



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4000 OF 2020

1. Saifan Hussain Nadaf,
Since dead, Through Legal Heirs,
- 1-A Tolan Saifan Nadaf,
Age: 55 Years, Occu: Agriculture
R/o: Omerga (Chiwari)
Tq. Tuljapur, Dist. Osmanabad.
- 1-B Lalu Saifan Nadaf,
Age: 44 Years, Occu: Agriculture
R/o: Omerga (Chiwari)
Tq. Tuljapur, Dist. Osmanabad.
- 1-C Salim Ambir Nadaf,
Age: 27 Years, Occu: Agriculture
R/o: Sangmeshwar Nagar,
Akkalkot Road, Solapur,
Tq. & Dist. Solapur.
- 1-D Ghudumabi Ambi Nadaf,
Age: 60 Years, Occu: Household
R/o: Sangmeshwar Nagar,
Akkalkot Road, Solapur,
Tq. & Dist. Solapur.
- 1-E Rukyabee Bashumiya Nadaf,
Age: 55 Years, Occu: Household
R/o: Omerga (Chiwari)
Tq. Tuljapur, Dist. Osmanabad.
- 1-F Hussain Bashumiya Nadaf
Age: 28 Years, Occu: Agriculture
R/o: Omerga (Chiwari)
Tq. Tuljapur, Dist. Osmanabad.

- 1-G Tajoddin Bashumiya Nadaf
Age : 27 years, Occu.Agriculture,
R/o. Omerga (Chiwari)
Tq. Tuljapur,Dist.Osmanabad.
- 1-H Fatimabee Yunus Nadaf,
Age: 29 Years, Occu: Household
R/o. Murum, Tq. Omerga,
Dist. Osmanabad.
- 1-I Ruksana Jainoddin Nadaf,
Age: 28 Years, Occu: Household
R/o. Arbali, Tq. Tuljapur, Dist. Osmanabad.
- 1-J Tasmin Bashumiya Nadaf,
Age: 23 Years, Occu: Household
R/o: Omerga (Chiwari) Tq. Tuljapur,
Dist. Osmanabad.
- 1-K Yasmin Paingambar Nadaf,
Age: 25 Years, Occu: Household
R/o. Keshegaon, Tq. Tuljapur,
Dist. Osmanabad.
- 1-L Husainamabee Maula Nadaf,
Age: 50 Years, Occu: Household
R/o: Omerga (Chiwari)
Tq. Tuljapur, Dist. Osmanabad.
- ... Petitioners**

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The District Collector, Osmanabad.
3. The Deputy Director of Land records,
Aurangabad.

4. The Superintendent of Land Records,
Osmanabad.

5. Maheboob Faku Nadaf,
Since dead, Through Legal Heirs,

5-A Nabilal Maheboob Nadaf,
Age: 60 Years, Occu: Agriculture,
R/o: Omerga (Chiwari),
Tq. Tuljapur, Dist. Osmanabad.

5-B Salim Maheboob Nadaf,
Age: 57 Years, Occu: Agriculture,
R/o: Omerga (Chiwari),
Tq. Tuljapur, Dist. Osmanabad.

... Respondents

Shri Milind Patil, Advocate for the Petitioners.

Shri B. A. Shinde, A.G.P. for the Respondent Nos. 1 to 4.

SHRI S. V. Deshmukh, Advocate for the Respondent Nos. 5A and
5B.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 01.07.2025
JUDGMENT PRONOUNCED ON : 28.07.2025

JUDGMENT :-

. Rule. Rule is made returnable forthwith. Heard finally
with the consent of learned counsel for the parties.

2. This writ petition is directed against the order of the
learned Minister passed on 09.09.2019, setting aside order of
09.02.2011 passed by District Superintendent of Land Record,
and remitting the matter for fresh enquiry to the said authority.
Petitioner and the Respondent No.5 are litigating over ownership

of eight acres which is wrongly shown in the record of right after implementation of consolidation scheme.

