

(2017) 10 BOM CK 0023
In the Bombay High Court
Case No : 16719 of 2017

Suresh Bapu Sankanna, & Ors.

APPELLANT

Vs

State of Maharashtra, & Ors.

RESPONDENT

Date of Decision : 09-10-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Bombay Prevention of Fragmentation and Consolidation of Holdings
Act, 1947, Section 35 ,

Citation : (2017) 10 BOM CK 0023

Hon'ble Judges : A. A. Sayed, Manish Pitale

Bench : DIVISON BENCH

Advocate : Manoj Patil, R. M. Shinde, Prathamesh Bhargude

Judgement

1. Heard. Rule. Rule made returnable forthwith. Learned counsel Mr. Prathamesh Bhargude waives service for Respondent No. 5. By consent of the parties, petition is taken up for final hearing.

2. The question that arises for consideration in this writ petition is - as to whether the application submitted by Respondent No. 5 under Section 32 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "said Act") for reopening of consolidation proceeding, that attained finality in the year 1971, could be said to be within limitation, and whether such a proceeding before Respondent No. 4 - Dy. Superintendent of Land Records was maintainable.

3. The Petitioners are agriculturists, whose names are recorded in the record of rights pertaining to lands situated in Gat Nos. 1153, 1646 and 1647/1 at village Kasba Aalte, taluka Hatkanangale, district Kolhapur. The consolidation proceeding pertaining to the said lands attained finality on publication of such scheme in the Government Gazette on 4.3.1971, which was brought into effect on 29.3.1971. The revenue record was mutated in terms of the said scheme on 9.2.1973, and

accordingly names of the Petitioners were mutated in the revenue record i.e. 7/12 extracts of the said lands as owners. It is the case of the Petitioners that after about 44 years, in December 2015, an application has been submitted by Respondent No. 5 seeking to reopen the said consolidation proceeding, which had attained finality in the year 1971.

4. It is the case of the Petitioners that such an application after a long delay of 44 years is not maintainable. Reliance has been placed on judgments of this Court, wherein it has been held that although Section 32 of the said Act does not specify any period, within which an application can be made under the said provision, such an application can be made only within reasonable time, which has been held to be a period of three years. The Petitioners had raised such an objection regarding limitation before Respondent No. 4 - Dy. Superintendent of Land Revenue, Kolhapur, but the said objection stood rejected by an order dated 6.5.2017 passed by the said Authority. The Petitioners have filed this writ petition seeking direction to quash and set aside the entire proceeding initiated by Respondent No. 5 and specific prayers have been made for quashing the communication dated 23.12.2015 issued by Respondent No. 2 - Dy. Director of Land Records referring the application of Respondent No. 5 to Respondent No. 4 and for quashing of the communication cum direction dated 6.5.2017, whereby the objections raised by the Petitioners have been rejected and an order has been passed stating that the changes prayed for by Respondent No. 5 in the consolidation scheme are being put up before the superior authority for sanction.

5. On 29.6.2017 this Court had issued notice in the writ petition, directing that it could be disposed of at the stage of admission. In response to the notice issued by this Court, an affidavit in reply has been filed on behalf of Respondent No. 5 through power of attorney holder. It is stated in the said affidavit in reply that Respondent No. 5 is unable to come to Mumbai due to some domestic difficulties and illness, as a consequence of which affidavit in reply has been filed by his power of attorney holder. In the affidavit in reply, it is primarily submitted that contention of the Petitioners regarding delay of 44 years in reopening of the consolidation proceeding is absolutely false, since objections to the consolidation scheme have been raised from 1981 onwards. It is submitted on behalf of Respondent No. 5 that the Petitioners were very well aware about the objections being raised since 1981 and that the writ petition deserves to be dismissed only on the ground of suppression of facts by the Petitioners.

