HUSENBASHA RAHAMAN NADAF
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.3829 OF 1999

Nana Bhagwan Kolte)
resident of at post Pisarve)
Taluka Purandhar, District Pune.) … Petitioner

Versus

1. Kisan Bhausaheb Kolte)
(since deceased) by heirs and)
Legal representatives)

1a) Kalawati Kisan Kolte)

1b) Gorakh Kisan Kolte)
Both R/o At and Post Pisarve)
Tal. Purandhar, Dist. Pune.)

1c) Pushpa Vilas Kul)
R/o At and Post: Khamgaon)
Tal. Daund, Dist. Pune.)

1d) Vimal Prakash Shere)
R/o At and Post: Sakurde)
Tal. Purandhar, Dist. Pune.)

2. Vithal Bausheb Kolte)
(deceased by heirs and)
Representatives))

2-A Sunita Tanaji Ingulkar,)
Age 33 years, Occ. Housewife,)
R/o Kamthodi, Tal Bhor, District Pune)

2-B Chandrakant @ Bapu Vithal Kolte)
Age 35 years, Occ. Agriculture)
R/o Pisarve, Taluka Purandar)

District Pune.)

2-C Anita Suresh Mhaske,)
Age 31 years, Occ. Housewife)
R/o Nhawali, Taluka Purandar)
Dist. Pune.)

2-D Vandana Balasaheb Kul)
Age 56 years, Occ. Agriculturist)
R/o Pisarve, Taluka Purandar)
District Thane.) … Respondents

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Ms. A. R. S. Baxi for the Petitioner.
Mr. Prafulla B. Shah a/w Ms. Gunjan P. Shah for Respondent Nos.1A, 1B, 1D & 2A to 2D.

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CORAM : M.M. SATHAYE, J.
DATE : 22nd OCTOBER, 2026

JUDGMENT :

1. This petition is filed invoking Article 227 of the Constitution of India, challenging Judgment and Order dated 23.07.1998 passed by Secretary and Officer on Special Duty (Appeals) Revenue and Forest Department, Maharashtra State ('Secretary/OSD' for short) in Revision Application No. Consolidation 3495/1180/Case No. 99/L.1/Case No. 679/97/AVR. By the said impugned order, the revision application filed by Respondent Nos. 1 and 2 is allowed thereby cancelling the corrigendum/order dated 06.09.1994 issued by Deputy Director of Land Records, Pune Division, Pune. Said authority is directed to issue fresh corrigendum under Section 31A of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('the said Act', for short). Said authority is also

directed to show holding of Petitioner in Gat No. 1280 as 1 Hectare 52 Ares and the Petitioner was given liberty to apply under Section 32(1) of the said Act for separate enquiry.

2. Consequently, a notice was issued by the concerned Circle Officer to Petitioner on 23.11.1998 about implementation of impugned order.

3. The petition was admitted on 14.12.1999 and notice dated 23.11.1998 was stayed. In short, implementation of the impugned order was stayed. During pendency of the petition, original Respondents expired and their legal heirs are brought on record.

4. After hearing learned counsel for the parties and on going through the revision application, its reply and the impugned order, following background emerges.

5. By registered Sale Deed dated 13.10.1962, the larger piece of land bearing original Survey No.198 admeasuring 10 Acres 24 Gunthas at village Pisarve, Taluka Purandar, District Pune, was purchased by the Petitioner and another party. The said land was sub divided into Survey Nos. 198/1 and 198/2 and Survey No. 198/1 was shown in Petitioner's name admeasuring 5 Acre, 12 Gunthas. According to Petitioner, he is in possession and cultivation thereof till today. Survey No. 198/2 was shown in the name of Venubai Nivrutti Deokar which was subsequently entered in the name of Respondents by Mutation Entry No. 3233.

6. In the year 1971, consolidation scheme was made applicable /

implemented in the said village, in which the Petitioner's land was given Gat No.1280 and the Respondent's land was given Gat No.1281. However, while implementing the scheme, the Petitioner's Gat No. 1280 was shown as only having 52 Ares. According to Petitioner, it was far less than his actual holding which is 5 Acres 12 Gunthas. According to Petitioners, there was no exchange of lands or any change in holding while implementing the consolidation scheme map was prepared as per actual cultivation.

7. The Petitioner applied to Settlement Commission for correction of the said area, under section 31A of the said Act for correction of clerical / arithmetical mistake in the scheme. After taking oral evidence and examining the record, the area of Petitioner's Gat No. 1280 was corrected resulting in corrigendum/order dated 06.09.1994.

8. But then, the Respondents filed revision application before the Revenue Minister/State contending *inter alia* that while implementing the consolidation scheme, there was compromise/ Kabulayat between Petitioner's father and Respondents and since Petitioner's land Gat No. 1280 was irrigated land (superior quality) including a well, less area was given to said Gat and since Respondent's land Gat No. 1281 was non-irrigated (inferior quality) and since they had filed a civil suit regarding their share and there was injunction, they prayed for setting aside the correction.

9. The Petitioner filed reply contending that land in the name of Venubai Nivrutti Deokar was shown in the name of Respondents

under Mutation Entry No. 3233 and therefore both Petitioner and Venubai Nivrutti Deokar had half share in the said larger piece of land. That the Petitioner is in possession of half portion being 5 Acres 12 Gunthas since 1962. However, due to arithmetic mistake the area of the Gat No.1280 was shown as 52 Ares which is rightly corrected. Case of alleged compromise/Kabulayat by Petitioner's father and difference in quality of lands is denied. In fact it is contended that Petitioner dug a well after consolidation scheme and formation of Gat No. 1280.

