



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9614 OF 2023**

Husenbasha Safilsaheb Patel
(Birajdar) (Deceased) thr
Legal Heir and Ors

.....Petitioners

Vs.

The State of Maharashtra Thr Its
Ministry of Revenue and Forest
Department and Ors

.....Respondents

Mr. Mohammad S. Mulla for the petitioners

Mr. Girish Godbole, Senior Advocate a/w Mr. Anand S. Kulkarni for
respondents

Mr. S. L. Babar, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 12th MARCH 2024

P.C.

1. This petition is filed to challenge the order dated 27th July 2023 passed by respondent no. 1 in a revision application filed by the petitioners. By the said order, the revision application challenging the order dated 26th December 2022 is rejected resulting into confirmation of the order dated 26th December 2022. Order dated 26th December 2022 is passed by Deputy Director Land Records for confirming the draft amendment published under section 32(1) of The Maharashtra

Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('the said Act') on an application filed by respondent no.7. The petitioners have essentially raised an objection to invocation of powers under section 32(1) of the said Act for correcting the original consolidation scheme.

2. Learned senior counsel for respondent no. 7 on instructions of respondent no. 7 submitted that proceedings initiated were on an application filed by him under section 31A of the said Act and the application was not filed under section 32(1). He therefore submits that respondent no. 7 has no objection if the order dated 26th December 2022 is set aside and application of respondent no. 7 filed under section 31A is decided in accordance with the provisions of section 31(A) of the said Act.

3. Considering the agreement between the parties that proceedings under challenge were initiated on an application by respondent no. 7 filed under section 31A and not under section 32(1) of the said Act, the petition is taken up for final disposal.

4. Perusal of the order dated 26th December 2022 indicates that originally an application was filed by respondent nos. 8 and 9 for the amendment to the consolidation scheme, however, the said application was not proceeded. Respondent no. 7 is the subsequent purchaser from respondent nos. 8 and 9 who filed application under section 31A of the said Act. It appears that though the application was filed under section 31A, the authorities under the said Act have invoked the powers under section 32(1) of the said Act and published the draft amendment. Petitioners filed their objections to the draft amendment raising various grounds. The main ground amongst other grounds raised by the petitioners was that correction to the consolidation scheme by invoking powers under section 32(1) could not have been initiated by the authorities. After considering the objections, Deputy Director of Land Records by an order dated 26th December 2022 has approved the draft amendment published on 20th September 2022. Being aggrieved by the said order, petitioners filed revision application before the State Government. By the order impugned in the present petition, revision application filed by the petitioners is dismissed and

thus, order dated 26th December 2022 is confirmed.

5. The confirmation of the proposed amendment to the consolidation scheme was initiated on an application filed by respondent no. 7 under section 31A of the said Act. Section 31A of the said Act provides for correction of clerical and arithmetical mistake under the scheme. Whereas sub-section 1 of section 32 provides for variation in the scheme on the ground of error, irregularity or informality. Thus, the scope of provisions of section 31A and section 32 are different. Application filed by respondent no. 7 is admittedly under section 31A. However, the authorities have invoked provisions under sub-section (1) of section 32 for variation of the original scheme. Hence, petitioners were right in objecting to variation of the scheme on various grounds as were raised in the objections which were filed before the authorities including the objections on the ground of limitation. Thus, considering the scope of section 32(1) of the said Act, invocation of powers by the authorities is without considering the scope of section 32(1) and the period of limitation for invoking provisions of sub-section (1) of section 32 of the said Act.

6. Since the order passed by the Deputy Director of Land Records on 26th December 2022 is on an application filed by respondent no. 7 and since respondent no. 7 has admitted that his application was under section 31A and not under section 32(1), learned counsel appearing for respondent no. 7 on instructions has consented for setting aside the order dated 26th December 2022 approving the draft amendment by invoking powers under sub-section (1) of section 32 of the said Act.

7. In response to the submissions made on behalf of respondent no. 7, learned counsel for the petitioners have no objection for restoring the application filed by respondent no. 7 under section 31A and decide the same in accordance with law.

8. Hence, for the reasons stated above, petition is partly allowed by passing following order:

ORDER

- (i) Order dated 27th July 2023 passed by respondent no. 1 in RTS Revision Application No. 3423/1269/Case No.

224/J-5 is quashed and set aside.

(ii) Order dated 26th December 2022 passed by Deputy Director, Land Records Pune Region in (Exhibit 'G') is quashed and set aside. Consequently, the draft amendment published on 20th September 2022 is also quashed and set aside.

(iii) Application dated 1st October 2018 filed by respondent no. 7 under section 31A of the said Act is restored to the file of Deputy Superintendent of Land Records, Akkalkot for deciding it afresh in accordance with the provisions of Section 31A of the said Act.

(iv) It is clarified that rival contentions of the parties on the said application under section 31A are not examined by me on merits and hence, all contentions of all parties are kept open.

9. Writ petition is disposed of in above terms.

[GAURI GODSE, J.]