



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3475 OF 2025**

Maruti Mahadev Dhuri (deceased)
through his legal heirs Minakshi
Mahadev Dhuri and Ors. ... Petitioners
versus
Dilip Dhondu Acharekar and Ors. ... Respondent

Mr. Mayank Tripathi i/by Mr. Bhushan Walimbe, for Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 11 MARCH 2025

P.C.

1. Heard the learned Counsel for the Petitioners.
2. The Petitioners – Plaintiffs take exception to a judgment and order dated 8 July 2024 passed by the learned District Judge, Sindhudurg in Misc. Civil Appeal No.15 of 2024 whereby the appeal preferred by the Petitioners came to be dismissed affirming the rejection of the application for temporary injunction passed by the learned Civil Judge in RCS No.45 of 2017.
3. The deceased Plaintiff instituted RCS No.45 of 2017 seeking declaration and perpetual injunction in respect of original Survey No.19 Hissa No.5A corresponding to new Gat No.918B. The substance of the Plaintiff's claim is that the Defendant No.1 had purchased only an area admeasuring 1H 84 R from Manorama Pawaskar, out of Survey No.19, Hissa No.5, which then admeasured 7H and 63R. In the consolidation scheme, however, an area

admeasuring 5H 94R is shown against old Survey No.19 Hissa No.5A, which corresponds to Gat No.918.

4. Indisputably, the balance land out of original Survey No.19 Hissa No.5, after the sale of 1 H 84R land to the Defendant No.1 and acquisition of 28R land by the government which led to carving out of Survey No.19 Hissa No.5B, corresponding to new Gat No.916, vested with the co-owners of the vendors of Defendant No.1, including the plaintiff. By taking undue advantage of the mutation of a larger area in the consolidation scheme, Defendant No.1 has executed various conveyances. Thus, an action by way of suit for declaration and perpetual injunction.

5. It seems, initially the application for temporary injunction was not pressed by the Plaintiff. Subsequently, Plaintiff filed an application for temporary injunction (Exhibit 150) asserting that the Defendant No.1 was in the process of selling remaining portions of the suit lands to third parties and that would cause irreparable loss to the Plaintiff. By an order dated 8 April 2024, the learned Civil Judge was persuaded to reject the application.

6. The Plaintiff carried the matter in appeal before the District Court. By the impugned judgment and order, the learned District Judge was also persuaded to dismiss the appeal observing, inter alia, that there was a clear bar to the suit under the provisions of Section 36A of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, as

what the Plaintiff essentially challenged was the legality and correctness of the consolidation scheme. Since the certificate of transfer was issued to the Defendant No.1 under Section 24 of the Act, 1947, the correctness thereof, can only be decided by the authorities constituted under the said Act, 1947.

7. Mr. Walimbe, learned Counsel for the Petitioners, would urge that the settlement of the consolidation scheme and the grant of certificate under Section 24 of the Act, are ex-facie unsustainable. Defendant No.1 had acquired only 1H and 84R of land from one of the co-owners of Original Survey No.19 Hissa No.5. Thus, under no circumstances, land measuring 5H 19R could have been shown against Survey No.19 Hissa No.5A, which was allotted to Defendant No.1. It was submitted that the bar under Section 36A of the Act, cannot be said to be absolute. Reliance was sought to be placed on a judgment of this Court in the case of Shankar Natha Waghmare V/s. Rukhminibai Vinayakrao¹.

8. Incontestably, the consolidation scheme was settled in the year 1990. In the said consolidation scheme, Survey No.19 Hissa No.5A corresponding to Gat No.918 was allotted to Defendant No.1. Subsequent thereto, Defendant No.1 executed conveyances in favour of transferees conveying various portions of the said land. Asserting that in the year 2017 the Plaintiff learnt about the irregularities in the consolidation scheme, the suit came to be

1 SA No.179 of 1986 dated 18 June 2008

instituted.

9. Evidently, a certificate under Section 24 of the Act, 1947 has been issued in favour of Defendant No.1. Under Section 32 of the Act, 1947, if after the 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 is empowered to vary the scheme by embarking upon an inquiry by following the procedure delineated therein.

10. Under Section 35 of the Act, 1947, the State Government or the Commissioner in respect of such matters as the State Government may by general or special order specify in this behalf, may at any time for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any order passed by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it or he, as the case may be, thinks fit. Section 36 further provides that, except as provided in the said Act, no appeal or revision application shall lie from any order passed under Chapter II, III and IV of the Act.

11. Thereafter, comes Section 36A, which incorporates the bar of jurisdiction. It provides that no civil Court or Mamlatdar's Court shall have jurisdiction to settle, decide or deal with any question which is by or under this

Act required to be settled, decided or dealt with by the State Government or any officer or authority. Sub-section (2) of Section 36A further provides that no order of State Government or any such officer or authority made under the Act shall be questioned in any Civil, Criminal or Mamlatdar's Court.

12. Under Section 36B, if any suit instituted in any civil Court or Mamlatdar's Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act, the Civil Court or Mamlatdar's Court shall stay the suit and refer such issues to such competent authority for determination.

13. A conjoint reading of the aforesaid provisions would indicate that the bar under Section 36A of the Act is, in a sense, absolute. Since the substratum of the Plaintiff's case is that the consolidation scheme was wrongly implemented and the entire Survey No.19 Hissa No.5A admeasuring 5H 94R was wrongly allotted to Defendant No.1 under the consolidation scheme, and, accordingly, a certificate under Section 24 of the Act, 1947, was wrongly granted to the Defendant No.1, the question squarely falls within the ambit of Section 36A of the Act, which clearly bars the jurisdiction of the Civil Court to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

14. The learned District Judge, thus, does not seem to have committed any

error in dismissing the appeal. No interference is, thus, warranted in exercise of the supervisory jurisdiction.

15. The Writ Petition, therefore, stands dismissed.

(N.J.JAMADAR, J.)