

(1980) 01 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 3138 of 1975

Mallappa Guruppa Chaugule

APPELLANT

Vs

Padmanna Ormanna Sajane and Others

RESPONDENT

Date of Decision : 24-01-1980

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 15A, 19, 32(1)

Citation : AIR 1982 Bom 211 : (1980) MhLj 377

Hon'ble Judges : Kotwal, J; Chandurkar, J

Bench : Division Bench

Advocate : S.M. Mhamane, for the Appellant; A.G. Sabnis, Asst. Govt. Pleader and Bhimrao N. Nalik, for the Respondent

Judgement

Chandurkar, J.—This petition filed by the original owner of survey shared. District Kolhapur, Challenges Taluka action taken by the Settlement Commissioner under S. 32(1) of the Bombay prevention of Fragmentation and consolidation of Holdings Act, 1947 (here in after referred to as "the Act") where by the original scheme for consolidation which had become final is now sought to be modified by the settlement commissioner.

2. In a scheme of consolidation in respect of the village of Mahuli, the petitioner was allotted land bearing revision survey No.146/1/A and revision survey No.146/1-B admeasuring 1 hectare 58 areas which constituted Gat No. 622. These fields were originally owned by respondent No.1 before consolidation. Respondent No.1 was allotted 1 hectare 56 areas out of revision survey No.145 which was given Gat No.23. According to the petitioner, this scheme of consolidation was arrived at on the basis of an agreement between the two parties and this arrangement was, therefore, included in the scheme. The petitioner alleged that a joint statement was made by the parties on 22nd Nov. 1973. The petitioner also claimed that he was put in possession of Gat No.622 on 31st Mar. 1974.

3. Respondent No.1 alleging that the petitioner was interfering with his possession of the two survey numbers which, according to the petitioner, were allotted to him under the consolidation scheme, had filed a civil suit for injunction restraining the petitioner from interfering with his possession. No interim injunction was, however, granted to respondent No.1. He failed to get a relief of injunction even in appeal against the order refusing to grant the injunction. Respondent No.1 then made an application on 28th May 1974 which is to be found in the record which has been made available to us by the learned Assistant Government pleader. He has made a grievance in that application against the scheme by which his land was being given to the petitioner and he has stated that no notice was given to him at the time when this arrangement was arrived at. He also further stated that the quality of the land was not taken into account at the time of making the scheme relating to the exchange of the land. He has stated that if an enquiry was made from him about this, he would have given the necessary facts. He further stated that his own land was more fertile and though the area of the land sought to be exchanged between the two parties was the same, he would still be seriously prejudiced because he would lose the land of good quality. According to respondent No.1 the petitioner was a leader in the village and he was also a panch appointed to help the consolidation officer and, therefore, he has managed to take such land for himself as he wanted. It is on this application that the settlement commissioner acted after making the necessary enquiry and he has in the exercise of his power under S. 32(1) of the Act varied the scheme, the effect of this variation being that the land of respondent No.1 would be restored to him. This variation of the scheme was directed to be published by the settlement commissioner on 7th Oct. 1975. The notice dated 7th Oct. 1975 was issued to the Talathi by the consolidation officer asking him to publish the variation in the scheme by putting it on the notice board and by beat of drum. One of the reliefs claimed in the present petition is that this notice should be quashed. The petitioner has also prayed that the settlement commissioner must be restrained from taking steps for variation of the scheme which was finalized on 19th Mar.1975.

4. The main challenge to the action taken by the settlement commissioner on the application filed by respondent No.1 is that this action is beyond the powers conferred by S. 32(1) of the Act. It is contended that merely because respondent No.1 got land which was less fertile as a result of the scheme and the petitioner was allotted land which is more fertile, the scheme could not be interfered with because such an error is not within the provisions of S. 32(1) of the Act so as to give jurisdiction to the settlement commissioner to exercise his power under that provision.

5. Before we deal with this contention, we may dispose of two other contentions which have been raised before us. One of the contentions raised is that when arriving at the decision to modify the scheme, the petitioner has not heard and, therefore, the decision of the settlement commissioner to modify the scheme is in violation of the principles of natural justice.

6. Now, the only occasion on which under the law a person can raise an objection to the variation of the scheme is after the proposed amendment of the scheme is published as contemplated by S. 32(1) of the Act. S. 32 reads as follows :-

"(1) 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 S. 31(A), irregularity or informality the settlement commissioner shall publish a draft of such variation in the prescribed manner. The draft variation shall state every amendment proposed to be made in the scheme.

(2) within one month of the date of publication of the draft variation any person affected thereby may communicate in writing any objection to such variation to the settlement commissioner.

(3) After receiving the objections under sub-sec. (2) the settlement commissioner may, after making such enquiry as he may think fit, make the variation with or without modification or may not make any variation.

(3A) If the scheme is varied under sub-sec. (3) ,a notification stating that the scheme has been varied shall be published in the official Gazette and the scheme so varied shall be published in the prescribed manner in the village or villages concerned.

