 1974 and the application for modification is filed in the year 2000. It was, therefore, necessary for the State Minister to consider law laid down by this Court in various judgments not to entertain the applications for modification of consolidation scheme after period of three years. The impugned order discloses that the revision is allowed by assigning one line reason that there is mistake in the implementation of the consolidation scheme. It needs to be noted that before entering into merits of the matter, it was necessary for the State Minister to assign justifiable reasons as to why the Minister is exercising power after 35 years. No compelling reason was pleaded or brought to notice by the State Minister nor is referred in the order.

10. According to the learned advocate for the petitioners, respondent No.1 applied for measurement in the year 1999 which prompted him to file such application for modification of consolidation scheme. Filing of such application can hardly be a sufficient cause giving explanation for applying modification of a finalized consolidation scheme after period of 35 years.

11. I am, therefore, satisfied that the exercise of power by the State Minister (Revenue), State of Maharashtra is perverse which constitutes error apparent on the face of record and, therefore, interference under Article 226 of the Constitution of India is called for. Hence, following order:

12. The impugned order dated 4 September 2019 passed by the State Minister (Revenue), State of Maharashtra in RTS Revision No.3518/691/PK-132/J-5A, annexed at Exhibit “M” to this writ petition, is quashed and set aside.

13. Rule is made absolute accordingly. No costs.

(AMIT BORKAR, J.)