



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.10948 OF 2018
WITH CIVIL APPLICATION NO.10135 OF 2024**

1. Bhimabai w/o Baburao Waghmare.
Age: 75 years, Occ. Household.
R/o Digras. Tq. Rahuri,
Dist. Ahmednagar
2. Mirabai w/o Rakhmaji Gawade.
Age:- 58 years, Occ. Houeshold.
R/o Deolali Pravara, Tq. Rahuri,
Dist. Ahmednagar
3. Shantabai w/o Sudhakar Waghmare.
Age:- 72 years. Occ. Household.
R/o Digras, Tq. Rahuri,
Dist. Ahmednagar
4. Lilabai w/o Gorakshnath Bhand
Age:- 60 years, Occ. Household.
R/o Digras. Tq. Rahuri.
Dist. Ahmednagar
5. Govind s/o Punjaji Tikkal.
Age:- 58 years. Occ. Agril.,
R/o Deolali Pravara, Tq. Rahuri.
Dist. Ahmednagar
6. Yamunabai w/o Sopan Datir,
Age:- 70 years, Occ. Household.
R/o Digras. Tq. Rahuri.
Dist. Ahmednagar
7. Sudhakar s/o Baburao Waghmare.
Age:- 55 years, Occ. Agril.,
R/o Digras, Tq. Rahuri,
Dist. Ahmednagar
At Present PTS, Latur

... Petitioners
(Orig. Opponents)

Versus

1. The Deputy Director Land Record
Nashik Division, Nashik
2. The District Superintendent
of Land Record, Ahmednagar
Dist. Ahmednagar

3. The Deputy Superintendent
of Land Record, Rahuri,
Tq. Rahuri. Dist. Ahmednagar
4. Ramchandra s/o Dashrath Gawade,
Age:- 55 years, Occ. Agril.
R/o Digras. Tq. Rahuri.
Dist. Ahmednagar
5. Balasaheb s/o Dashrath Gawade
Age:- 52 years, Occ. Agril..
R/o Digras, Tq. Rahuri.
Dist. Ahmednagar
6. Kaushalyabai w/o Dashrath Gawade.
Age:- 75 years, Occ.
Household, R/o Digras, Tq. Rahuri,
Dist. Ahmednagar
7. Eknath s/o Savliram Khatekar,
Age:- 65 years, Occ. Agril.,
R/o Digras, Tq. Rahuri.
Dist. Ahmednagar
8. Nanda w/o Changdeo Sawant,
Age: 55 years, Occ. Household,
R/o Near Rahata Police Station,
Tq. Rahata, Dist. Ahmednagar
9. Hira w/o Sudhakar Pansambal,
Age:- 48 years, Occ. Agril.,
R/o Karpe Estate, Rahur (Bk),
Tq. Rahuri, Dist. Ahmednagar
10. Meenakshi w/o Shivajirao Bhingarde,
Age: 50 years, Occ. Agril.,
R/o Digras. Tq. Rahuri,
Dist. Ahmednagar
11. Shivaji s/o Laxman Bhingarde,
Age: 55 years. Occ. Agril.,
R/o Digras, Tq. Rahuri, Dist. Ahmednagar
12. Satish s/o Dattatraya Todmal,
Age: 38 years. Occ. Agril.,
R/o Digras, Tq. Rahuri.
Dist. Ahmednagar
13. Radhabai w/o Kisan Gawade,
Since deceased
14. Nanasaheb s/o Sambhaji Gawade,
Age:- 22 years, Occ. Agril.,