(4) From the date of the notification stating that the scheme has been varied the variation shall take effect as if it were incorporated in the scheme."

Under sub-sec. (1) it is provided that if it appears to the settlement commissioner after the scheme has come into force that the scheme that the scheme is defective on account of an error other than the error referred to in S. 31A or irregularity or informality, he shall publish a draft of such variation in the prescribed manner and the draft variation has to state every amendment proposed to be made in the scheme. S. 31A deals with the power to correct clerical and arithmetical mistakes in the scheme. The error referred to in S. 32(1) must, therefore, be different in nature from the clerical or arithmetical mistake or error arising from any accidental slip or omission referred to in S. 31A. Then u/s 31(2) objection can be raised within one month of the date of publication of the draft variation by any person affected by the proposed amendment. These objections are required to be considered by the settlement commissioner and there is power given to the settlement commissioner to make such enquiry as he thinks fit and then to decide whether he will make a variation with or without modification or whether he will not make any variation at all.

7. The notice dated 7th Oct. 1975 which is now impugned in this petition is the notice requiring the scheme to be published and inviting objections. The petitioner was therefore, entitled to object to the proposed variation at that stage alone. However, he has come to this court even before the expiry of the 30 day's

period referred to in S. 32(2) , though the record shows that later on he has filed on 26th oct. 1975, certain objections which admittedly have not been decided possibly because of the pendency of this petition. The grievance that action has been taken by the settlement commissioner without hearing him is, therefore, premature because no final decision as contemplated by section 32(3) of the Act has been taken.

8. In the petition an averment has been made that respondent No.1 is associated with one Mr. Ratnappa Kumbhar who was then a minister for civil supplies and that he had threatened the petitioner that he would use good offices of the minister to secure possession of Gat No.622. Apart from this averment we are not able to see any material on record which would justify the grievance that the power under S. 32(1) was exercised as a result of any outside interference as alleged. Indeed, as will be clear later, the case of respondent No.1 has throughout been that the petitioner was never officially delivered possession of Gat No.622 and that respondent No.1 was never dispossessed and in any case , respondent No.1 claims never to have taken possession of the substitute land allotted to him in lieu of Gat No.622.

9. Coming to the main contention whether the settlement commissioner was justified in taking action under S. 32(1) for variation of the scheme, though it was clear that he had not taken any final decision with regard to the proposed variation an really speaking respondent No.1 was at liberty to canvass the matter before the settlement commissioner, since he has already raised objections, what has been urged before us on the authority of a decision of this court in *Devappa parisa Darure v. Gangubai satabai Bhau Darure* (special civil Appln. No.1592 of 1971 decided on 17th Apr. 1972) is that any difference in quality of the land allotted to different persons as a result of a scheme of consolidation did not furnish a ground for variation of the scheme under S. 32(1) and, therefore, the entire proceedings must be quashed. The Division Bench of this court has taken the view in the decision above referred to that mere difference in quality of land exchanged cannot be said to be an error or basis for treating the scheme as defective so as to permit the settlement commissioner to vary the scheme in exercise of his powers under S. 32(1) of the Act. It cannot be disputed that having regard to the decision of the Division Bench, if the ground on which the scheme was being varied was that respondent No.1 had been allotted land of inferior quality, the proceedings for variation of the scheme could not have been validly taken, what is , however contended by respondent No.1 both in his application made to the settlement commissioner on 28th May 1974 and in the return filed in this petition is that respondent No.1 was given no notice as contemplated by S. 15A of Act . It is also his contention that it was not correct that there was at any stage any agreement between the parties and according to him, he was never in the picture at all when the draft scheme was made. According to the learned counsel. The draft scheme itself is vitiated for non-compliance with he mandatory statutory requirements in S. 15A. Since the matter now goes to the root of jurisdiction of the authorities to frame the

scheme, we are called upon to decide whether the original scheme itself is such that it was validly brought into being and if it was not validly brought into being, it would be open to the settlement commissioner to undo the effect of such a scheme by variation thereof which would only mean that the status quo was being restored.

10. Having gone through the record, we are not satisfied in this case that the original scheme was made and published in compliance with the provisions of the Act. The averment made by the petitioner that the original scheme as a result of which land belonging to respondent No.1 was allotted to the petitioner with the consent of respondent No.1 is not only denied by respondent No.1. but it is negative by the documents in the original record, The original record relating to this consolidation in question shows that the consolidation officer has recorded statements of the villagers. On page 37 of the compilation of the statements among the names of the persons making the statements, at serial No.4 is the name of respondent No.1 and at serial No.3 is the name of the petitioner. These statements state that these persons and the three other persons whose names are recorded therein agree to the formation of the Gat specified in that statement and further agree that these Gats were formed after taking into account the area, land revenue and the production capacity and the quality of the land. It contains a statement that these Gats have thus been made by then and that they are not disadvantageous to anybody and there is not grievance about the fixation of the Gats. The averment made in the petition is that respondent No.1 is a party to this agreement. The original record, however, shows that while three of the five persons have signed this, respondent No.1 has not signed. Now, the case of respondent No.1 is that he was not given notice as required by S. 15A of the Act and that all the proceedings have been taken behind his back.

