

(1990) 10 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 3834 of 1982

Gunda Tuka Shinde since deceased by his heir

APPELLANT

Vs

Pandharinath Ramrao Shinde and Another

RESPONDENT

Date of Decision : 25-10-1990

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 19(1), 32

Citation : (1991) 2 BomCR 650 : (1991) 93 BOMLR 832 : (1991) 1 MhLj 669 :
(1991) MhLj 669

Hon'ble Judges : Sujata Manohar, J; M.F Saldanha, J

Bench : Division Bench

Advocate : M.R. Ketikar, instructed by Shelke and Co, for the Appellant; M.A. Rane, for respondent No. 1, D.L. Patil, Asst. Govt. Pleader, for the Respondent

Judgement

Sujata Manohar, J.—This petition relates to lands at village Ambheri, Taluka Khatav, District Satara bearing original Survey No. 112/1 to 7 and Survey No. 121/40 to 46 & 51 to 56 as also original Survey No 117/5. The petitioner, respondent No. 1 and one Nana Shinde and his brother (as one group) had each 1/3rd share in these joint family properties which were in their separate possession and vahiwat. In the year 1976 under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 a Consolidation Scheme was made applicable to this village. A draft consolidation scheme was finalised by the Consolidation Officer after calling for objections from the holders of lands. As far as the petitioners the 1st respondent and Nana Shinde and others were concerned, they agreed to the formation of blocks in respect of their lands by mutual consent. They have filed a writing before the Consolidation Officer dated 7th August, 1976, which is signed by all the concerned land holders including the petitioner and the 1st respondent in which they have set out that in respect of their lands they have, by mutual consent, and after taking into account the produce of the land and the equality of the land, agreed to the blocks as set out therein. They have set out in this writing

that blocks have been formed by taking into account the quality of land and availability of water for the land. The writing also records that if, as a result a block coming to the share of one or the other of the parties is less in area than one coming to the share of others, they have agreed that no amount is to be paid to the concerned party for being given a lesser area. They have similarly recorded that distribution of fruit bearing trees also is done on this basis. Clearly, therefore, the blocks were formed in respect of the land by mutual consent under a writing in the presence of the Consolidation Officer. This is also recorded in the order passed by the Officer on Special Duty (Appeals and Revisions), which is at Exh.B to the petition. As a result, Gat No. 649/A was given to the petitioner while Gat No. 649/B was given to the 1st respondent.

2. Two years thereafter, on 21st June, 1978, the 1st respondent made an application before the Settlement Commissioner complaining that he was given lesser area of land than the petitioner although both had an equal share, in the land. Thereafter the Settlement Commissioner gave directions to the Consolidation Officer, Satara for making appropriate changes in the land coming to the share of the petitioner and the 1st respondent. The petitioner was served with a letter dated 24th September 1980 from the Settlement Commissioner, Pune Division, to the effect that pursuant to the applications dated 21st June, 1978 and 26th October, 1978 the Consolidation Officer, Satara had been directed to effect necessary correction in the scheme. The Consolidation Officer, Satara served the petitioner with a letter dated 4th April, 1981 stating that pursuant to the decision of the Settlement Commissioner, Pune Division, dated 13th March, 1981 the possession of the petitioner's land would be given/taken on 13th April, 1981. The petitioner preferred a revision application, which was heard by the officer on Special Duty, (Appeal's & Revisions), Revenue and Forests Department, Mantralaya, Bombay. By his order dated 29th June, 1982 the Revision Application was dismissed by the Officer on Special duty. As a result 50 acres of land from Gat No. 649/A has been given to the 1st respondent in addition to Gat No. 649/B. It is the contention of the petitioner that in the proceedings before the Settlement Commissioner he was not heard. This is disputed by the 1st respondent. A more important question which arises for our determination is about the jurisdiction of the Settlement Commissioner to make a variation in the scheme of 1976 in the year 1981.

3. u/s 19(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, when a scheme of consolidation is ready for publication, the Consolidation Officer shall publish a draft thereof in the prescribed manner in the village concerned. Any person likely to be affected by such scheme, may, within 30 days of the date of such publication, communicate in writing to the Consolidation Officer any objections relating to the draft scheme. In the year 1976 when the scheme was published, the 1st respondent did not raise any objection to the allotment of Gat No. 649/B to him within 30 days as prescribed u/s 19. In fact, he had consented to this gat number being allotted to him. The petitioner has stated that after the land was divided into Gat No. 649/A and 649/

B, the 1st respondent was given the first option to select the Gat; and respondent No. 1 chose Gat No. 649/B. Two years thereafter, the 1st respondent raised an objection to the allotment of Gat No. 649/B on the ground that he had been given a lesser area of land. Looking to section 19(1) such an objection cannot be made after the period u/s 19(1) has expired. The application of the 1st respondent was, therefore, clearly time barred.

4. u/s 32 of the said Act, if after a 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 31-A), irregularity or informality", the Settlement Commissioner shall publish a draft of such variation in the prescribed manner. Undoubtedly there is no time limit for amending the scheme u/s 32(1). u/s 31-A the Settlement Commissioner has power to amend the scheme in order to correct clerical or arithmetical mistakes or error arising on account of any accidental slip or omission, while u/s 32 the power to amend relates to an error other than arithmetical or accidental error, as well as any irregularity or "informality". In the present case, there is no question of any arithmetical or accidental error. The division and consolidation of the land in question into two gats is also not affected by any error, irregularity or "informality". In fact, all the concerned parties have themselves agreed to the formation of the gats in question. They were fully aware of the fact that the division which was being made by them, was not of equal areas of land, since the writing itself records this fact. They have stated that the division has been made after taking into account the quality of land, availability of water and yield of the land. In these circumstances, when the parties have chosen the gats with open eyes and taken into account various relevant factors pertaining to the land coming to their share, there is no question either of any error or irregularity or informality. The Settlement Commissioner, therefore, was not justified in amending the scheme in exercise of his power u/s 32. The only ground for amendment, which is set out in the order (Ex.D) is equalisation of areas coming to the shares of the petitioner and the 1st respondent. When the parties themselves divided the land into unequal areas because of differences in the quality and yield of the land, there is no error or irregularity in such a division, which is by mutual consent of the concerned parties. The impugned order of the Settlement Commissioner, Pune dated 13th March, 1981 and the order of the Officer on Special Duty dated 29th June, 1982 (Exh."D" to the petition) are therefore without jurisdiction and are set aside.

5. The 1st respondent is directed to hand over to the petitioner 50 acres of land from Gat No. 649/A.

6. Rule is made absolute accordingly.

7. No order as to costs.