3. Petitioner claims that he was owner of survey no.13/A measuring 10 acres and 7 gunthas situated at Omerga (Chivri) Tq. Tuljapur, District Osmanabad. After consolidation scheme, the said land is numbered as gat no.17 measuring 76R thereby reducing it's area by 8 acre. The Respondent No.5 was the owner of Survey no.13/B total admeasuring 15 Acres which is given Gat No. 19. It's a case of the petitioner that Gat no. 19 is formulated by consolidating Survey nos. 8/2,8/3 and 8/9/3 and making it upto 23 Acres and 20 gunthas. Due to the mistake, area of 8 acres belonging to the petitioner which was part of gat No. 17 is wrongly added to the area of gat No. 19. Gut No. 17 is reduced to 76R from 10 acres and 7 gunthas (4 Hectare). This was a cause of action for petitioner to approach civil court.

4. Petitioner had filed R.C.S No. 105 of 1995 for declaration and injunction in respect of disputed 8 acre which was part of his gat no.17 and wrongly added to gat no.19 after consolidation. After recording evidence of the contesting parties, suit was decreed on 26.02.2001. Being aggrieved R.C.A No. 66 of 2001 was preferred. It was allowed partly remanding the matter to the trial court for referring issue to the competent authority under 'The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947' (hereinafter referred to as

‘Act’ for the sake of brevity and convenience) vide judgment dated 18.07.2003.

5. After remand, Learned Trial Judge referred following issue to the competent authority as per Section 36(B) of the Act.

“Whether the plaintiff proves that this land has been converted into block No. 17 and he is owner of the area of 10 acres instead of area of 76R on the basis of old record of Survey number ?

6. After referring the issue, Respondent No.4/Superintendent of land record passed order dated 09.02.2011. Thereafter, trial court again decreed R.C.S No.105 of 1995 on 30.04.2015 which was assailed by the Respondent No.5 in R.C.A No.119 of 2015. It was dismissed on 21.01.2019. Questioning the decrees passed by the courts below, Respondent No.5 has preferred Second Appeal No.303 of 2019 which is tagged alongwith the present petition.

7. The Respondent No.5 approached Learned Minister on 03.01.2019, taking exception to the order dated 09.02.2011 passed by District Superintendent of Land Record along with application for condonation of delay. In pursuance of the notice, petitioner appeared before learned Minister. Delay was condoned and simultaneously order dated 09.02.2011 was recorded to be passed without considering consolidation record and contrary to the issue referred. Vide judgment and order dated 09.09.2019, order dated 09.02.2011 passed by District Superintendent of

Land Record was quashed and matter was relegated to the said authority for deciding it afresh. Petitioner is assailing this judgment by way of present petition under Article 226 and 227 of the Constitution of India.

8. Learned counsel Mr. Milind Patil for the Petitioner has taken me through various documents especially Exhibit-G to bolster a submission that after following due procedure of law, order dated 09.02.2011 was passed under Section 31A of the Act. Despite due publication of the order which is in the form of corrigendum, no objection was raised by the Respondent No.5 or any interested party. It is submitted that mutation entry no.596 was effected in pursuance of order dated 09.02.2011 and Respondent No.5 was aware of it. Neither the said order, nor the mutation entry was ever challenged. It is submitted that Respondent No.5 suffered decree in RCS No.105/1995 after remand on 30.04.2015 and thereafter his appeal i.e. RCA No.119/2015 was also dismissed on 21.01.2019. He approached learned Minister with application for delay condonation on 03.01.2019 after inordinate delay. It is submitted that learned Minister had no jurisdiction to entertain application of the Respondent No.5 and that too when competent Civil Courts decided against him.

9. Learned counsel further submits that there was delay of 7 years, 10 months and 23 days which was not explained in the application. It was suppressed that R.C.S. No.105/1995 was decreed against Respondent No.5 and the decree was confirmed

by the Appellate Court in R.C.A. No.119/2015. My attention is adverted to affidavit filed before the Minister in support of appeal to show that a false statement is made in its paragraph no.3. It is further submitted that its an error of jurisdiction to condone the delay and to decide matter on merits simultaneously on 09.09.2019. No proper opportunity of hearing was given to the Petitioner by the Minister. Appeal preferred by the Respondent No.5 under Section 257 of the Maharashtra Land Revenue Code (for the sake of brevity and convenience hereinafter referred as to the “M. L. R. Code”) was not tenable. It was suppressed that Writ Petition was filed and it was dismissed.

