

(2014) 02 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 7586 of 2013

Bapu Gunda Mirje

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 19(1), 32, 32(1)
Constitution of India, 1950 — Article 227

Citation : (2014) 3 ABR 516 : (2015) 1 ALLMR 697

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Manoj Patil, Advocate for the Appellant; Pramod Kathane and P.S. Cardozo, AGP, Advocate for the Respondent

Judgement

R.M. Savant, J.—Rule. With the consent of the learned counsel appearing for the parties made returnable forthwith and heard. The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 7-8-2013 passed by the Hon"ble Minister for State for Revenue by which order, the Appeal filed by the Respondent Nos. 4 and 5 herein came to be allowed and resultantly the order dated 30-1-2013 passed by the Deputy Director Land Records, Pune Region, Pune, came to be set aside.

2. The facts necessary to be cited for adjudication of the above Petition can be stated thus:

3. The instant proceedings have arisen out of the application filed by the Respondent Nos. 4 and 5 herein being Revision Application No. 523 of 2009 for remeasurement of Survey No. 254/2 situated at Mouje Hingangaon (Shindewadi) Tal Kavthemahankal, Dist Sangli. By virtue of the said application the Respondent Nos. 4 and 5 were seeking modification in the Consolidation Scheme which has been implemented in the Village in question in the year 1970. The relief sought by way of the application filed by the said Respondents was that their names

should recorded in respect of the land admeasuring 80 Ares in Survey No. 254/2 situated at the said Village Hingangaon (Shindewadi). The application filed by the Respondent Nos. 4 and 5 therefore impinges upon the consolidation scheme relating to the land bearing Gat No. 355 old Survey No. 254/2 situated at Village Hingangaon (Shindewadi). It was the case of the Respondent Nos. 4 and 5 that the said 15 Gunthas was the excess land to which the Petitioners were not entitled to. It was the case of the Respondent Nos. 4 and 5 that the said land came to be wrongly entered in the name of the Petitioners in view of the fact that the Respondent Nos. 4 and 5 were not in the village on account of the exigencies of their employment. It was further the case of the Respondent Nos. 4 and 5 that they were not present when the statement were recorded by the consolidation officer and that in their absence the consent was recorded by the consolidation officer and thereafter the land in excess was recorded in the name of the Petitioners, the same was only on paper as the Respondent Nos. 4 and 5 continued to be in possession and there was actually no change on the site. The Respondent Nos. 4 and 5 therefore by the said application sought the relief that the District Superintendent of Land Records, Pune to transfer the land admeasuring 15 gunthas from Gat Nos. 354 to 355 in the said village Hingangaon (Shindewadi). The Petitioners herein opposed the said application by filing their Written Statement. It was the case of the Petitioners that it is after scrutinizing the entire record that the mutation entry has been recorded. It was the case of the Petitioners in the Written Statement that the consolidation officer after the spot visit has prepared the record and has accordingly recorded the mutation entry No. 5241 in the name of the Petitioners in respect of 97 Gunthas of land. It was the case of the Petitioners that a partition had taken place between their ancestors Kedari Mirje and Dnyanu Mirje. Insofar as Kedari Mirje is concerned, in the said partition land 65 ares was allotted to Kedari Mirje and land admeasuring 96 ares was allotted to Dnyanu Mirje. The Respondent Nos. 4 and 5 claimed through the said Kedari Mirje where as the Petitioners claimed through the said Dnyanu Mirje. It was further the case of the Petitioners that the parties had signed before the consolidation officer pursuant to which the guts were prepared in accordance with their possession. It was further the case of the Petitioners that the Respondent Nos. 4 and 5 were not entitled to the land admeasuring 80 Ares and since the inception the Respondent Nos. 4 and 5 are entitled to 65 Ares which they are in possession of. The petitioners had also averred in the written statement that in view of the interference in their possession by the Respondent Nos. 4 and 5, they were constrained to file Regular Civil Suit No. 5 of 2012 seeking declaration and injunction which suit was pending as on date of the proceedings. The Superintendent of Land Records before whom the application was filed by the Petitioners allowed the said application and held that as the dispute between the parties is pending before the Civil Court, it would not be appropriate to change the record in respect of the land bearing Gat No. 354 situated at Mouje Hingangaon (Shindewadi). The said authority inter alia held that the consolidation scheme was not properly executed and that there are defects in the said scheme in respect of the original Survey