Orig. Appellants

- R/o Digras. Tq. Rahuri,
Dist. Ahmednagar
15. Swati d/o Sambhaji Gawade
Through Swati Kailash Jamkar
Age: 25 years, Occ. Household,
R/o Kharwandi, Tq. Newasa,
Dist. Ahmednagar
 16. Jyoti d/o Sambaji Gawade,
Through Jyoti w/o Santosh Bhand
Age:- 27 years. Occ. Household,
R/o Dhotre, Tq. Parner.
Dist. Ahmednagar
 17. Bharti d/o Sambhaji Gawade,
Through Archana Navnath Rashindkar,
Age:- 29 years, Occ. Household,
R/o Belapur (Kh). Tq. Shrirampur.
Dist. Ahmednagar
 18. Rani d/o Sambhaji Gawade,
Through Rani Pandurang Rashindkar,
Age:- 30 years, Occ. Agril.,
R/o Tilapur, Tq. Rahuri,
Dist. Ahmednagar
 19. Shakuntala Sambhaji Gawade,
Age: 57 years, Occ. Agril.,
R/o Digras, Tq. Rahuri,
Dist. Ahmednagar
 20. Shivaji s/o Kisan Gawade,
Age:- 46 years, Occ. Agril.,
R/o Digras, Tq. Rahuri.
Dist. Ahmednagar
 21. Bhaskar s/o Nanabhau Todmal,
Age:- 60 years, Occ. Agril.,
R/o Digras, Tq. Rahuri.
Dist. Ahmednagar
 22. Nanda w/o Dattatraya Todmal,
Age:- 48 years. Occ. Agril.,
R/o Digras, Tq. Rahuri.
Dist. Ahmednagar
 23. Dattatraya s/o Nanabhau Todmal,
Age:- 55 years, Occ. Agril.,
R/o Digras. Tq. Rahuri, Dist. Ahmednagar
 24. Venunath s/o Yadav Girgune,

Age:- 57 years, Occ. Agril.,
R/o Digras, Tq. Rahuri.
Dist. Ahmednagar

25. Digambar s/o Yadav Girgune,
Age:- 55 years, Occ. Agril.,
R/o Digras, Tq. Rahuri.
Dist. Ahmednagar

26. Sushila w/o Bhaskar Todmal,
Age:- 55 years, Occ. Household,
R/o Digras, Tq. Rahuri,
Dist. Ahmednagar

27. Ashok s/o Ramji Matkar,
Age:- 57 years, Occ. Agril.,
R/o Digras, Tq. Rahuri,
Dist. Ahmednagar

...Respondents
(Resp. No.4 to 7 are the orig.
Appellants and Resp. No.8
and 27 orig. opponents)

.....
Mr. Rahul R. Karpe, Advocate for Petitioners
Ms. A.S. Mantri, AGP for Respondents/State
Mr. S.V. Natu, Advocate for Respondent Nos.4 to 7
.....

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 21st FEBRUARY, 2025
PRONOUNCED ON : 28th MARCH, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. Petitioners are taking exception to the order dated 29/06/2018, passed by respondent No.2 District Superintendent of Land Records, Ahmednagar, in Consolidation Appeal No.825/2016, and the consequential notices issued by respondent No.3 Deputy Superintendent of Land Records. Vide order dated 29/06/2018. The order passed respondent No.2 on 28/02/2017 has been corrected to

the extent that measurement of sub-division done at the time of consolidation scheme in Survey No.95 at village Digras, Taluka Rahuri, has been cancelled holding that the same is defective and respondent No.2 Deputy Superintendent of Land Records, Rahuri, has been directed to submit amended proposal in view of Section 32(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'the said Act'), according to the 7/12 extract existing prior to the coming into force of the consolidation scheme.

3. According to petitioners, consolidation scheme was made applicable in the village Digras in the year 1978. By virtue of application filed in the year 2015, amendment is sought in the consolidation scheme after a huge delay of 37 years, which is not permissible in the eyes of law as well as in view of various authoritative pronouncements of this Court. The reasonable period for seeking such relief is held to be 3 to 4 years from initiation of scheme. Therefore, petitioners are challenging the order dated 29/06/2018, on the ground of delay and latches.

4. Brief case of the petitioners is that:-

(I) Consolidation scheme is made applicable to the village Digras by issuing notification on 06/04/1978. Petitioners are legal heirs of deceased Rakhmaji Gawade, respondent Nos.4 to 6 are legal heirs of one Dasharath Gawade and respondent No.7 is

purchaser of the land from respondent Nos.4 to 6. Petitioners are concerned with Gut No.153 which was Survey No.95/10, whereas respondent Nos.4 to 7 are concerned with Gut No.162 which was originally Survey No.95/2.

(II) On 29/08/2015 respondent No.4 filed application addressed to the respondent No.1 Deputy Director of Land Records, Nashik, seeking amendment in the record of Gut No.162 on the ground that his holding in Gut No.162 has been reduced after consolidation. It was contended that prior to implementation of consolidation scheme in the year 1978, 'Falani map' was prepared as per the cultivation and possession of land by respective owners and accordingly 7/12 extract was prepared. It was the contention of respondent No.4 that without taking any assistance from original record, the scheme has been prepared. As a result, his holding has been reduced in the revenue records. On receiving the application filed by respondent No.4, respondent No.1 issued communication to respondent No.2 and respondent No.2 in turn has directed the respondent No.3 to conduct an inquiry.