10. It is submitted that judgment and order dated 09.09.2019 is perverse because no specific reasons are assigned for interfering in the order dated 09.02.2011. It would amount to exceeding of jurisdiction and usurpation of powers. It is contended that impugned judgment is arbitrary because it did not refer to the finding recorded by the trial Court and the Appellate Court. Learned Counsel has also raised objection to the documents filed by the Respondent No.5 alongwith reply stating that those are filed for the first time in the High Court.

11. Petitioner relied on following judgments of this Court :

- I Judgment dated 13.06.2024 in Writ Petition No. 13677 of 2017 in the matter of Avantikabai Shankar Shinde and others Vs. Pratap Gunderao Jadhav and others.
- II Hanmant Jaisingh Ahirekar and others Vs. Baburao

Raghunath Ahirekar and others reported in 2019 SCC Online Bom. 1662.

- III Shankar Ramrao Rangekar Vs. Narayan Sakharam Sawant and others reported in 2013 (1) Mh.L.J. 706.
- IV National Buildings Construction Corporation Ltd. and another Vs. Regional Labour Commissioner (Central), Nagpur reported in 2006(1) Mh.L.J. 669.

12. In reply to the submission of the Petitioner, learned counsel Mr. S. V. Deshmukh appearing for the Respondent No.5 has referred to affidavit-in-reply. It is vehemently contended that the documents annexed to the reply were part of the proceeding before learned Minister and those are public documents born from City Survey and Revenue Record. Learned Counsel would submit that no recourse could have been taken to Section 31A of the Act. After the consolidation proceedings were over, it is not permissible to make any change in the record. Petitioner did not file say to application for condonation of delay before the Minister. Both the parties had conceded that delay as well as merit would be considered at the same time. Therefore petitioner is estopped from objecting impugned judgment. Learned counsel adverted my attention to revenue record, form no.12, form no. 4, to demonstrate that Survey No. 8/1 measuring 76R was in the name of petitioner's father and Survey No. 8/2, 8/3 and 9/3 were in the name of respondent No. 5 and his family members. Even the mutation entry no.307 prior to consolidation was not disputed, depicting the holding of the parties. It is further pointed out from mutation ledger that Survey No. 13/1 was

recorded in the name of Taty Kerba Sawant and Manik Bajarao Sawant at Serial No. 38 which belies petitioner's case. My attention is adverted to map which is at Exhibit-R5 to show Survey No.13 is not adjoining to Survey Nos. 8, 9. Hence claim of the petitioner that he is the owner of original Survey No. 13/A which is measuring 10 acre, is false. It is submitted that after conducting measurement and considering possession, the entries were recorded which are undisputed.

13. Learned counsel further submits that after consolidation proceedings, Survey Nos. 8/2, 8/3 and 9/3 were consolidated in gut No. 19. Area of the respective Survey numbers before the consolidation and after the consolidation, remained the same. After consolidation, Survey No.8/1 belonging to Petitioner, is converted into gut no.17 which was of only 76R. Hence it is contended that there was no need of any rectification so as to take recourse to Section 31A of the Act. The record of the consolidation proceedings, have not been challenged by anybody. The record of consolidation is totally overlooked by Superintendent of Land Record, while passing order dated 09.02.2011. It is submitted that observations of para No. (13) of the judgment dated 17.07.2003 of the Appellate Court are overlooked. Though specific issue was framed and referred for the scrutiny to the Consolidation Officer, no finding was recorded as per the reference.

14. It is submitted that order dated 09.02.2011 is passed

without following due procedure of law. No steps were taken against the parties who were dead namely Mehbub Faqru Nadaf and Papala Faqru Nadaf. No objective scrutiny was made by Superintendent of Land Record and issue was not answered by him which was referred by Civil Court. It is submitted that it is fraud and misrepresentation on the part of the Petitioner to claim that he is owner of Survey No. 13/A and its 8 acres was added to the gut no. 19. It is submitted that learned Minister had jurisdiction under Section 35 of the Act. It is submitted that order dated 09.02.2011 is vitiated by fraud and arbitrariness and learned Minister is not precluded from entertaining appeal.

15. It is submitted by learned Assistant Government Pleader that Minister is justified in partly allowing appeal and remanding the matter to the Superintendent of Land Record to conduct inquiry afresh.

