

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2082 OF 2024

Natha Namdev Khairnar and Ors. **...*Petitioners***

V/s.

Devaji Karbhari Khairnar and Ors. **...*Respondents***

Mr. Nikhil G. Hire *with Mr. Ranjeet Patil for the Petitioners.*

Mr. Sujeet Bugade *for Respondent Nos.1 and 2.*

Ms. A.A. Nadkarni, *AGP for the Respondent -State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 27 January 2025.

P.C. :

1) Short issue that arises for consideration in this Petition is whether an appeal under the provisions of Section 247 of the Maharashtra Land Revenue Code, 1966 (**the Code**) can be entertained by District Superintendent of Land Records in a challenge set up to a Mutation Entry and thereby indirectly exercising jurisdiction under the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (**Consolidation Act**).

2) Respondent No.1 initially filed Consolidation Complaint Application dated 4 May 2022 before the Deputy Director of Land Records with the following prayers:

अर्जदार यांचे अर्जासंबंधाने कायदेशीर चौकशी व मोजणी होऊन अर्जदार यांचे मौजे गिरणारे येथील सव्हे नं. ३५ चे एकत्रीकरण योजनेपूर्वीच्या ७/१२ अधिकार अभिलेखातील मालकीहक्काप्रमाणे व प्रत्यक्ष कब्जेवहिवाटीप्रमाणे क्षेत्र व नकाशा दुरुस्तीसंबंधाने दुरुस्ती योजना करण्यात यावी.

3) The Deputy Director of Land Records however advised the Petitioner to file an Appeal before the District Superintendent of Land Records against Mutation Entry No. 1250 dated 13 February 1973 vide letter dated 24 March 2022, which reads thus:

विषयांकीत बाबत संदर्भाय अन्वये आपला अर्जप्रकरण प्राप्त झालेला आहे. प्रस्तुत अर्ज प्रकरणांची पडताळणी कारता आपली तक्रार पोटहिस्सा मोजणी फाळणी बारा फेरफार नोंद क्र.१२५० दिनांक १३/२/१९७३ विरुद्ध असलेचे दिसून येते. याबाबत आपण ४९ वर्षांचे प्रदिर्घ कालावधीनंतर अर्ज प्रकरण सादर केलेला आहे सदरचे जंगल तफावत फेरफार नोंद क्र.१२५० दिनांक १३/२/१९७३ मे विरुद्ध जिल्हा अधीक्षक भूमि अभिलेख, नाशिक यांचेकडे विलंबाचे संयुक्तिक कारणासह रितसर अपील अर्ज दाखल करून दाद लावून घ्यावी. सबब आपला संदर्भाय अर्ज विनाकार्यवाही निकाली ठेवणेत येत आहे. याची कृपया नोंद घ्यावी.

4) Taking a clue from order of the Deputy Director of Land Records dated 24 May 2022, Respondent No.1 was advised to file an Appeal under Section 247 of the Code before the District Superintendent of Land Records with the following prayers:-

सबब विनंती की,

अ) प्रस्तुत अपीतासंबंधाने अपिलदार यांचे युक्तीवादाचा व कायद्याचा विचार करून मौजे गिरणारे, ता. देवळा, जि.नाशिक येथील पोटहिस्सा फाळणी कार्यवाही व त्या अनुषंगाने करण्यात आलेला पोटहिस्सा फाळणी नकाशा, हिस्सा फॉर्म नं.४, ११ व त्या अनुषंगाने अधिकार अभिलेखात करण्यात आलेली हिस्सा फॉर्म १२ ची फेरफार नोंद क्रमांक १२५० ही सव्हे नंबर ३५ पुरती रद्द करण्यात यावी.

ब) सदर सर्व्हे नंबर ३५ संबंधाने मुळ अधिकार अभिलेखाप्रमाणे व प्रत्यक्ष कब्जेवहिवाटीप्रमाणे मोजणी व चौकशी होऊन सदर वाद मिळकतीस अपिलदार यांचे पोटहिस्सा मोजणीपूर्वीचे अधिकार अभिलेखाप्रमाणे व प्रत्यक्ष कब्जेवहिवाटीप्रमाणे क्षेत्र दाखल होऊन नकाशे तयार होण्यासाठी दुरुस्ती योजना कार्यवाही करण्यात यावी.