(III) Respondent No.3 has prepared report on 29/01/2016 and sent it to respondent No.2 informing him that no mistake or illegality has occurred while preparation of the consolidation scheme, hence, there is no necessity to carry out any change. It is also informed that the applicant had previously filed similar application to respondent No.1 and the same has been disposed of

vide communication dated 11/10/2005 and entry to that effect has already been taken in the complaint register. Hence, considering that there is no infirmity or error in the scheme and the earlier application filed by applicant has already been decided on 11/10/2005, the complaint filed by respondent No.4 can be disposed of.

(IV) In spite of report submitted by respondent No.3, respondent No.2 has again directed respondent No.3 to submit a fresh report, accordingly respondent No.3 has again submitted report on 31/03/2016. In spite of two reports, sent by respondent No.3, respondent No.2 has issued communication to respondent No.4, directing him to file Appeal before respondent No.2. Appeal No.825/2016 was filed by respondent Nos.4 to 7 invoking Section 247 of Maharashtra Land Revenue Code which was decided by respondent No.2 vide order dated 28/02/2017.

(V) Pursuant to the order passed in Appeal No.825/2016, notices came to be issued to the interested parties for conducting measurement and accordingly measurement map was prepared on 25/02/2017 and the proposal of corrected scheme under Section 32(1) of the said Act, was prepared, which was published and interested persons were called upon to raise objection to the proposed scheme within 15 days. Upon receiving notice of correction in the scheme on 02/04/2018, petitioner No.4 Lilabai Bhand raised objection, and also advanced oral and written

submissions on 19/04/2018. The objection raised by petitioner No.4 was accepted and consequently, the notice issued on 02/04/2018 was cancelled vide communication dated 23/05/2018. Thereafter, in view of the complaint filed by respondent No.4, by communication dated 29/05/2018 respondent No.3 was directed to conduct hearing by issuing notices and after taking decision in accordance with law proposal was directed to be submitted.

(VI) Thereafter, on 29/06/2018, respondent No.2 has passed an order thereby making correction in the order dated 28/02/2017 and directing respondent No.3 to prepare and submit the proposal for correction in the scheme as per Section 32(1) of the said Act, after considering the holdings of appellants and respondents in Survey No.95 as per the record of 7/12 extract existing prior to the implementation of consolidation scheme.

5. It is the contention of petitioners that though it was not necessary, in exercise of his advisory jurisdiction, respondent No.2 has issued communication to respondent No.4 on 10/04/2016, thereby directing him to file Appeal which was maintainable before respondent No.2 himself, this itself speaks in volume. The respondent Nos.4 to 7 have filed Consolidation Appeal No.825/2016 under Section 247 of the Maharashtra Land Revenue Code. It is contended that the petitioner was not given an opportunity of being heard in the Appeal. The Appeal itself is not maintainable in view of the earlier report submitted by respondent No.2 on 29/01/2016.

6. Though the Appeal was not maintainable, respondent No.2 has allowed it, by condoning the delay in the very order which is impugned herein. Vide order dated 28/02/2017, the Appeal is allowed thereby cancelling earlier mutation since it was found to be defective and respondent No.3 was directed to submit corrected proposal under Section 32(1), for making corrections in the scheme on the basis of actual occupancy in Survey No.95.

7. Learned advocate for petitioner contends that no opportunity of being heard was given to petitioners. Without taking into consideration that there is a huge delay in filing the Appeal for which no satisfactory explanation has been given by respondent No.4, the delay in filing Appeal has been condoned. In fact, as per the order dated 28/02/2017, measurement of the land was conducted on 25/07/2017. Thereafter, notices were issued to petitioners calling their objections, in response thereto the petitioners have raised the objections. After appreciating the record and extending opportunity of hearing respondent No.3 has submitted report on 23/05/2018, which supports the case of petitioners. According to petitioners, objections raised by them were upheld and entry is made in Hissa form No.2. The steps taken in accordance with the order dated 28/02/2017 have been intimated to respondent Nos.4 to 7 on 09/07/2018.

8. Though the order passed by respondent No.2 has been taken to it's logical end by conducting measurement, respondent

Nos.4 to 7 have again filed application before respondent No.2. Thereafter, respondent No.2 has immediately issued intimation notice to respondent No.3 on 29/05/2018, thereby directing to take necessary action in view of the order dated 28/02/2017 and submit the report to that effect.