16. Learned Counsel for the respondent No. 5 relied upon following judgments of the Supreme Court :

- A Collector Land Acquisition, Anantnag and another Vs. Mst. Katiji and others reported in AIR 1987 SC 1353.
- B Azgar Barid (D) by L.rs. and others Vs. Mazambi @ Pryaremabi and others reported in (2022) 5 SCC 334.
- C S. P. Chengalvaraya Naidu (Dead) by L.Rs. Vs. Jagannath (Dead) by L.Rs. and others reported in (1994) 1 SCC 1.
- D Ashok Balaji Ratan Vs. Nagpur Improvement Trust

Nagpur reported in 2004(6) Bom.C.R. 861.

- E Smt. Gulabrao Bhaurao Kakade since deceased Vs. Nivrutti Krishna Bhilare and others reported in 2001(2) All MR 518.
- F Limbraj Waman Yede Vs. State of Maharashtra and others reported in 2004(4) Bom.C.R. 945.
- G Dattu Appa Patil and others Vs. State of Maharashtra and others reported in 2006(6) Bom.C.R. 246
- H Judgment dated __ October 2011 in Writ Petition No. 1783 of 1990 in the matter of Ganpati Dadu Mali since deceased through L.Rs. Rakhmabai Ganpati Mali and another Vs. The State of Maharashtra and others.
- I Judgment dated 02.02.2018 in Writ Petition No. 11816 of 2016 in the matter of Jalindar Sadashiv Hirde and others Vs. The State of Maharashtra and others.
- J Judgment dated 13.02.2020 in Writ Petition No. 10200 of 2014 in the matter of Padmabai Narayan Chaudhary and others Vs. The Deputy Director of Land Records, Aurangabad and others.
- K Order dated 13.10.2021 in Second Appeal No. 86 of 2012 in the matter of Murlidhar Ramnarayan Chechani died through L.Rs. Omprakash Chechani and others Vs. Narayandas Raghunathdas Chechani died through L.Rs. Ramprasad Chechani and others.

17. Having considered rival submissions of the parties, I propose to formulate following points for determination :

- (i) Whether learned Minister has jurisdiction to entertain appeal of the Respondent No. 5?
- (ii) Whether condonation of delay/latches by learned Minister is legal and proper?
- (iii) Whether order dated 09.02.2011 passed by Superintendent of Land Record, is legal and proper?
- (iv) Whether the impugned judgment and order dated 09.09.2019 passed by learned Minister is legal and proper?
- (v) Whether any interference by High Court under Article 226 and 227 or under any other provisions is called for?

18. Before embarking on various submissions for addressing above referred points, it is necessary to chalk down the admitted facts as follows :

- (a) R.C.S. No. 105/1995 was filed by the Petitioner and it was decreed on 26.02.2001. Being aggrieved, R.C.S. No. 66/2001 was filed by which matter was relegated to trial Court to refer issue to the authority under the Act. After receiving order of Superintendent of Land Record dated 09.02.2011, suit was again decreed. Being aggrieved, R.C.A. No. 119/2015 was preferred and it was dismissed. From those proceedings, Second Appeal No. 303/2019 is filed which is pending for admission.
- (b) Petitioner claims to be owner of previous survey No.13/A

which is present gut no.17. Respondent No.5 claims ownership of previous survey no.8/2, 8/3 and 9/3, which is gut no. 19.

- (c) City survey record, record of consolidation proceedings and revenue record in respect of gut nos. 17 and 19 is available.
- (d) Petitioner was heard by learned Minister before passing impugned order.
- (e) Grievance of the Petitioner is that area of 8 acres from his gut no.17 is wrongly and illegally incorporated in area of gut no.19 belonging to Respondent No.5 who is in possession of the same.

19. Learned counsel Mr. Patil for the petitioner raised strong objection for the document annexed to affidavit-in-reply. Those are part of revenue and the consolidation record. There is no rejoinder to reply challenging the existence or source of the documents. Besides that learned Minister in the impugned judgment has referred the record, which was before him. Therefore the objection raised by the Petitioner is liable to be overruled. This Court finds it fit to refer to the record which is genuine, old and unchallenged.