11. Now, S. 15A of the Act which deals with the procedure for preparation of a scheme and principles to be followed in its preparation reads as follows :-

"(1) The consolidation officer shall after giving due notice to the land owners concerned and the village committee, visit each of the concerned villages, and shall, in consultation with the village committee, proceed to prepare a scheme for the consolidation of holdings which shall include such statements, records and maps as may be prescribed.

(2) In preparing the scheme, the consolidation officer shall have regard to the procedure which the state Government may from time to time prescribe in regard to the number of blocks in which the village lands are to be grouped, the manner of allotting new plots to each owner, the recommendations of the village committee and such other matters as may be prescribed."

A bare reading of the provisions of S. 15A will show that the consolidation officer must visit each of the concerned villages and he has to proceed to prepare a scheme in consultation with the village committee for the consolidation of

holdings. S. 15A further requires that the consolidation officer must give due notice to the land owners concerned and the village committee. S. 15A is no doubt a procedural provision, but it casts an obligation on the consolidation officer statutorily to give sufficient notice to the land owners before he visits the village. The visit to the village is intended for the consolidation officer to personally collect the necessary data. It is implicit in the provisions of S. 15A that before any scheme is made. The villagers have to be heard. A villager is entitled to put his point of view before the consolidation officer as to how his field or land should be dealt with and whether it should be included the one Gat or the other and further whether any land which is intended to be allotted to him compares favorably with the land which is owned by him and which may as a result of a scheme of consolidation be allotted to some other person. The very basis of the scheme, therefore, is to be prepared by the consolidation officer after recording the views of the land owner concerned. It is clear from the provisions of S. 15A that the legislature contemplated that a land belonging to a land owner will not be affected by the scheme unless he is personally given notice of the enquiry. This provision is obviously made with a view to safeguard the interest of the land owner so as to enable him to put before the consolidation officer all the necessary information in relation to his land and to know his point of view in respect of land which is likely to be allotted to him. It is difficult to imagine how a scheme concerning land belonging to the land owner to whom no notice has been given can really be said to be a scheme properly made in compliance with the statutory provisions of S. 15A at least in so far as it affects him. The pre-conditions therefore, for preparing a draft scheme is individual notice to the land owner and if such notice has not been made in compliance with the provisions of law. There is nothing on the record to show that any such personal notice was given to respondent No.1.

12. It also appears to us on perusals of the record that the publication of the draft scheme has not been made according to law. S. 19 of the Act provides that when a scheme of consolidation is ready for publication, the consolidation officer shall publish a draft thereof in the prescribed manner in the village or villages concerned and any person likely to be affected by such a 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.

13. An argument was advanced on behalf of the petitioner by Mr. Mhamane that respondent No.1 has failed to take advantage of this provision and since he has not objected to the draft since he has not objected to the draft scheme, his grievance that there is any error in the draft scheme should be rejected.

14. Now, when we go through of this publication, it presents a rather an unusual look. A notice under Rule 14 Form I in the printed form is on record. That notice is dated 1st Feb. 1974. That notice states that the draft scheme is published at the Chawdi on 2nd Feb. 1974 and any person who has any objection to that scheme should submit it on or before 3rd Feb.1974. S. 19 statutory provides for

a period of 30 days before the scheme is finalised. The original notice shows that the date 3-3-1974 has been altered to 3-2-1974. When we went through the rest of the record, we found that there were two other true copies of this notice certified to be true signed by the Assistant consolidation officer. Shirol, where it has expressly been stated that the date for receipt of objection is 3-2-74. These true copies are also on the printed forms where blanks have been filled up. Now, if this is the state of the record, the only inference that we can draw is that assuming that the scheme was published on 2nd Feb. Only one day's time has been granted by the consolidation officer for the necessary objections. This is itself in utter violation of the statutory provisions of section 19. The record , therefore, discloses serious lapses on the part of the consolidation officer, which have clearly affected the rights of respondent No.1 that the petitioner was himself a member of the village committee appointed to assist the consolidation officer and he has, therefore, so manipulated consolidation that the land of good quality belonging to respondent No.1 was allotted to himself. The errors in the procedure which we have pointed out above were, in our view, sufficient to create a serious infirmity in the consolidation scheme so far as at least respondent No. was concerned. If in these circumstances the settlement commissioner has thought it fit to exercise his powers u/s 32(1), it is hardly possible to argue that the exercise of the powers is without jurisdiction.

15. In the view which we have taken, we must dismiss the petition. The petition is, therefore, dismissed with costs, Rule discharged.

16. Petition dismissed.