9. It is further contended that in furtherance of the order dated 28/02/2017, for correction of scheme under Section 32(1) of the Act, the authorities have taken entry in the record according to the possession of the parties. In view of the fact that there is a delay in filing Appeal, so also, the directions issued were already taken to its logical end by conducting measurement and upholding the objections, the subsequent application as well as order passed therein by the authorities is not at all maintainable.

10. Per contra learned advocate for respondent Nos.4 to 7 has raised objection about maintainability of writ petition in view of alternate and efficacious remedy available to petitioner under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, along with the Maharashtra Land Revenue Code. It is his contention that the consolidation scheme was implemented in village Digras in the year 1984. Father of respondent No.4 died on 06/01/1982, when he was 14 years old and his younger brother was 10 years old, therefore, there was no literate surviving male family member to look after them or the affairs of their agricultural lands. The respondent No.4 started cultivating the land in the year 1990.

When the dispute arose with the adjacent land owner Nanasaheb Todmal regarding exact area of land in his possession, respondent No.4 came to know that revenue authorities have committed mistake in recording area of land Survey No.95/1B/2, i.e. Gut No.162 and have reduced the area by 60 R. Therefore, respondent No.4 approached the revenue authorities and verified the revenue record contained in 7/12 extract and came to know about the mistake committed by the authorities.

11. According to him, he has filed application on 14/07/1998, addressed to the Deputy Director, Land Records for correction in the consolidation record and thereafter follow up applications have been filed on 11/10/2005 and 29/08/2015. Since he did not receive any response to his application, he filed an Appeal before respondent No.2.

12. It is his contention that when the order was passed by respondent No.2 on 28/02/2017, petitioners have accepted it and accordingly measurement has been carried out in Survey No.95. Since petitioners have not challenged the order dated 28/02/2017, it has attained finality. It is further contended that after passing of the order on 28/02/2017, report was received from the concerned authorities and thereafter he has brought to the notice of the authorities that in fact in the Appeal he has claimed that the correction should be made as per the revenue record which was existing at the time of implementation of scheme and not as per the

measurement as has been directed.

13. It is only after considering the submissions of respective parties respondent No.2, has corrected the order dated 28/02/2017, and directed to make correction as per the revenue record. According to him, petitioner has challenged only order dated 29/06/2018, without challenging the order dated 28/02/2017. According to the order dated 28/02/2017, consolidation authorities have already cancelled the consolidation record in respect of land Survey No.95 and have prepared corrected consolidation record.

14. Learned advocate for respondent Nos.4 to 7 is relying on the reply affidavit to contend that a circular has been issued by the Settlement Commissioner and Director, Land Records, Maharashtra State, Pune on 25/08/1993, issuing guidelines for making corrections in the consolidation scheme for correction of errors. Learned advocate for respondents places reliance on clause (2) of the circular dated 25/08/1993 wherein it is provided that while preparing the scheme, record existing prior to the implementation of scheme should be taken into consideration. It is further provided that in any circumstances, while implementing the Scheme or taking cognizance of complaint application, no power is vested in the Consolidation Officer to reduce or increase the area regarding anewari, possession, other rights, inherent rights etc.

15. He also relies on the circular dated 23/11/2010, wherein

guidelines have been issued for resolving dispute in respect of errors occurred during the consolidation scheme, which makes it mandatory for the Consolidation Officer to obtain statement of landholders while making sub-division of the Gut numbers, if such sub-division is prepared by obtaining consent of the respective land holders.

16. It is the contention of learned advocate for respondent Nos.4 to 7 that during the consolidation, Survey numbers are converted into Gut numbers either by consent of the parties for consolidating Gut numbers or by way of exchange of lands. Since the error has occurred when respondent No.4 was minor, he could not bring it to the notice of authorities within the prescribed time. However, fact remains that there is reduction in the area of land owned by father of respondent No.4 after implementation of the consolidation scheme. Therefore, considering that there is reduction in area of holding of respondent No.4, appropriate order have been passed.