6. It is submitted in the reply that although the consolidation scheme was finalised in the year 1971 and that it was given effect on 23.3.1971 leading to mutation in the revenue record, the actual division of lands by measurement was yet to be done, and therefore, objections were raised in the year 1981. It is the contention of Respondent No. 5 that the objections raised in the year 1981 were being dealt with by Respondent- State Authorities, and that the Petitioners were also put to notice. A measurement was undertaken on 30.3.1989 and 31.3.1989 in presence of one of the Petitioners and the error in the consolidation scheme

was noticed by Respondent - State Authorities. It is contended that only the record needs to be amended in terms of the measurement undertaken in the year 1989. Respondent No. 5 contended that in the consolidation scheme finalised in the year 1971, there was an error because the land holding shown against his name was reduced drastically due to an error on the part of the Respondent Authorities.

7. A reference is made by Respondent No. 5 to letter dated 30.4.2012 sent by Respondent No. 4 - District Superintendent of Land Records stating that Respondent No. 5 ought to have filed an appeal as per Government Circular dated 17.3.2014 to raise the objections against the consolidation scheme, already finalised in the year 1971. It is in pursuance of the said letter, Respondent No. 5 on 22.12.2015 submitted an application before Respondent No. 2 - Dy. Director of Land Records, raising his grievance regarding consolidation scheme and the errors committed therein. Respondent No. 2 - Dy. Director of Land Records on 23.12.2015 sent the impugned communication to Respondent No. 5 stating that his case was being sent to Respondent No. 4 - Dy. Superintendent of Land Record, who would conduct necessary inquiry and take an appropriate decision in the matter. On this basis, Respondent No. 5 contended in the affidavit in reply that the Petitioners were not justified in claiming that there had been a delay of 44 years in seeking redressal of grievance by Respondent No. 5.

8. Apart from the contentions raised on merits in the affidavit in reply, Respondent No. 5 also claimed that the writ petition was not maintainable because the Petitioners had an alternate remedy to redress their grievance. Although it was stated that alternate remedy was available, it was not specified as to what the alternative remedy was. On this basis, Respondent No. 5 sought dismissal of the writ petition.

9. Learned counsel Mr. Manoj Patil appearing on behalf of the Petitioners vehemently submitted that the application dated 22.12.2015 submitted by Respondent No. 5 for reopening consolidation proceedings, which were finalised in the year 1971, was hopelessly barred by limitation and that Respondent Nos. 2 and 4 were not justified in entertaining the application and rejecting the objections raised on behalf of the Petitioners. The counsel for the Petitioners relied upon judgment of the Division Bench of this Court passed in the case of - Gulabrao Bhaurao Kakade (Smt.) since deceased by His Heirs & Legal Representatives Vs. Nivrutti Krishna Bhilare & Ors., 2001 (4) Mh.L.J. 31. wherein it has been held that although Section 32 of the said Act does not specify any period of limitation, within which an objection can be raised to the consolidation scheme, ordinarily, exercise of such power after three years from finalisation of the scheme may not be justified. The Division Bench of this Court has held that such power can only be exercised within reasonable period. The counsel appearing for the Petitioners also relied upon subsequent judgments of this Court, which have followed the law laid down by the Division Bench of this Court

in the aforesaid judgment. The subsequent judgments are - (i) Dattu Appa Patil & Ors., Petitioners Vs. State of Maharashtra & Ors., Respondents, 2006 (6) Bom. C. R. 246.; (ii) Ganpati Dadu Mali since deceased through heirs & Anr., Petitioners Vs. State of Maharashtra & Ors., Respondents, 2012 (3) Bom. C. R. 703.; (iii) Bapu Ganda Mirje & Ors., Petitioners Vs. State of Maharashtra & Ors., Respondents, 2015 (1) All. M. R. 697. On this basis, it was contended on behalf of the Petitioners that the impugned orders passed by Respondent No. 2 and Respondent No. 4 and the entire reopening of the finalised consolidation scheme deserved to be quashed and set aside.