20. Point No. (i) : Whether learned Minister has jurisdiction to entertain appeal of the Respondent No. 5 ?

20-A. Respondent No. 5 approached learned Minister after

seven years and ten months. Respondent No. 5 challenged order dated 09.02.2011 passed by Superintendent of Land Record before Minister by filing appeal on 03.01.2019 along with application for condonation of delay under Section 35 and 36 of the Act. Impugned judgment of Minister refers to Section 257 of M. L. R. Code for entertaining appeal. It is strongly contended by the Petitioner that Minister had no jurisdiction either under Section 35 or 36 of the Act or under Section 257 of the Code. It's a matter of record that in pursuance of judgment and decree dated 18.07.2003, trial Court referred issue under Section 36B of the Act for the decision vide communication dated 06.02.2007. Hence inquiry was conducted by Superintendent of Land Record and the decision was rendered vide order dated 09.02.2011. The decision was recorded to be under Section 31A of the Act. Being aggrieved, Respondent No. 5 preferred appeal under Section 35 of the Act.

21. Section 35 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 reads as follows :

The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947

1. ...
2. ...

35. Power of [State] Government [or Commissioner] to call for proceedings :

The [State] Government [or the Commissioner] in respect of such matters as the State Government may by general or special order

specify in this behalf may at any time for the purpose of satisfying itself [or himself as the case may be,] as to the legality or propriety of any order passed by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it or [he, as the case may be,] thinks fit:

[Provided that no order shall be varied or revised until the parties interested have been given a reasonable opportunity of showing cause against the proposed variation or revision of the order.]

22. The State Government is empowered to examine any order passed by the Sub-ordinate Officer. These powers are akin to Superintending powers. No period of limitation is prescribed for invoking the powers. The powers are exercisable in a disposed of matter also. Mentioning of Section 257 of the MLR Code in the impugned judgment is inconsequential because order did not emanate from the proceedings under Land Revenue Code. It's trite law that wrong mentioning of provision does not vitiate order. I am of the considered view that learned Minister had jurisdiction to receive and entertain appeal, albeit subject to condonation of delay. Hence I answer point no.1 in affirmative.

23. Point No. (ii) : Whether condonation of delay/latches by learned Minister is legal and proper ?

23-A. Impugned judgment passed by the learned Minister shows that delay was condoned and matter was decided on merits, simultaneously. A separate application was filed by Respondent No. 5 along with appeal memo for condonation of delay on 03.01.2019. Admittedly Petitioner did not file any separate say to application for condonation of delay. Petitioner

was issued notice and had opportunity to contest application for delay. Petitioner did not raise grounds in the petition that any prejudice is caused to him for deciding application for condonation of delay and merits of the appeal simultaneously in the self same judgment. In the absence of specific challenge, it has to be held that there was implied consent of the petitioner to conduct such exercise simultaneously. The submissions of the petitioner objecting the course undertaken by Minister cannot be accepted.

24. No limitation is prescribed for invoking powers under Section 35 of the Act. By separate application various grounds were quoted by the Respondent No. 5 for condonation of delay. Those were not controverted by the petitioner by filing any say. Considering these facts, the condonation of the delay by the Minister is justified, albeit more reasoned order should have been passed. However it is not that the reasons are lacking. Considering over all conspectus of the matter, learned Minister appears to have preferred to condone delay and to go into the merits of the matter.

25. It is submitted that when limitation is not prescribed, reasonable period of three years is presumed for exercising jurisdiction. Respondent No. 5 has shown the circumstances for filing appeal belatedly. In the peculiar facts of the case, the authority under Act was under obligation to conduct inquiry and render findings to the issue referred so as to assist Civil Court to decide R.C.S. No. 105/1995. In such a situation entertaining of

the appeal beyond three years cannot be said to be without jurisdiction or exceeding of the jurisdiction. Ultimately Minister is found to have rectified Superintendent of Land Record. In that view of the matter, I find that learned Minister rightly entertained appeal under Section 35 by condoning delay.