17. Respondent No.4 relies on the judgment of this Court in Writ Petition No.8737/2021 (*Tulsiram s/o Shivram Dhondkar and Others Vs. The State of Maharashtra and Others*) dated 12/10/2023, wherein it is observed that the date on which consolidation scheme comes into force would depend on the date on which possession is handed over to the individual after following due process. If the Settlement Commissioner is of the view that further process as

contemplated under Section 21 in respect of deposit of compensation; eviction of the occupant; and transfer of possession has not taken place; only confirmation of the entire scheme has taken place under Section 21(1), the Settlement Commissioner is entitled to exercise jurisdiction under Section 31A and 32 of the Act. Therefore, considering the facts and circumstances in the present case, writ petition deserves to be dismissed.

18. Learned AGP appearing on behalf of respondent Nos.1 to 3 relies on the reply affidavit filed by the authorities, wherein it is contended that after passing of earlier order dated 28/02/2017, petitioners have accepted the findings therein and have not challenged the same by which pot Hissa measurement is done. Therefore, it will have to be presumed that petitioners are satisfied with the directions issued vide order dated 28/02/2017 to carry out measurement as per the actual possession of the parties.

19. During the implementation of order dated 28/02/2017, it was realised by respondent No.3 that measurement on the basis of actual possession cannot be done. Therefore, the order dated 28/02/2017 was modified by the order dated 29/06/2018 and the words "measurement according to actual possession" were substituted by "the actual holding as mentioned in the 7/12 extract prior to the consolidation scheme". It is also submitted that order dated 29/06/2018, has been passed after going through the report dated 23/05/2018, wherein it is specifically stated that correction in

the consolidation scheme cannot be carried out on the basis of actual possession as it is practically impossible.

20. Reliance is placed on the circular dated 25/08/1993, which provides that correction can be done as per the record which was in existence prior to the implementation of consolidation scheme. Hence, order dated 29/06/2018 has been rightly passed taking into consideration the defective pot hissa measurement carried out at the time of consolidation scheme. Hence, there is no illegality in the order dated 29/06/2018 passed by respondent No.2.

21. After hearing the respective parties and the documents placed on record it can be gathered that respondent Nos.4 to 7 herein have filed application for correction in the consolidation scheme in respect of their holding in Survey No.95. Grievance of respondent No.4 is that his father's land was part of Survey No.95 Hissa No.1B/2 to the extent of 2 H 43 R. After implementation of consolidation scheme he was given only 1 H 83 R land in Gut No.162. As against that petitioners' holding in Survey No.95 was Hiss No.3B to the extent of 3 H 54 R and petitioner was given Hissa No.10 by increasing his holding to the extent of 4 H 51 R.

22. According to him, his holding has been reduced during the consolidation scheme and holding of the petitioners is increased by 0.97 R. In the report submitted by respondent No.3 on 29/01/2016, it is submitted that entries have been taken in the 'Shet Pustak' according to the possession of respective parties.

Therefore, there is no error as such in the consolidation scheme. Again report was called from respondent No.3 who has again submitted the report on 31/03/2016 along with his remarks. In spite two reports of respondent No.3 stating in unequivocal terms that there is no error in the scheme, respondent No.2 has advised respondent Nos.4 to 7 to file Appeal and accordingly Appeal has been filed by respondent Nos.4 to 7.

23. In spite of the fact that scheme has been sanctioned on 06/04/1978, Appeal filed by respondent Nos.4 to 7 has been entertained by respondent No.2, only on the ground that error has occurred while forming the sub-division. It is recorded that in order to adhere to principles of natural justice, after condoning the delay Appeal has been allowed, giving directions to make corrections in the record of Survey No.95, as per the actual possession of the respective parties.

24. From perusal of order it appears that respondent No.14 i.e. petitioner No.1 herein has not been heard before passing of the impugned order. Even otherwise, directions to make correction as per Section 32(1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, is much beyond the permissible period of limitation of three years, as has been held by this Court in catena of decisions.

25. Section 32(1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, reads thus:-

“32. Power to vary scheme on ground of error, irregularity, informality.—

(1) If after a scheme has come into force it appears to the [Settlement Commissioner] that the scheme is defective on account of an error (other than that referred to in section 31A), irregularity or informality the [Settlement Commissioner] shall publish a draft of such variation in the prescribed manner. The draft variation shall state every amendment proposed to be made in the scheme.

(2) Within one month of the date of publication of the draft variation any person affected thereby may communicate in writing any objection to such variation to the [Settlement Commissioner].

(3) After receiving the objections under sub-section (2) the [Settlement Commissioner] may, after making such enquiry as [he may] think fit, make the variation with or without modification or may not make any variation.