10. Per contra, learned counsel Mr. Prathmesh Bhargude appearing for Respondent No. 5 submitted that the Petitioners were not justified in claiming that there had been a delay of 44 years in approaching the Authorities for modification of the consolidation scheme, finalised in the year 1971. According to the counsel appearing for Respondent No. 5, the first such objection in respect of the said consolidation scheme was raised in the year 1981 and it was only when letter dated 30.4.2012 was received from Respondent No. 4, stating that an appeal was required to be filed for seeking modification of the scheme, that the application dated 22.12.2015 was submitted by Respondent No. 5 before Respondent No. 2. It was further contended that the said objection raised in 1981 and the developments subsequent thereto were within the knowledge of the Petitioners and that they had deliberately suppressed these facts while filing the writ petition and that on this ground alone, the writ petition deserves to be dismissed. It was further contended that although the Division Bench of this Court in its judgment in the case of Gulabrao Kakade (supra) has laid down the law that exercise of power under Section 32 can be undertaken within three years of finalisation of the consolidation scheme, from the facts of the present case, it could not be said that application submitted by Respondent No. 5 was barred by limitation. Mr. Bhargude supported this contention by relying upon judgment of the Hon'ble Supreme Court in the case of - (i) Thansingh Nathmal & Ors., Appellants Vs A. Mazid, Superintendent Of Taxes, Respondent, AIR 1964 SC 1419; (ii) Prestige Lights Ltd., Appellant Vs. State Bank of India, AIR 1964 SC 1419; (iii) State of Jharkhand & Ors., Appellants Vs. Shivam Coke Industries, Dhanbad & Ors., Respondents, (2011) 8 Supreme Court Cases 656; and (iv) Ashok Kumar Pandey & Ors., Appellants Vs. State of Bihar, Respondent, (2008) 7 SCC 544.

11. In order to appreciate the contentions raised on behalf of the parties, it is necessary to consider the law laid down by the Division Bench of this Court in the case of Gulabrao Kakade (supra). The following extract from the said judgment is relevant for the present case:

"5. There is no dispute that the scheme was finalised by following the procedure contemplated under the Act of 1947 way back in the year 1973 whereby the earlier Survey No. 95/4 was divided into different Gat numbers and the said scheme was enforced and remained in force without any demur or objection by

any party for about 15 years. Section 32 gives power to the Settlement Commissioner to vary the scheme on the ground of error, irregularity or informality other than the errors referred to in Section 31-A. Section 32 reads thus :

"32. (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 section 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 communicate in writing any objection to such variation to the Settlement Commissioner.

(3) After receiving the objection under sub-section (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.

(3-A) If the scheme is varied under sub-section (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."

6. The power given to the Settlement Commissioner for variation of the scheme is on account of an error other than that referred to in section 31-A, irregularity or informality after following the procedure prescribed. Though there is no time limit prescribed under Section 32(1) for the Settlement Commissioner to vary the scheme which has come into force, but obviously even in the absence of any period prescribed under section 32, the said power can only be exercised within reasonable period in any case. What would be the reasonable period for exercise of power under Section 32(1) by the Settlement Commissioner may depend on facts and circumstances of each case and we do not intend to lay down any specific period for exercise of that power by Settlement Commissioner but ordinarily exercise of such power after three years of finalisation of scheme under section 22 may not be Justified. In the facts and circumstances of the present case, the exercise of power by Settlement Commissioner for variation of scheme which has come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within reasonable time. The fact is and that is not disputed that the earlier scheme was finalised in the year 1973 under the Act of 1947 to the knowledge of all the parties concerned. Nobody was aggrieved by the said scheme finalised under the Act of 1947 and the scheme came into force under section 22. The said scheme which had been finalised in accordance with law and came into force and continued to be in force, could not have been

unsettled by initiating the proceedings for variation under section 32 on the purported ground of error, irregularity or informality after a lapse of about 15 years. Thus, the exercise of power by Settlement Commissioner under section 32 for variation of the scheme in the facts and circumstances of the present case is grossly unjustified."

12. It is evident from the portion quoted above that any application seeking modification of finalised consolidation scheme under Section 32 of the said Act has to be made within three years of finalisation of the scheme. This position of law has been followed consistently by this Court.

13. The said position of law, which lays down that when a statute does not prescribe period of limitation, then a reasonable time, ordinarily a period of three years has to be read into such a statute, has been laid down by the Hon'ble Supreme Court in the case of Saantoshkumar Shivgonda Patil & Ors, Appellants Vs. Balasaheb Shevale & Ors., Respondents, (2009) 9 SCC 352. Thus, even if there is no specific period prescribed in Section 32 of the said Act as regards limitation, an application for modification or correction of finalised consolidation scheme can be made only within three years of such finalisation of the scheme.