26. Point No. (iii) : Whether order dated 09.02.2011 passed by Superintendent of Land Record, is legal and proper ?

26-A. In pursuance of the direction given by Lower Appellate Court in judgment dated 18.07.2003 in RCA No. 119/2015, suit was relegated to the trial Court. Following are the relevant observations :

“13. The defendants/appellants have produced on record the certified copies of public documents along with list Ex.23 before this Court. It is true that the documentary evidence produced on record before Trial Court unmistakably point out that the plaintiff is the owner in possession of 10 acres of land before consolidation and after the consolidation the land admeasuring 76 R. stands mutated in his name as gat no.17. The defendants have produced on record the consolidation extract at Exh. 58. It appears that the land sy. no.8/2 and 9/3 admeasuring 9 H. 50 R. converted into gat no.19. The defendants/appellants in continuation with that extract have produced on record certain documents as stated above. On careful perusal of the Hissa Form-4 at Ex.27 before this court and the certified copy of Hissa Namuna-12 at Ex.28, I find that the defendants are the owners in possession of the land sy.no.8/2, 8/3 and 9/3. The consolidation extract before and after consolidation of gat no.19 clearly shows that the defendants were in possession of the land admeasuring 9H. 50R. prior to the consolidation and accordingly gat no.19 came to be formed. I am just failed to understand on what basis the inference could be drawn that 8 acres of the land belonging to

the plaintiff, incorrectly added in the area of the land gat no.19.

14. In order to resolve this controversy the civil court is not supposed to sit on the chair of the consolidation officer, nor it can be resolved on the basis of the letter issued by the T.I.L.R. Tuljapur Ex.52. If the consolidation authority found the scheme defective on account of the error, so far as the land owned and possessed by the plaintiff is concerned certainly by taking recourse of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, the scheme could be amended and even the possession for the person evicted could be restored.

15. Apart from it, since the suit is instituted before the civil court and the preliminary issue has been decided in favour of the plaintiff, it would be just and proper to refer the consolidation issue to the competent authority as provided u/s 36-B of the Bombay Prevention of Fragmentation and Consolidation Holdings Act. On receipt of the decision, it would be legal and proper to dispose of the suit in accordance with the procedure applicable thereto. Thus, in my considered opinion, the matter deserves to be remanded to the Trial Court with directions to refer the consolidation issue to the competent authority as provided u/s36-B of the Act and dispose of the suit after receipt of the decision. Accordingly, I answer the point no.6 in the affirmative and remaining points as does not arise and proceed to pass the following order.”

26-B. In view of above observations, Appellate Court remanded the matter by following order :

ORDER

A. Appeal is partly allowed.

B. The judgment and decree passed by the Civil Judge, JD, Tuljapur dated 26.2.2001 in RCS no.105/95, is hereby set aside.

C. The matter is remanded with the following directions :

- i) Re-admit the suit under its original number and the evidence recorded during the original trial shall be the evidence during the trial after remand.
- ii) The Trial Court is hereby directed to refer the consolidation issue to the competent authority, as provided under section 36-B of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, and on receipt of the decision, shall dispose of the suit in accordance with the procedure applicable thereto.
- iii) Parties to the suit shall put their appearance before Trial Court on 18.8.03.

D. Parties to bear their own costs.

27. Trial Court framed following issue and referred it under Section 36(B) of the Act to Deputy Director Land Records :

“Whether the Plaintiff proves that his land has been converted into block no.17 and his owner of area 10 acres instead of area 76R on the basis of old record survey number?

27-A. The Deputy Director of Land Record referred matter to Superintendent of Land Record, Osmanabad. It was specifically directed that inquiry be conducted into old survey number and gut number after verifying the record. Thereafter Superintendent of Land Record conducted inquiry and passed order dated 09.02.2011 which was treated to be corrigendum.

28. Respondent has produced on record along with affidavit-in-reply notice issued by Taluka Inspector of Land Record to the concerned parties including Petitioner and heirs of respondent No.5. Out of five persons, two of them Mr. Mehbub and Papalal were shown to be dead. It further appears from record that Mehbub died on 04.10.2006. There is no record to show that heirs of the deceased party were served. Order dated 09.02.2011 does not indicate anything in that regard. Learned counsel for the respondent No. 5 is right in contending that no care was taken to extend opportunity of hearing to all heirs of respondent No. 5. *Prima facie*, inquiry and the order passed by the Superintendent of Land Record is against principles of natural justice.

29. Perusal of the order dated 09.02.2011 shows that only because of the clerical and arithmetical error in the proforma of consolidated lands rectification was made and it was publicized. No reasons are assigned by the Superintendent. It is not clear as to whether the old record before consolidation and after consolidation in respect of the land of the parties was ever taken into account or not. So much so learned Officer did not bother to clarify as to what was actual mistake. The order is cryptic and perverse. Learned Officer lost sight of the directions of the Appellate Court mentioned in judgment dated 18.07.2003.