[(3A) If the scheme is varied under sub-section (3), a notification stating that the scheme has been varied shall be published in the Official Gazette and the scheme so varied shall be published in the prescribed manner in the village or villages concerned.]

(4) From the date of the notification [stating that the scheme has been varied] the variation shall take effect as if it were incorporated in the scheme.”

26. Though there is no limitation provided in Section 32 of the said Act, for correction in the scheme, however, according to authoritative pronouncements governing the field, person aggrieved is expected to approach the authority for correction in the scheme within a reasonable period and that reasonable period is held to be within three years. Though it is observed in various judgments that

reasonable period would vary from case to case depending on the facts of each of the case, however, that reasonable period cannot be stretched beyond particular limit. It is also observed that only in deserving and exceptional cases the period of three years can be extended.

27. Upon going through the averments made in the application filed by respondent Nos.4 to 7 as well as findings recorded by respondent No.2, I do not find that delay has been satisfactorily explained by respondent Nos.4 to 7. Respondent No.2 while recording his findings on delay has merely observed that “in order to adhere to principles of natural justice delay requires to be condoned”. The satisfactory reasons explaining delay are required to be recorded before condoning the delay. Undisputedly in present case since the scheme has been sanctioned in the year 1978 itself, application made by respondent No.4 on 29/08/2015 i.e. after almost delay of 35 years could not have been entertained by respondent No.2.

28. In the case of ***Gulabrao Bhaurao Kakade (Smt.) Vs. Nivrutti Krishna Bhilare and Others***, reported in ***2001 (Supp.1) Bom.C.R. 688***, this Court has already taken a view that though no period of limitation is prescribed under Section 32(1) of the said Act, for the Settlement Commissioner to vary the scheme which has come into force, but such powers have to be exercised within a reasonable period in any case. The Court has observed that

they do not intend to lay down any specific period for exercising of such powers by Settlement Commissioner, however, ordinarily exercise of such power after three years of finalization of scheme would not be justified. It is further held that the scheme which has been finalized in accordance with law and has come into force and continued to be in force, could not have been unsettled by initiating proceedings for variation on the ground of error, irregularity after a lapse of about 15 years. Therefore, the exercise of power by Settlement Commissioner under Section 32 was held to be grossly unjustified. The view taken in this judgment has been further affirmed in case of ***Dattu Appa Patil and Others Vs. State of Maharashtra***, reported in **(2006) 6 Bom.C.R. 246** and ***Jalindar Sadashiv Hirde and Others Vs. State of Maharashtra and Others***, reported in **2018 (2) Bom.C.R. 320**.

29. In Writ Petition (St.) No.16719/2017 (*Suresh Bapu Sankanna and Others Vs. State of Maharashtra and Others*) decided by the Division Bench of this Court (Coram: A. A. Sayed & Manish Pitale, J.J.) on 09/10/2017, reliance has been placed on the case of ***Pundlik Jalam Patil (Dead) by L.Rs Vs. Executive Engineer, Jalgaon Medium Project and Another***, reported in **(2008) 17 SCC 448**, observing that law of limitation is a matter of public policy, which lays down that stale claims cannot be agitated, and there has to be time limit, within which an aggrieved person can successfully raise his grievance. The Hon'ble Supreme Court in case

of ***Pundlik Jalam Patil*** (supra) has held thus:

"26. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England, 4th Edn., Vol. 28, p. 266, para 605, the policy of the Limitation Acts is laid down as follows:

"605. Policy of the Limitation Acts.--The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to disprove the stale claim, and (iii) that persons with good causes of actions should pursue them with reasonable diligence."

27. Statutes of limitation are sometimes described as 'statutes of peace'. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This court in *Rajender Singh and Ors. v. Santa Singh and Ors.* (1973) 2 SCC 705 has observed : (SCC p. 712, para 18)

"18. The object of law of Limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches".

28. In *Tilokchand Motichand v. H. B. Munshi*, AIR 1970 SC 898, this court observed that this principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of Limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

29. It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

It is held by this Court that when the entire proceedings were without jurisdiction, this Court can very well exercise writ jurisdiction to put an end to such proceedings. Therefore, contention

of respondent about availability of alternate remedy to petitioners was also negated by this Court.

