

AGK

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

WRIT PETITION NO.11358 OF 2018

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Balkrishna Raghunath Pendse
(deceased through Legal heirs
Sudha Pendse & Ors.

... Petitioners

V/s.

Bhalchandra Ganesh Sapre & Ors.

... Respondents

Mr. Anant Vadgaonkar for the petitioners.

Mr. Sandesh Deshpande for respondent Nos.1 to 5.

Ms. V.S. Nimbalkar, AGP for respondent Nos.6 &
7/State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 2, 2024

P.C.:

1. The petitioners are challenging orders passed by the authorities under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It appears that respondent Nos.1 to 5 filed an application under Section 32 of the said Act for correction of record prepared by the Consolidation Authorities. The first authority issued notice to the petitioners. However, the postal packets indicate that the address was either insufficient or the petitioners were not residing on the said address. The first authority, therefore, confirmed the modification prayed by the respondents.

2. Aggrieved thereby, the petitioners filed appeal under Section 257 of the Maharashtra Land Revenue Code, 1966 before the Minister. The Minister, by order dated 30 January 2018, confirmed the order. By order dated 22 March 2018 the Minister issued clarification to substitute seven properties instead of five properties mentioned at page 5, line No.9 of its order dated 30 January 2018.

3. The principal contention raised on behalf of the petitioners is that the petitioners were not heard by the first authority and orders affecting their legal rights have been passed.

4. On perusal of the record and in particular postal packets placed on record, it appears that the address mentioned on the postal receipts was not the address where the petitioners reside at the relevant time, with the result order adverse to the interest of the petitioners was passed without granting opportunity of hearing to the petitioners. It was, therefore, necessary for the Minister to set aside the first authority's order confirming change suggested by the respondents. Since the first authority has passed order without granting opportunity of hearing to the petitioners, only on that ground, the orders impugned cannot be sustained. Hence, following order:

- a) Impugned order dated 19 June 2017 passed by the Deputy Director, Land Records, Konkan Region, Mumbai in S.R. No.30 of 2017 annexed to this writ petition at Exhibit "E" as also orders dated 30 January 2018 and 22 March 2018 passed by respondent No.7 are quashed and set aside;

- b) The proceeding is remanded back to the Deputy Director, Land Records, Konkan Region, Mumbai for decision afresh in accordance with law;
 - c) The parties shall appear before the Deputy Director, Land Records, Konkan Region, Mumbai on 29 January 2024;
 - d) Respondent No.6 shall decide the application of the respondents in accordance with law after giving opportunity of hearing to both the sides.
- 5.** The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)