30. The issue referred by the trial Court for conducting inquiry remained unanswered, obviously because no exercise was undertaken for verification of the old record. Instead of that, some correction is made. It was referred to be published on a

notice board. Public notice was given on 01.04.2011. A panchanama was conducted. No finding as such is recorded by the Officer so as to enable the Civil Court to arrive at some conclusion on the technical issues. The enquiry undertaken by the Superintendent is thoroughly uncalled for and misconceived. It reflects non-application of mind and it has led to complication.

31. There is fundamental flaw in the order dated 09.02.2011. Trial Court referred issue for recording findings as the litigating parties had rival claims for the constitution of their respective lands gut nos. 17 and 19. It was neither directed by the Appellate Court, nor trial Court to undertake any exercise under Section 31A of the Act. Revenue record and consolidation record was available and after verification, Superintendent was expected to record a finding as to whether after consolidation there was any change in the area of gut no.17. Whole exercise of Superintendent and resultantly order dated 09.02.2011 is misconceived, arbitrary and patently illegal. I answered point no.3 in the negative.

32. Point No. (iv) : Whether the impugned judgment and order dated 09.09.2019 passed by learned Minister is legal and proper ?

32-A. Learned Minister exercised jurisdiction U/Sec. 35 of the Act. This is supervisory jurisdiction meant for examining legality and propriety of the order dated 09.02.2011 passed by the Superintendent. Impugned judgment was passed after

hearing the parties and considering revenue and city survey record of consolidation. A very limited issue was referred to the Superintendent to return findings after verifying old record. Instead of that powers U/Sec. 31A were exercised and it was recorded that some arithmetical or typographical mistake occurred in the consolidation scheme and he proceeded to issue corrigendum. A letter dated 15.11.2010 addressed by the Deputy Director of land record delegating Superintendent of Land Record to conduct inquiry and record finding itself is against the purport for which the issue was referred. By the said letter unnecessary scope was enhanced resulting into usurpation of jurisdiction. Those are misconceived directions. Learned Minister has rightly recorded that when the matter was pending before Civil Court so called corrigendum could not have been issued by the Superintendent vide order dated 09.02.2011.

33. Learned minister is justified in holding that Deputy Director totally overlooked the observations of the District Court in the judgment dated 18.07.2003. As none of the authorities under the Act properly understood the purport for which the issue was referred, learned Minister relegated the matter for fresh inquiry to the Superintendent of Land Record. Impugned judgment is within four corners of law, because Superintendent has committed dereliction of duties.

34. Learned counsel for the respondent Mr. Deshmukh adverted my attention to the documents produced along with his reply, which are part of revenue and city survey record. There is

overwhelming record to show that petitioner's land gut No. 17 is constituted by Sy. No. 8/1 adm. 76R. It was never constituted by Sy. No. 13/A having area 10 acres or 4H. Record further reveals that respondent No. 5 is the owner of gut No. 19, which is constituted by Sy. No. 8/2, 8/3 and 9/3. The village map clearly shows that Sy. No. 13 was not adjoining Sy. No. 8 or 9. Therefore, no part of Sy. No. 13 could be a constituent of gut No. 17. Sy. No. 13 is shown to be of Tatyaba Kerba Sawant. Hissa form No. 12 and mutation entries corroborate the respondent No. 5. Mutation entry No. 307 also supports his claim. The said record was never challenged. More clinching piece of evidence is Exhibit R – 3 to show that prior and post position of lands of the parties and their area. Gut No. 17 is only 76R and gut No. 19 is 9H 50R. A mutation entry No. 294 supports the respondent. Prima facie there is strong evidence that there was no change in the area of the lands belonging to parties after consolidation. Prima facie, 7/12 extract of land Sy. No. 13/A on the basis of which petitioner is relying his claim is not in consonance with the city survey record and his claim is not corroborated.

35. The Superintendent of Land Record should have examined Yojana patrak, mutation entries, shet pustak, Namuna Form No. 12 and Hissa Form No. 4 before passing order dated 09.02.2011. I find substance in the submissions of Mr. Deshmukh. Learned Minister by the impugned order only relegated matter to the Superintendent of Land Record for looking into above referred record. In find that impugned judgment is perfectly legal and valid.

36. Point No. (v) : Whether any interference by High Court under Article 226 and 227 or under any other provisions is called for ?