30. In the present case, in spite of huge delay of more than 30 years the respondent No.2 has erroneously recorded his satisfaction. It is stated in the reply affidavit of respondent Nos.4 to 7 that, they have submitted application on 14/07/1998, so also on 11/10/2005, prior to the application dated 29/08/2015. In the application seeking condonation of delay filed under Section 251 of the Maharashtra Land Revenue Code, delay has not been properly explained. Even assuming that if the first application of respondent No.4 would have been entertained by the authorities in 1998, there was an inordinate delay of 20 years which could not have been condoned for entertaining the Appeal.

31. In the report dated 29/01/2016, prepared by respondent No.3, it is categorically mentioned that applicant has already filed the application which was decided on 11/10/2005, itself and accordingly entry to that effect has also been taken in records. In absence of satisfactory explanation given by applicant, huge delay has been condoned by the authority. Only reason mentioned in the application for condonation of delay is that when he scrutinized old record existing at the time of consolidation scheme, he has come across the error occurred at the time of measurement of sub division.

32. While passing the order dated 28/02/2017, respondent

No.2 has categorically observed that in exercise of powers under Section 255 (3) of the Maharashtra Land Record, he is passing the order of cancellation of measurement of pot hissa, which was apparently found to be defective. He has further directed to measure the land according to the possession of parties and submit the proposal for correction under Section 32(1).

33. After the order was passed by respondent No.2 on 28/02/2017, directing to submit a proposal for correction in the area after conducting measurement of Survey No.95 under Section 32(1) of the said Act, notice was issued by respondent No.3 to the interested parties for conducting measurement of Survey No.95. Accordingly, the measurement was conducted and proposed correction was prepared by respondent No.3 and notice for correction was issued to the interested parties on 02/04/2018 thereby calling upon their objections, if any, to the proposed correction. In response to the notice of proposed correction, petitioner No.4 Lilabai had submitted her objection on 19/04/2018. In furtherance of her complaint, hearing was conducted on 07/05/2018 and 10/05/2018. After hearing petitioner No.4 as well as respondent Nos.4 to 7, respondent No.3 has allowed the objection raised by petitioner No.4 holding that, according to the order passed in Appeal No.825/2016, measurement of the respective land according to the possession is carried out for preparation of proposal for correction. After the measurement it was found that

respondent No.4 Ramchandra Dashrath Gawade and respondent No.7 Eknath Savaleram Khatekar were not in possession of the land which was claimed by them. Therefore, objection raised by petitioner No.4 was allowed on 23/05/2018.

34. Respondent No.4 again filed complaint contending that though there is an order directing to prepare corrected proposal under Section 32(1), respondent No.3 has not prepared proposal for correction and has forwarded report without preparing necessary proposal and has inserted certain fabricated documents in the report. After receiving such application from respondent No.4 on 24/05/2018, respondent No.2 has directed respondent No.3 to prepare and submit the proposal for correction as per the order passed in Appeal. It is further directed that in view of complaint filed by respondent No.4, notice should be issued to the respective parties and after granting opportunity of hearing to all the interested persons, decision should be taken in Form-2, in accordance with the rules and regulations. In pursuance to the communication dated 29/05/2018, respondent No.2 has passed order dated 29/06/2018.

35. In the order dated 29/06/2018, respondent No.2 has corrected the earlier order dated 28/02/2017, passed in the Appeal, claiming it to be correction in the typographical mistake, thereby directing to prepare and submit proposal for correction in the area of Survey No.95 as per Section 32(1) after taking into consideration

the possession of appellant and respondents according to their holdings in 7/12 extract, prior to the implementation of consolidation scheme, instead of earlier order which directed to prepare the proposal for correction after conducting measurement according to the possession of respective parties. Though it is claimed by respondent No.2 that this order was passed for correcting the typographical mistake, upon going through the same it is evident that it was not an typographical mistake, but the very scope of the order has been changed by respondent No.2.

36. In view of the fact that the measurement is already carried out as per order dated 28/02/2017, the order dated 29/06/2018, itself is passed without any powers. The powers for correction in the area are provided under Sections 31A to 33 of the said Act, and none of the provisions contemplate the correction of the order which is passed by the competent authority that is already implemented by claiming it to be typographical mistake. The very purport of the order dated 28/02/2017 has been changed by the subsequent order dated 29/06/2018, claiming it to be a typographical error.

