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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6318 OF 2022

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Chandrabhan Balwant Jamkar & Ors ... Petitioners

V/s.

Balu Gajiram Kholambe & Ors ... Respondents

Mr. Girish R. Agrawal a/w Mr. Shubham Jangam, for
Petitioners.

Mr. Ramesh Dube Patil a/w Mr. Ashish Gabhale i/by
MS Jay & Co., for Respondent Nos.1 & 2.

Mr. I. A. Patel, Mr. Abdul, GP a/w Mrs. V. S. Nimbalkar,
AGP, for Sate/Respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 22, 2024

P.C.:

1. Rule.

2. Rule is made returnable forthwith.

3. The petitioners are challenging the order passed by the Minister for State (Revenue) dated 25 February 2022 thereby directing modification of consolidation scheme in exercise power under Section 32(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

4. The consolidation scheme in relation to properties in dispute

i.e. Gat Nos.268, 269 and 270 at Ramnagar, Taluk Niphad, District Nashik was effected in the year 1970.

5. In the year 2020, respondent Nos.1 and 2 filed an application under Section 32(1) of the said Act contending that while effecting consolidation scheme, there is mistake occurred which needs to be corrected.

6. The Deputy Director, Land Record, Nashik Division by order dated 9 February 2021 rejected respondent Nos.1 and 2's application on the ground that such application was filed after 46 years.

7. Aggrieved thereby respondent Nos.1 and 2 approached respondent No.6 by revision application. Respondent No.6 by the impugned order dated 9 February 2021 allowed the revision application and directed consolidation authority to exercise power under Section 32(1) of the said Act for modification of consolidation scheme.

8. Learned Advocate for the petitioners relying on the judgment of this Court in the case of **Bapu Gunda Mirje and Ors Vs. State of Maharashtra and Ors**, reported in 2015 (1) of All MR 697, contended that the power under Section 32 in relation to variation of scheme needs to be exercised within reasonable time. The reasonable time has been interpreted to mean a period not extending three years depending on the facts and circumstances of each case. The petitioners, therefore, contended that in the absence justification for approaching the authority after 46 years, respondent No.6 could not have directed modification of

consolidation scheme after 46 years.

9. Learned Advocate for respondent Nos.1 and 2 contended that the consolidation scheme was effected without giving opportunity to the respondent No.1. Statements of petitioners were recorded. The statements of respondent Nos.1 and 2 were not recorded, which has effect of practicing fraud on the authority and, therefore, the respondent No.6 was justified in directing authorities under the said Act to modify the consolidation scheme.

10. Having heard learned Advocate for the parties, I am of the opinion that power exercised by respondent No.6 entertaining application under Section 32A of the said Act needs to be termed as perverse. On perusal of the impugned order, it is evident that the respondent No.6 has not even referred to the ground on which the authority under the said Act rejected the application. The Minister considered merits of the matter and recorded a finding that the record of consolidation was not signed by the predecessors of respondent Nos.1 and 2. In view of judgment of this Court, in the case of **Bapu Gunda Mirje (Supra) and Ganpati Dadu Mali And Anr. Vs. State of Maharashtra & Ors** 2012 (7) of All MR 174, it is well settled that the variation of scheme after reasonable period has been consistently deprecated by this Court. Despite the respondent No.6 being aware of such settled position, the impugned order is passed without even referring to the justification for approaching the authority after 46 years.

11. On perusal of the revision application, it appears that there is no ground of fraud raised by respondent Nos.1 and 2 in the

revision application. No reason is mentioned in the revision application for approaching the authority after 46 years. Only reason referred in the revision application is absence of opportunity of hearing to predecessors of respondent Nos.1 and 2. It is well settled that after the consolidation scheme is implemented corresponding entries in revenue record are effected. Therefore, it does not lie in the mouth of litigant approaching the authorities under the said Act with variation of concluded scheme after the reasonable period. Therefore, in my opinion, respondent No.6 was not justified in passing the impugned order directing the exercise of power under Section 32 of the said Act. Therefore, the impugned order cannot be sustained. Hence, following order:

i) The impugned order dated 25 February 2022 passed by the respondent No.6 in Revision Application No.123/J-6 annexed to this writ petition at Exhibit (G) is quashed and set aside.

12. Rule is made absolute in above terms.

13. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)