No. 254/2 and therefore the mutation entry No. 5241 effected on 5-12-1970 suffers from infirmity. The District Superintendent of Land Records by order dated 23-4-2012, allowed the application filed by the Respondent Nos. 4 and 5 and inter alia held that it is necessary in the interest of justice to peruse the original Sale Deed, Revenue Record, Anewari and thereafter modify the consolidation scheme in accordance with Section 32(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

4. The Petitioners aggrieved by the said order dated 23-4-2012 passed by the Superintendent of Land Record in the application No. 523 of 2009 filed by the Respondent Nos. 4 and 5 filed an Appeal being RTS Appeal No. 2016 of 2012 before the Deputy Director of Land Records, Pune. The parties reiterated the grounds which they had urged before the Superintendent of Land Records. The Deputy Director of Land Records by Judgment and Order dated 30-1-2013 allowed the said Appeal filed by the Petitioners and set aside the order dated 23-4-2012 passed by the Superintendent of Land Records. The gist of the reasoning of the Deputy Director of Land Records was that the modification in the scheme was sought after a period of 33 years and when the guts were formed on account of the consent of the parties which was evidenced by the Respondent Nos. 4 and 5 who had affixed their thumb impressions to the distribution of lands. The said order dated 30-1-2013 passed by the Deputy Director of Land Records was challenged by the Respondent Nos. 4 and 5 by filing an Appeal before the State Government. As indicated above the Appellate Authority i.e. the Hon"ble Minister of State for Revenue has by the impugned order dated 7-8-2013 has allowed the Appeal and set aside the order passed by the Deputy Director of Land Records dated 30-1-2013. The gist of the reasoning as can be seen from the order passed by the Appellate Authority is that the Respondent Nos. 4 and 5 who are the heirs of Kedari Mirje had taken exception to the affixing of the thumb impression before the consolidation officer and therefore in the light of the said stand taken by the Respondent Nos. 4 and 5 the Appellate Authority held that the mutation entry No. 5241 evidencing the distribution of land could not be sustained. The Appellate Authority accordingly set aside the order passed by the Deputy Director of Land Records and thereby confirmed the order passed by the Superintendent of Land Records, Pune. As indicated above it is the said order dated 7-8-2013 which is impugned in the present Petition.

5. Heard the learned counsel for the parties.

6. The learned counsel for the petitioners would question the exercise of jurisdiction by the authorities under the Consolidation Act on the ground that the application filed by the Respondent Nos. 4 and 5 for correction/modification of the consolidation scheme having been filed after a period of 33 years, was not maintainable. In support of the said contention, the learned counsel relied upon the judgments of the Division Benches of this Court, reported in Gulabrao Bhaurao Kakade, Since Deceased by his heirs and Legal Representatives and

Others Vs. Nivrutti Krishna Bhilare and Others, in the matter of Shri Dattu Appa Patil (since deceased, by legal heirs and representatives Shri Ananda Dattu Patil, Shri Sadashiv Dattu Patil and Shri Maruti Dattu Patil) Vs. State of Maharashtra and Shri Rama Yesaba Patil, in the matter of Dattu Appa Patil v. State of Maharashtra & Ors. and the judgment of a learned single Judge of this Court reported in Ganpati Dadu Mali Since deceased through heirs (Rakhmabai Ganpati Mali and Others) and Damodar Dadu Mali, All Vs. The State of Maharashtra and Others, in the matter of Ganpati Dadu Mali & Anr. v. The State of Maharashtra & Ors. It has been held in the aforesaid pronouncement that though there is no time limit prescribed u/s 32 for variation or modification of the consolidation scheme. The same should be done in a reasonable time and application for variation filed after a long period of time i.e. 15 years and 27 years in the case before the Division Benches the exercise of jurisdiction was not warranted.

7. The learned counsel would further contend that the partition had taken place between the parties pursuant to which the area of 96 acres had come in the share of Dnyanu Mirje and 65 Acres of land in the share of Kedari Mirje. The learned counsel would contend that the said Kedari Mirje having affixed his thumb impression and accepted the statement before the Consolidation officer now his heirs i.e. the Respondent Nos. 4 and 5 cannot turn back and question the consolidation scheme.

8. Per contra Mr. Kathane the learned counsel appearing for the Respondent Nos. 4 and 5 would support the impugned order passed by the Appellate Authority. The learned counsel would contend that the issue of limitation has sought to be urged by the learned counsel for the petitioners would not arise in the instant case as mutation entry No. 5241 though records the area in respect of the parties has not been certified and therefore insofar as the land bearing survey No. 254/2 is concerned, the consolidation scheme cannot be said to be complete. The learned counsel would contend that the Respondent Nos. 4 and 5 are sought to be deprived of the area of 16 gunthas purportedly on the basis of thumb impression which has been allegedly affixed by the said Kedari Mirje by the ancestor of the Respondent Nos. 4 and 5 which fact has been seriously disputed by the Respondent Nos. 4 and 5 and therefore the said fact cannot come in their way from getting the Consolidation scheme modified.

