Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12476 OF 2018

NIKITA KAILAS DARADE
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Vasant Tryambak Bidwai and Ors. … Petitioners

V/s.

Nivrutti Tryambak Ugle and Ors. … Respondents

Mr. Sagar A. Rane for the Petitioners.

Mr. Rameshwar N. Gite a/w Rohit Gorade a/w Mr. Sushant Tare for Respondent No.1.

Mr. Y. D. Patil, AGP for the State-Respondent Nos. 2 to 6.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 20, 2024

P.C.:

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

2. The petitioners are challenging order passed by respondent No.2 entertaining Revision Application under Section 35 of the the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (the Act) after 23 years of passing of impugned order.

3. The property in dispute is Survey No.116 and Survey No.117, total ad-measuring 20 acres 35 gunthas. The properties were divided between Vasant Bidwai and Keshav Bidwai. Eastern

half of Survey No.117 was allotted to the petitioners. Western half of Survey No.116 was also allotted to the petitioners. According to the petitioners, they are is in possession of the said lands. Since, there was error in preparation of record of authorities under the provisions of the Act, they applied to the authorities under the Act in the year 1995. Accordingly, the authorities under the the Act issued a corrigendum on 27th December 1995 in exercise of power under Section 32 of the Act.

4. Order dated 27th December 1995 was challenged by respondent No.1 before the Minister by way of revision under Section 35 of the Act in the year 1998. In Clause-7 of the Revision Application respondent No.1 stated that Section 35 of the Act provides no limitation for filing revision and it is only after the respondent No.1 got knowledge of the order when he applied for documents of measurement, he got to know about the impugned order on 19th December 2017. Accordingly, he filed Revision Application in the month of January 2018.

5. The Minister, by impugned order has allowed the Revision Application. The Minister entertained the Revision Application without condoning delay or without considering explanation for entertaining Revision Application after reasonable time. The petitioners have, therefore, challenged the order in this petition.

6. The learned counsel for the petitioners relying on Division Bench's judgment of this Court in the case of **Gulabrao Vs. Nivrutti** reported in 2001, (4) Mh L.J. 31; ii) **Dattu Appa Vs. State of Maharashtra** reported in 2007 (1) Mh. L.J. 393; iii) **Ganpati Dadu**

Mali (since deceased) through Lrs. Rakhmabai Ganpati Mali Vs. State of Maharashtra reported in 2012 (1) Mh. L.L. 341 submitted that the exercise of power after 23 years is not justified. Initiating proceedings in the year 2018 to challenge order passed in the year 1995 cannot be termed as proceedings initiated within reasonable time.

7. Per contra, learned counsel for the Respondent No.1 submitted that the petitioners have admitted the mistake committed by the authorities under the provisions of the Act. The respondent No.1 is illiterate and, therefore, was not aware of the intricacies of law. According to him, therefore, interference in the order would cause injustice to respondent No.1 as he continues to be owner of the portion which is directed to be corrected by the impugned order. In support of his submission, he placed reliance on the single Judge's judgment of this Court in the case of **Kisan Bhimrao Patil & Ors. Vs. The State of Maharashtra & Ors.** 2020 Supreme (Bom) 1303.

8. Having considering the submissions on behalf of both sides, in my opinion, following factual scenario emerges;

i) The impugned order in exercise of power under Section 32 of the Act is dated 27th December 1995.

ii) In January 2018, respondent No.1 filed revision application challenging the order.

iii) In the Revision Application, only cause show is that the respondent No.1 got knowledge of impugned order only when he applied for documents for measurement of land.

9. The reason assigned by respondent No.1 in paragraph No.7 of Revision Application cannot be termed as sufficient cause for not filing Revision Application after reasonable time as held by Division Benches of this Court. Ordinarily reasonable time is construed to be of three years, even if, no time limit is prescribed under the provisions of the Act. The reasonable period for exercise of power is dependent on facts and circumstances of each case.

10. Insofar as the ground of lack of knowledge on the part of the respondent No.1 is concerned, the rules for initiating proceedings under Section 32 of the Act required draft variation of scheme to be published by affixing copy of it on the Chawadi or in case of no Chawadi, at the Office of Village Panchayat and in case of absence of Village Panchayat, at any other conspicuous public place of the village. Such notice needs to be announced by bitting drums. Such notice at conspicuous public place is published in a regional language of the said village. Therefore, it is not open for the respondent to fein ignorance order of variation of scheme by the authorities under the the Act. The delay of 27 years cannot be termed as reasonable period.

11. The single judge in case of the **Kisan Patil** (supra) relied by the respondent No.1 was considering an application which the Court found to be within reasonable period in the facts of the case, no absolute proposition of law requiring interference after 23 years has been passed. The observation regarding sporadic entries not affecting rights of the parties is an observation which is restricted to the facts of the case. The Section 24 of the said Act requires authorities to issue a certificate which is treated as proof of title.

Therefore, the judgment in the case of **Kisan Patil** (supra) is of no use to the petitioner.

12. On overall consideration of the facts of the case, I am satisfied that the respondent No.2, was not justified in entertaining the revision application after 23 years.

13. Hence, Rule is made absolute in terms of prayer clause (a).

14. At this stage, learned advocate for the respondent No.1, seeks stay of the order. The order is stayed for period of four weeks from today.

(AMIT BORKAR, J.)