10. The revision was allotted to Secretary/OSD, who has passed the impugned order, setting aside correction and reverting the parties to position of uneven holding.

11. Learned counsel for Petitioner Ms. Baxi submitted that the Secretary/OSD has travelled beyond the scope of revisionary power and despite coming to conclusion that there is no clarity in the record, has erred in allowing the revision. She submitted that the sale deed by which the Petitioner and predecessor of the Respondents have purchased the larger piece of land is not challenged and while implementing consolidation scheme, there was arithmetic error which was corrected. She submitted that there is nothing on record and no evidence in support of the alleged case of compromise/Kabulayat by Petitioner's father or the lands having different quality. She submitted that the Petitioner's father was blind and there is no question of he giving any consent or kabulayat.

12. On the other hand, learned counsel for the Respondents have

supported the impugned order contending *inter alia* that under the garb of arithmetic mistake, the concerned authority (Settlement Commissioner) has undertaken major change / variation in the consolidation scheme and therefore it is rightly set aside. He submitted that impugned order permits the Petitioner to apply under Section 32(1) of the said Act for appropriate enquiry and therefore, it is a fair order and interference is not required.

13. I have considered the rival submissions and perused the record.

14. It is important to note in the beginning that Respondent Nos. 1 and 2 filed a revision application challenging the corrigendum/order dated 06.09.1994 contending that their land was not irrigated and the land of the Petitioner was irrigated and there was a compromise/ kabulayat between the parties without any consideration which resulted into an uneven distribution of area. This is a case about lands having different quality and there being special arrangement between parties. It is important to note that, there is no concrete evidence about such difference in the quality of the land (irrigated or non-irrigated) or any compromise/Kabulayat executed by father of the Petitioner, as alleged. It is also important to note that such consideration for change of consolidation scheme would be apparently a matter for consideration under Section 32(1) of the said Act.

15. The Petitioner in his reply has taken a clear stand that since there was arithmetic mistake, it was corrected. The Petitioner has also taken a clear stand that his father was blind and there was no

reason to take his thumb-print for the purpose of alleged compromise/ kabulayat. Specific stand is also taken that after the implementation of consolidation scheme, the Petitioner has constructed well in his Gat No.1280.

16. The learned Secretary/OSD while passing the impugned order, has narrated rival contentions. He was conscious of the fact that according to joint statement, the larger piece of land was purchased from earlier owner Mr. Navalakha under Sale Deed dated 13.10.1962. He was also conscious of the fact that initially joint statement was recorded in January 1985 and thereafter in March 1987, again inquiry was conducted and thereafter measurement was carried out in January 1993, which measurement was not accepted because the areas were not shown as per the actual cultivation. It was all along the Petitioner's contention that less area is shown for his gat number. In paragraph No.8 of the impugned order, the learned Secretary/OSD has clearly held that the correspondence of the parties is so scattered that it is not possible to conclude about what has exactly happened. The learned Secretary/OSD seems to have accepted the objection of the Respondents that the impugned corrigendum is beyond the scope of Section 31A.

17. After going through the impugned order, apparently it appears that the learned Secretary/OSD has interfered in the corrigendum/order dated 06.09.1994 despite the fact that said corrigendum had in fact restored the position between parties showing original holding in favour of both the parties as per original sale deed. It is not brought on record, not even a remote reference

that the original sale deed was challenged by the Respondents. There is nothing on record to indicate exchange of part of lands.

18. In that view of the matter, the impugned order has resulted into perversity in as much as, the corrigendum/order of correction is interfered without there being clear evidence in support of the contention of the Respondents about alleged difference in the quality of lands and/or there was compromise/ kabulayat executed by the Petitioner's father.

19. In the absence of any concrete material in favour of this basic contention of the Respondents, on which the whole edifice of Respondent's case stands, the learned Secretary/OSD could not have interfered. The impugned order not only interferes with the corrigendum but drives the Petitioner to initiate another round of correction / variation in the consolidation scheme, which is nothing but perpetuating the dispute.

20. In *Mallappa Guruppa Chaugule Vs. Padmanna Omanna Sajane and Ors. 1980 Mh.L.J. 377*, the Division Bench of this Court has held that 'allotment of inferior land' is not a ground for variation of the scheme under Section 32(1) of the said Act and the scope of correction under Section 32(1) and 31A of the said Act are different. The Division Bench has held that under Section 32(1) of the said Act the error referred is different from clerical or arithmetic error or error arising from accidental slip or omission referred in Section 31A of the said Act. In the present case, admittedly the correction/corrigendum was issued under Section 31A of the said Act and therefore, in

revision under Section 35 of the said Act, the learned Secretary/OSD was not justified in getting into factual disputes about allotment of inferior or superior land or other consideration such as, alleged compromise/ kabulayat by the Petitioner's father. Therefore, the said judgment directly supports the case of the Petitioner.

21. For the reasons indicated above, the impugned order requires interference.

22. Writ petition is therefore allowed by passing the following order :

(A) Impugned order dated 23.07.1998 passed by Secretary/ Officer on Special Duty (Appeals), State of Maharashtra, Revenue and Forest Division is quashed and set aside.

(B) The corrigendum/correction order dated 06.09.1994 is restored.

23. Rule is made absolute in above terms. No order as to costs.

24. At this stage, learned counsel for the Respondents seeks stay of this order for a period of 4 weeks. Learned counsel for the Petitioner opposed the request. In fairness, the effect of this order is stayed for a period of 4 weeks only.

25. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)