9. Having heard the learned counsel for the parties I have considered the rival contentions. It is an undisputed position that the consolidation scheme in the village in question i.e. Hingangaon (Shindewadi) has been implemented as long back as in the year 1970. The Revision Application filed by the Respondent Nos. 4 and 5 was filed by them before the Superintendent of Land Records in the year 2009 i.e. almost after a period of 33 years as initially it seems the application was filed in the year 2003 before the Deputy Director of Land Records who had remitted the matter to the Superintendent of Land Records for consideration. The question is whether the authority could have exercised jurisdiction in the matter after a period of 33 years taking the year 2003 as the date when the application

was filed. It is well settled that the issue of limitation is an issue relating to jurisdiction, insofar as the said issue is concerned, the same is no more Res Integra having been covered by the pronouncement of the two Division Benches of this Court in Gulabrao Bhaurao Kakade, Since Deceased by his heirs and Legal Representatives and Others Vs. Nivrutti Krishna Bhilare and Others, and Shri Dattu Appa Patil (since deceased, by legal heirs and representatives Shri Ananda Dattu Patil, Shri Sadashiv Dattu Patil and Shri Maruti Dattu Patil) Vs. State of Maharashtra and Shri Rama Yesaba Patil, as also the pronouncement of the learned single Judge of this court in Ganpati Dadu Mali Since deceased through heirs (Rakhmabai Ganpati Mali and Others) and Damodar Dadu Mali, All Vs. The State of Maharashtra and Others, As indicated above the said Judgments lay down the proposition that though there is no time limit prescribed u/s 32 for variation of the scheme, the same should be done in a reasonable time. In the case of Gulabrao Kakade's case variation was made after 15 years which the Division Bench found to be grossly unjustified. Insofar as the Judgment in Dattu Patil's case is concerned, the variation was sought after a period of 27 years which the Division Bench held cannot be said to be a reasonable period. Insofar as the case before the learned single Judge is concerned i.e. Ganpati Mali's case the variation sought was after a period of 18 years and therefore the learned Judge held that the said period by any stretch of imagination cannot be said to be a reasonable period. In the instant case, as indicated above the correction was sought by the Respondent Nos. 4 and 5 by the application made by them in the year 2003 i.e. almost after a period of 33 years. Hence applying the law laid down by this Court the Superintendent of Land Record did not have the jurisdiction to entertain the application. If that be so, the order passed by the Superintendent of Land Records has been passed when he had no jurisdiction to entertain the application. This is insofar as the jurisdictional aspect is concerned.

10. Insofar as the merits are concerned, it is required to be noted that under the provisions of the said Act, draft scheme etc., has to be published u/s 19(1) of the said Act. In the instant case, the same was done, however, the predecessor of the Respondent Nos. 4 and 5 did not ever take objection to the same. The Mutation Entry though not certified is on paper since the year 1970 and no exception was taken to the same till the Respondent Nos. 4 and 5 filed the instant application before the Superintendent of Land Records. Hence it is not possible to accept the contention of the learned counsel appearing for the Respondent Nos. 4 and 5 that the Consolidation Scheme is not complete insofar as Survey No. 254/2 is concerned. The Appellate Authority as can be seen has on the specious ground that the Respondent Nos. 4 and 5 have questioned putting of the thumb impression by their predecessors, has set aside the order passed by the Deputy Director of Land Records which in my view was a well reasoned order. Hence on merits also the Appellate Authority had erred in allowing the said Appeal. In my view therefore, the impugned order dated 7-8-2013 is unsustainable and is required to be quashed and set aside and is accordingly quashed and set aside. In view of the fact that the Deputy Director of Land

Records had allowed the Appeal filed by the Petitioners by applying the principles which have been enunciated by the Division Benches of this Court as well as a learned single Judge of this Court, the impugned order dated 7-8-2013 is required to be quashed and set aside, and is accordingly quashed and set aside. The Petition is accordingly allowed. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

11. Needless to state that the civil suit in question would be tried on its own merits and in accordance with law. At this stage, the learned Counsel for the Respondent Nos. 4 and 5 seeks stay of the order. In the facts and circumstances of the case, the parties are directed to maintain status quo for a period of 6 weeks from date. Order accordingly.