क) अपिलदार यांचे अपील मान्य करण्यात यावे.

ड)) इतर योग्य व न्याय्य हुकूम अपिलदाराचे लाभात व्हावेत.

5) The District Superintendent of Land Records has proceeded to condone the delay in filing appeal challenging the Mutation Entry dated 3 February 1973 by order dated 14 December 2023, which is subject matter of challenge in the present Petition.

6) The main contention of the Petitioners is that Respondent No.1 is actually seeking correction or re-opening of Consolidation Scheme either under Section 31A or Section 32 of the Consolidation Act and that therefore Appeal under the provisions of Sections 247 of the Code challenging Mutation Entry is not maintainable.

7) The issue involved in the present case is no more *res integra* and covered by judgment of this Court in ***M/s. Aluwid Architectural Private Ltd. and Others V/s. Housabai Jagannath Gavhane and Others***¹. The facts before this Court involved almost identical circumstances and it would

¹ Writ Petition No.12877 of 2022, decided on 4 October 2023.

therefore be appropriate to reproduce relevant paragraphs of the judgment as under:

3) Shorn of superfluities, the background facts can be stated in brief as under:-

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(f) Respondent No. 1 preferred an Appeal under Section 247 of the Code, 1966, assailing the legality and correctness of ME No. 4584 dated 21st December 1969. Since there was delay in preferring the Appeal, the respondent No. 1 preferred an application for condonation of delay.

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(i) By the impugned order, the Deputy Superintendent of Land Records was persuaded to allow the application holding, inter alia, that documents on record indicated that re-examination of the issue was warranted and the reasons ascribed by respondent No. 1 for condonation of delay merited acceptance and, therefore, the delay was condoned in conformity with the principles of natural justice.

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15) The primary question which thus crops up for consideration is whether the impugned order can be construed as one of mere condonation of delay in preferring the Appeal or one that has the implication on the exercise of jurisdiction by the authorities under the Consolidation Act, 1947 to correct or vary the Scheme settled under the Consolidation Act, 1947. To this end, it may be necessary to have a brief resume of the relevant provisions of the Act, 1947.

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18) Under section 31A, the Settlement Commissioner has the authority to correct the clerical or arithmetical mistake or error arising in the Consolidation Scheme, from any accidental slip or omission. **No authority except the Settlement Commissioner has the power to remove the defect arising on account of any clerical or arithmetical mistake or error on account of my accidental slip or omission.**

19) Under Section 32, the Settlement Commissioner is empowered to vary the scheme, after notifying the draft of variation, in the prescribed manner, receiving objections thereto, and making an appropriate enquiry in that regard, if it appears to the Settlement Commissioner that the scheme is defective on account of an error [other than the clerical and arithmetical mistake which he is

otherwise empowered to correct under Section 31A], irregularity or informality.

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25) On the aforesaid touchstone, reverting to the facts of the case, it is pertinent to note that, initially, vide application dated 7th September, 2012, the respondent No. 1 sought correction in the area of the land bearing Gat No. 369. The said application was filed by the District Superintendent of Land Records vide communication dated 7th November, 2012, holding that the scheme which came to be settled on 11th February, 1970 had been fully implemented.

26) In an application dated 11th June, 2016, the respondent No.1 sought correction in the scheme specifically under Section 31A of the Consolidation Act, 1947 asserting that an incorrect area was mentioned in the record of rights of Gat No. 369 on account of clerical and arithmetical mistake. The said application was not entertained on the ground that there was no clerical or arithmetical mistake in the scheme settled under the Consolidation Act, 1947. The communication dated 17th April 2017 addressed to respondent No. 1 in terms records that there was no such arithmetical or clerical error and there was no error, as such, in the Consolidation Scheme and, in the intervening period, the third party rights have been created and, therefore, the application of respondent No. 1 dated 16th June, 2016 was filed without any action thereon.