14. Applying the said position of law to the facts of the present case, it is evident that consolidation scheme was finalised in the instant case on 4.3.1971, on being published in the Government Gazette, leading to modification of the mutation entries on 9.2.1973. If the period of three years limitation is applied, even from 9.2.1973, any application for modification or correction of the consolidation scheme in the present case could have been made upto 9.2.1976. It is the case of the Petitioners that Respondent No. 5 submitted such an application on 22.12.2015, which was hopelessly barred by limitation, while Respondent No. 5 has claimed that first such application, raising objection, was submitted in the year 1981. The documents on record referred to different dates as regards the said application moved in the year 1981. At one place the date appears as 30.10.1981 and at another place as 3.11.1981.

15. It is not clear from the documents on record as to who submitted the said application in the year 1981. Respondent No. 5 could not have submitted the said application because he was a minor at that time. This is evident from the copy of the power of attorney on record where the age of Respondent No. 5 as on 8.9.20017 has been stated as 52 years, which means that Respondent was born in the year 1965. The counsel appearing for Respondent No. 5 could not state as to who had submitted the said application in 1981 because copy of such application is not available. In any case, even if it is presumed that such application, raising objection, submitted in the year 1981 was moved by the predecessor of Respondent No. 5, it was still beyond the period of limitation of three years.

16. In the affidavit in reply filed on behalf of Respondent No. 5, it has been submitted that after 1981 till the year 1991 reminders were sent to the said

Authorities for deciding the said objection. It is also contended that finally by letter dated 30.4.2012 the Respondent No. 5 was informed that an appeal was required to be filed as per Circular dated 17.3.2014 for raising grievance in respect of the consolidation scheme finalised in the year 1971. It is further claimed that in pursuance of the said communication, the application dated 22.12.2015 was submitted before Respondent No. 2.

17. Even after the letter dated 30.4.2012, the said application dated 22.12.2015 was submitted after more than three years and a vague explanation was given on behalf of Respondent No. 5 in the affidavit in reply that during this period, Respondent No. 5 was making attempts to settle the matter with the Petitioners. The documents on record clearly show that, insofar as Respondent No. 5 is concerned, the application raising grievance in respect of consolidation scheme finalised in 1971 was submitted on 22.12.2015. It is not clear from record as to who had moved the earlier application in the year 1981. In any case, applying the said period of limitation of three years, neither the application moved by Respondent No. 5 on 22.12.2015 nor the purported objection submitted in the year 1981, fall within the period of limitation. Therefore, Respondent Nos. 2 and 4 could not have entertained the application submitted by Respondent No. 5 seeking modification of the consolidation scheme finalised in the year 1971.

18. Respondent No. 4 was not justified in issuing letter dated 23.12.2015 referring the application of Respondent No. 5 to the Respondent No. 4 - Dy. Superintendent of Land Records. The communication cum order dated 6.5.2017 issued by Respondent No. 4 rejecting the objection of limitation, raised by the Petitioners, was also not justified. In fact the entire proceeding undertaken by Respondent Nos. 2 and 4 in the present case was without jurisdiction, and therefore, deserve to be quashed and set aside.

19. The law of limitation is a matter of public policy, which lays down that stale claims cannot be agitated, and there has to be time limit, within which an aggrieved person can successfully raise his grievance. The Hon'ble Supreme Court has held in the case of Pundlik Jalam Patil (Dead) by LRS., Appellant Vs. Executive Engineer, Jalgaon Medium Project & Anr., Respondents, (2008) 17 SCC 448 as follows:

"26. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England, 4th Edn., Vol. 28, p. 266, para 605, the policy of the Limitation Acts is laid down as follows:

"605. Policy of the Limitation Acts.--The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to disprove the stale claim, and (iii) that persons with good causes of actions should pursue them with reasonable diligence."

27. Statutes of limitation are sometimes described as `statutes of peace'. An

unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This court in *Rajender Singh and Ors. v. Santa Singh and Ors.* (1973) 2 SCC 705 has observed : (SCC p. 712, para 18)

"18. The object of law of Limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches".

