



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12947 OF 2018

1. Janabai s/o. Sakahari Shinde
2. Laxman s/o. Sakahari Shinde
3. Ram s/o. Sakahari Shinde

... PETITIONERS

VERSUS

1. The State of Maharashtra
2. The Deputy Director (Land Record)
3. The District Superintendent (Land Record)
4. Dadasaheb s/o. Janardhan Shinde
5. Balasaheb s/o. Janardhan Shinde
6. Vijaykumar s/o. Janardhan Shinde
7. Shivaji s/o. Manik Shinde
8. Bhagwat s/o. Manik Shinde (*deleted*)
9. Khandu s/o. Digambar Shinde

... RESPONDENTS

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Mr. Nilkanth P. Bangar – Advocate for Petitioners

Ms. M.N. Ghanekar – AGP for Respondent Nos.1 to 3, State

Mr. K.K. Kulkarni – Advocate for Respondent Nos.4 to 6

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CORAM : SACHIN S. DESHMUKH, J.

DATE : 01.10.2025

ORAL ORDER :

1. Rule. Rule made returnable forthwith. By consent of the parties,

the petition is heard finally.

2. The petitioner raises an exception to the order passed by the Minister dismissing the revision presented by the petitioners and confirming the order of the Superintendent of Land Records, Tuljapur.

3. The consolidation scheme was implemented in village Baswantwadi, Tq. Tuljapur, Dist. Osmanabad on 15.02.1982. On the basis of said scheme, the Consolidation Officer sanctioned the corresponding mutation entries. Thereafter, respondent No.4 purchased the subject land under a registered sale-deed in the year 2004. Upon such purchase, respondent No.4 asserted that the area of the land had been reduced in the consolidation scheme. Resultantly, an application came to be presented by respondent No.4.

4. Pertinently, while presenting the application, respondent No.4 consciously chose not to implead the present petitioners as parties before the Superintendent of Land Records, although the authorities were fully aware that the decision on the application would impact and prejudice the rights of the petitioners. Ignoring the fact that the petitioners were necessary parties to the proceedings, the Superintendent of Land Records proceeded to pass an order effecting corrections in the scheme under Section 32 (1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short, "*the Act, 1947*").

5. Aggrieved by the same, the petitioners approached the Minister, submitting specifically that the petitioners were not impleaded as parties to the proceedings although they were the necessary parties. It was also submitted that there was no justification for the Superintendent of Land Records to entertain such an application after an unexplained and inordinate delay. It was also submitted that the original owner had never raised any objection to the consolidation scheme and that respondent No.4, having purchased the land in 2004, could not have preferred such an application. Although, the specific plea was made regarding non-impleadment of the petitioners, the Minister ignored the same, while dismissing the revision.

6. The legal position regarding the consequence of not impleading necessary party has been dealt in detail by the Hon'ble Apex Court in **Moreshar s/o. Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) through L.Rs. And Ors.**, in *Civil Appeal Nos.5755 and 5756 of 2011*, particularly paragraph 20, which reads as under :

“20. It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.”

It is well settled that any order passed in the absence of a necessary

party, who is a real stakeholder and affected, is liable to be rendered as a nullity.

7. Learned Counsel for the petitioners submits that the consolidation scheme was finalized in the year 1981, whereas the application seeking correction was filed belatedly in the year 2007. As such, it was not open for the Superintendent of Land Records, to entertain an application with inordinate and unexplained delay.

8. Reliance is also placed by the learned Counsel for the petitioners on the judgment of the Division Bench of this Court in **Suresh Bapu Sankanna and Ors. Vs. State of Maharashtra and Ors., 2018 (4) Mh.L.J.**, to contend that an application filed after a lapse of three (3) years could not have been entertained.

9. It is further submitted by the learned Counsel for the petitioners that although the application was entertained, the petitioners, who were necessary and affected parties, were not impleaded as respondents which has caused serious prejudice to the petitioners. In this behalf, reliance is also placed on the judgment of the Hon'ble Apex Court in **Madhyamam Broadcasting Limited Vs. Union of India and Ors., 2023 SCC OnLine SC 366**, to submit that non-joinder of necessary parties vitiates the proceedings.