37. As stated above, the order dated 28/02/2017 was passed by respondent No.2 directing to prepare the proposal for correction, under Section 32(1) of the said Act, according to the possession of respective parties after conducting the measurement. In furtherance thereof measurement was conducted on 25/07/2017

in the presence of respective parties and accordingly proposed correction was prepared which was objected by petitioner No.4 and after upholding objections of petitioner No.4 on 23/05/2018, the notice dated 02/04/2018 has been cancelled. Hence, after taking steps in furtherance of order dated 28/02/2017 and taking the order to its logical end, it was beyond the powers of respondent No.2 to pass correctional order under the guise of typographical error. If at all respondent Nos.4 to 7 were aggrieved by the order passed by respondent No.2, they had a remedy to approach the higher authority provided under the Act. Respondent No.4 instead of approaching the higher authority has filed complaint which was entertained by respondent No.2, which has resulted into the impugned order. Even though the complaint was filed by respondent No.4, respondent No.2 should not have entertained the same by making correction in the earlier order which was already acted upon. It was beyond the scope and powers of respondent No.2, to entertain the application and pass order claiming to be a correction of typographical error. Upon going through the order dated 29/06/2018, it is evident that by no stretch it can be held to be a typographical mistake. Hence, in my opinion, the order passed by respondent No.2 is without any power and beyond its jurisdiction.

38. In Writ Petition No.3815/1998 (*Santosh Punjaram Pakhare and Others Vs. Vinayak Sampatrao Wagh and Others*), decided on 13/02/2020, issue before this Court was whether the

powers of Revision can be exercised under Section 257 of the Maharashtra Land Revenue Code, for seeking relief under Section 31-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, which is part of the statutory scheme of Chapter IV of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It was submitted before this Court that neither Appeal nor Revision is maintainable against any order passed under Chapter IV. This Court has taken a view that the order which is set aside in Revision is issued in exercise of powers under Section 31-A. A clerical error in the consolidation scheme is purportedly corrected. The said order was held to be not amenable to Revision in view of unambiguous provisions of Section 36 of the Act. It is held that the Revisional authority has committed jurisdictional error, in purportedly invoking provisions of Section 257 of the Maharashtra Land Revenue Code. Section 36 of the said Act, reads thus:-

“36. Appeal and Revision

Except as provided in this Act, no appeal or revision application shall lie from any order passed under Chapter II, III or IV of this Act.”

It is further held that the said Act is a special enactment and in view of bar under Section 36 of the said Act, an order under the said Act, could not have been set aside in purported exercise of powers under Section 257 of the Maharashtra Land Revenue Code.

39. In my opinion, the present case stands fully covered by the observations of this Court in the above judgments. In present

case, the order is passed under Section 32(1) of the Chapter IV of the Act. Therefore, the bar as provided under Section 36 of the Act to the Appeal or Revision against any order passed under Chapters II, III and IV of the Act will be applicable even to the present case, wherein Appeal has been entertained by respondent No.2. Hence, in view of the aforementioned position of law, the order passed by respondent No.2 dated 28/02/2017 suffers from jurisdictional error.

40. Though learned advocate for respondent Nos.4 to 7 has claimed that there is no prayer made by the petitioner, raising challenge to the order dated 28/02/2017, fact remains that the order dated 29/06/2018 is passed for making correction in the order dated 28/02/2017. Even the order dated 29/06/2018 suffers from the same jurisdictional error of delay. The order directing to submit a proposal for correction in the scheme under Section 32(1) of the said Act, on the basis of holdings according to old 7/12 extract is also beyond the period of limitation as has been held by this Court Court.

41. Even otherwise, order dated 29/06/2018 is in continuation of the earlier order dated 28/02/2017. Therefore, it is also an order without jurisdiction and all the steps taken in furtherance of subsequent correctional order are not tenable, since the exercise of powers under Section 32 of the Act, was not within the reasonable period. Similarly they are also not Appealable, under the provisions of Maharashtra Land Revenue Code, as held by this

Court in the judgment of *Santosh Punjaram Pakhare* (supra).

42. Therefore, the Writ Petition is allowed. Order dated 29/06/2018, passed by respondent No.2 District Superintendent of Land Records, Ahmednagar, in Consolidation Appeal No.825/2016 is quashed and set aside and consequential notices issued by the Deputy Superintendent of Land Record, Rahuri, are also quashed and set aside. Rule is made absolute in the above terms.

43. Accordingly, civil application also stands disposed of.

44. At this stage, learned advocate for respondent Nos.4 to 7 makes request that the order may be stayed for a period of two weeks. Considering the request made by respondent Nos.4 to 7, there shall be stay to this order for a period of two weeks from today.

(MANJUSHA DESHPANDE, J.)