28. In *Tilokchand Motichand v. H. B. Munshi*, AIR 1970 SC 898, this court observed that this principle is based on the maxim "*interest reipublicae ut sit finis litium*", that is, the interest of the State requires that there should be end to litigation but at the same time laws of Limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

29. It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

Thus, it is clear that aggrieved person, like Respondent No. 5 in the instant case, ought to raise his grievance within the period of limitation.

20. The counsel appearing for Respondent No. 5 has relied upon judgments of Hon"ble Supreme Court in the case of *State of Jharkhand* (supra) and in the case of *Ashok Kumar Pandey* (supra) to contend that specific time limit of three years could not have been applied in the present case, as there is no limitation prescribed under Section 32 of the said Act. The aforesaid judgments relied upon by the counsel appearing for Respondent No. 5 are distinguishable because they are in the context of other enactments and in different factual situations. The present case concerning local statutes, pertaining the State of Maharashtra, is completely covered by the Division Bench judgment of this Court in the case of *Gulabrao Kakade* (supra), that has been followed consistently by applying the said position of law laid down by this Court, which is holding the field. Hence, we reject the aforesaid contention raised on behalf of Respondent No. 5. The counsel appearing for Respondent No. 5 relied upon judgment of Hon"ble Supreme Court in the case of *Prestige Lights* (supra) to contend that since the Petitioners had not placed all the facts before this Court and that they had not approached writ court with clean hands, the extraordinary jurisdiction under Article 226 of the Constitution of India may not be exercised in their favour. In this context, we find from the documents on record that the application for modification of the consolidation scheme was submitted by Respondent No. 5 on 22.12.2015. The documents on record do not show who had submitted the earlier application / objection submitted in the year 1981. As we have recorded above, Respondent

No. 5 was minor in the year 1981 and it is not clear as to who had moved the earlier objection. Thus, the Petitioners were factually correct in stating that the application for modification of the consolidation scheme was submitted by Respondent No. 5 on 22.12.2015 and therefore, we do not agree with the counsel appearing for Respondent No. 5 that the Petitioners made any false statement in the writ petition, so as to dismiss the petition.

21. The counsel appearing for Respondent No. 5 has relied upon judgment of the Hon'ble Supreme Court in the case of Thansingh Nathmal (supra) for the contention that the writ petition ought not to be entertained in the light of an alternative remedy available to the Petitioners. Although in the affidavit in reply, a bald statement was made that an alternative remedy was available to the Petitioners, it is only during the course of arguments that reliance was placed on Section 35 of the said Act, to claim that Petitioners ought to have filed a revision application before the State Government to challenge the impugned order. The said contention is also not sustainable because the rule of alternate remedy is a rule of prudence. It has been held by the Hon'ble Supreme Court in the case of Dr. (Smt.) Kuntesh Gupta, Appellant Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) & Ors., Respondents, (1987) 4 SCC 525 that a writ court can exercise jurisdiction even if an alternative remedy is available and that it is not an absolute bar to the maintainability of a writ petition, particularly when an authority has acted wholly without jurisdiction. In the instant case, when the application submitted by Respondent No. 5 could not have been entertained by the Respondent - State Authorities and the entire proceedings were without jurisdiction, this Court can very well exercise writ jurisdiction to put an end to such proceedings. Therefore, we reject the said contention raised on behalf of Respondent No. 5.

22. In the light of the above, we find that Respondent Nos. 2 and 4 were not justified in entertaining the application dated 22.12.2015 submitted by Respondent No. 5 seeking modification of the consolidation scheme finalised on 4.3.1971 and that exercise of power by the said Authorities under the provisions of the said Act was wholly without jurisdiction. Accordingly, we allow this writ petition and quash and set aside the letter 23.3.2015 issued by Respondent No. 2, the communication cum order dated 6.5.2017 issued by Respondent No. 4 and the entire proceeding of consolidation initiated in the present case on the basis of application dated 22.12.2015 submitted by Respondent No. 5. Rule is made absolute in the above terms with no order as to costs.