10. *Per contra*, learned A.G.P. and learned Counsel for respondent

Nos.4 to 6 supported the orders under challenge. It is submitted that the delay was on the part of the petitioners in filing the revision and that the authorities have rightly considered the matter. Hence, same does not warrant interference.

11. Having heard learned Counsel for the parties and upon perusal of the record, it is evident that the consolidation scheme in the village was concluded in the year 1982. Section 32 of the Act, 1947 provides for reopening of consolidation proceedings only within the reasonable period of three (3) years, as has been held by this Court in the case of **Suresh** (*supra*). Admittedly, respondent No.4 moved the application in the year 2007, is beyond the reasonable period. The authorities below have failed to appreciate this important aspect and proceeded to entertain the application presented by the respondents herein.

12. Apart from aforesaid aspect, necessary parties, ought to have been impleaded. Non-impleadment has resulted in breach of the principles of natural justice and has further caused a serious prejudice to the petitioners. Thus, the verdict cited (*supra*) by the petitioners, underscores that the proceedings cannot stand when necessary parties are not impleaded.

13. The Division Bench of this Court in **Suresh** (*supra*) has held that after the lapse of the prescribed period, such applications cannot be

entertained. Paragraphs 21 and 22 thereof read as under :

21. The counsel appearing for Respondent No.5 has relied upon judgment of the Hon'ble Supreme Court in the case of *Thansingh Nathmal* (supra) for the contention that the writ petition ought not to be entertained in the light of an alternative remedy available to the Petitioners. Although in the affidavit in reply, a bald statement was made that an alternative remedy was available to the Petitioners, it is only during the course of arguments that reliance was placed on Section 35 of the said Act, to claim that Petitioners ought to have filed a revision application before the State Government to challenge the impugned order. The said contention is also not sustainable because the rule of alternate remedy is a rule of prudence. It has been held by the Hon'ble Supreme Court in the case of *Dr. (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Ors.* (1987) 4 SCC 525 that a writ court can exercise jurisdiction even if an alternative remedy is available and that it is not an absolute bar to the maintainability of a writ petition, particularly when an authority has acted wholly without jurisdiction. In the instant case, when the application submitted by Respondent No. 5 could not have been entertained by the Respondent - State Authorities and the entire proceedings were without jurisdiction, this Court can very well exercise writ jurisdiction to put an end to such proceedings. Therefore, we reject the said contention raised on behalf of Respondent No. 5.

22. In the light of the above, we find that Respondent Nos. 2 and 4 were not justified in entertaining the application dated 22.12.2015 submitted by Respondent No. 5 seeking modification of the consolidation scheme finalised on 04.03.1971 and that exercise of power by the said Authorities under the provisions of the said Act was wholly without jurisdiction. Accordingly, we allow this writ petition and quash and set aside the letter 23.03.2015 issued by

Respondent No. 2, the communication cum order dated 06.05.2017 issued by Respondent No. 4 and the entire proceeding of consolidation initiated in the present case on the basis of application dated 22.12.2015 submitted by Respondent No. 5. Rule is made absolute in the above terms with no order as to costs.

14. In view of the above discussion, the application filed by respondent No.4 was not maintainable when the scheme was implemented in village in the year 1982 and there is no material on record to indicate contrary to that effect. As such, the authorities below have erred in entertaining the application of the respondent Nos.4 to 9. Consequently, the orders under challenge cannot be sustained.

15. The orders under challenge dated 30.03.2010 and 31.07.2018 passed by the Superintendent of Land Records, Osmanabad and the Minister of Forest and Land Revenue, respectively, are quashed and set aside.

16. Resultantly, the petition is allowed. Rule is made absolute in the aforesaid terms.

17. No order as to costs.

[SACHIN S. DESHMUKH]
JUDGE