27) In contrast, if the grounds in the Appeal Memo and the application for condonation of delay in preferring the Appeal, purportedly under Section 247 of the Code, 1966, are considered, it becomes abundantly clear that respondent No. 1 has now assailed the legality and validity of the Consolidation Scheme qua the subject lands by asserting that while settling the scheme, no opportunity of hearing was given to respondent No. 1 or her predecessor in title; neither notice was served on them nor they were otherwise informed. The entries in the record of rights pursuant to the settlement of the scheme were thus made in violation of the principles of natural justice. The area of land which came to be mutated to Gat Nos.369, 373 and 374 was on the basis of incorrect Falnibara without carrying out actual measurements.

28) The grounds in the Appeal Memo and the application for condonation of delay, if compared and contrasted with the application for correction of the scheme dated 11th June, 2016 purportedly under Section 31A of the Act, 1947, lead to an inescapable inference that the challenge now sought to be raised by the respondent No. 1 falls under Section 32 of the Act, 1947. Respondent No. 1 is assailing the legality and validity of the scheme on the grounds of substantive errors, other than clerical or arithmetical mistake, and irregularity of the procedure as well.

29) In this view of the matter, I am impelled to hold that the remit of this Petition is not restricted to testing the legality, propriety and correctness of the order of condonation of delay simpliciter. The impugned order, in my considered view, touches upon the jurisdiction of the authorities under the Consolidation Act, 1947, to vary the scheme under Section 32 of the Act, 1947.

30) As noted above, the said exercise to vary the scheme can only be carried out within a reasonable period of the settlement of the scheme. This Court has consistently held that the Settlement Commissioner has no unbridled power to vary the scheme at any time. This Court has repetitively ruled that such power, ordinarily, ought to be exercised within a period of three years. In the absence of any special or compelling circumstances, the exercise of the power after an inordinately long period cannot be countenanced as it entails unsettling of the settled claims.

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37) This Court has held in no uncertain terms that the Superintendent of Land Records cannot invoke the provisions contained in Section 247 of the Code, 1966 so as to usurp the power of the Settlement Commissioner under Section 31A of the Act, 1947. Likewise, even if a resort to Section 31A was to be made by the Settlement Commissioner, it must be made within a reasonable time.

(emphasis added)

8) Thus, in ***M/s. Aluwid Architectural Private Ltd.*** (supra) this Court has emphatically held that District Superintendent of Land Records cannot invoke jurisdiction under Section 247 of the Code so as to usurp the power of Settlement Commissioner under Section 31A of the Consolidation Act. The facts in the present case appear to be almost similar to the one involved in ***M/s. Aluwid Architectural Private Ltd.***

9) Following the law enunciated by this Court in ***M/s. Aluwid Architectural Private Ltd.*** (supra) exercise of

jurisdiction of District Superintendent of Land Records in entertaining the Appeal preferred by the Petitioners is clearly erroneous. Respondent No.1 himself initially sought correction in the Consolidation Scheme by his Application dated 4 May 2022 and on account of erroneous advice given to him by Deputy Director of Land Records vide letter dated 24 May 2022, Respondent No.1 was persuaded to change the track and file an Appeal under Section 247 of the Code before the District Superintendent of Land Records. Following the law expounded by this Court in ***Aluwid Architectural Private Ltd.*** (supra) it is impermissible to exercise power by District Superintendent of Land Records under Section 247 of the Code for passing of an order which would indirectly touch upon the consolidation scheme, jurisdiction in respect of which is vested with the Settlement Commissioner under Section 31A or under 32 of the Consolidation Act. Impugned order dated 14 December 2023 thus suffers from jurisdictional error and is liable to be set aside.

10) Writ Petition accordingly succeeds and I proceed to pass the following order:

(i) Order dated 14 December 2023 passed by the District Superintendent of Land Records is set aside.

(ii) Respondent No.1 shall however be at liberty to file appropriate proceedings under the Consolidation Act with regard to his grievance of corrections in the consolidation scheme. Such proceedings, if and when

filed, shall be decided on its own merits without being influenced by any of the observations made in the the present order

11) With the above directions Writ Petition is allowed and disposed of.

[SANDEEP V. MARNE, J.]