36-A. It is submitted by petitioner that already Writ Petition Stamp No. 13906 of 2013 was filed in the High Court by the respondent No. 5 and it was rejected on 14.10.2013, which is suppressed. This submission is repelled by the respondent in para No. 21 of the reply. The registration of petition was refused for not removal of objections. It was filed by the respondent No. 5B and other heirs and not by the respondent No. 5A Nabila Maheboob Nadaf. The writ petition was not dealt with on merits. Filing of earlier petition would not be an impediment.

36-B. Even if, it is presumed that learned Minister has committed error of jurisdiction in entertaining matter after more than seven years, this Court while exercising powers under Article 226 and 227 of the Constitution of India can very well take cognizance of the order dated 09.02.2022 passed by the Superintendent. Independently, I find that inquiry conducted by the Superintendent is superfluous and extraneous. There is dereliction of duties. There was no need to resort to section 31A of the Act. The overwhelming record showing positions of the lands of the parties before and after consolidation is overlooked. The order of Superintendent is likely to mislead Civil Court. Under these circumstances, this Court cannot be a silent spectator and permit the illegalities to be perpetuated. This

Court would be failing in its duty, if the order dated 09.02.2011 is not quashed and set aside, which is perverse and most arbitrary. I, therefore, find that respondent has made out a case to interfere in the order dated 09.02.2011.

37. There is another facet of the matter. The Second Appeal No. 303 of 2019 has also been assigned to this Court only arising out of R.C.S. No. 105 of 1995. It is within purview of High Court while exercising jurisdiction U/Sec. 100 of the C. P. C. to resort to powers U/Sec. 103 of the C. P. C. Therefore, the issue referred to the Superintendent has bearing over the merits of the second appeal. I am of the considered view that findings recorded by the Superintendent on the issue referred to him would assist this Court in dealing with second appeal also.

38. Learned counsel for the petitioner relies on the judgment in the matter of Avantikabai Shankar Shinde and others Vs. Pratap Gunderao Jadhav and others (supra). My attention is adverted to para Nos. 21 and 22. The principles laid down there in cannot be made applicable because in the matter at hand the title and ownership is to be ultimately decided by the Civil Court. Only issue pertaining to consolidation scheme is referred. Further reliance is placed on the judgment in the matter of Hanmant Jaisingh Ahirekar and others Vs. Baburao Raghunath Ahirekar and others (supra). In that case application for condonation of delay and the merits of the matter were decided simultaneously by the Tribunal. The case in hand shows that petitioner did not file any say to the application for condonation of delay and impliedly consented for

deciding it along with merits. Hence this judgment is of no avail.

39. Further reliance is placed on the judgment in the matter of Shankar Ramrao Rangekar Vs. Narayan Sakharam Sawant and others (supra). It is also on the same line as referred above. Further reliance is placed on the judgment in the matter of National Buildings Construction Corporation Ltd. and another Vs. Regional Labour Commissioner (Central), Nagpur (supra). The judgment of the coordinate bench is distinguishable and would not enure to the benefit of the petitioner.

40. Learned counsel for the respondent No. 5 relied on various judgment in the matter of Smt. Gulabrao Bhaurao Kakade since deceased Vs. Nivrutti Krishna Bhilare and others (supra). The judgment is distinguishable on facts and ratio therein cannot be made applicable. Another judgment relied on by the respondent No. 5 in the matter of Limbraj Waman Yede Vs. State of Maharashtra and others (supra). It is pertaining to the power of the settlement Commissioner if there is clerical or arithmetical mistake in the consolidation scheme. In the case at hand Superintendent was not called upon to exercise power U/Sec. 31A of the Act, hence this judgment is not relevant.

41. The third judgment relied by the learned counsel for the respondent No. 5 is in the matter of Dattu Appa Patil and others Vs. State of Maharashtra and others (supra). It is in respect of exercise of power by the Consolidation Officer after 27 years, which is held to be impermissible. This judgment is also not applicable to the

present case. Reliance is also placed on the judgment of this Court in the matter of Ganpati Dadu Mali since deceased through heirs and another Vs. The State of Maharashtra and others (supra). This judgment is regarding jurisdiction of the officer to pass order U/Sec. 32 of the Act. This judgment is not relevant to the issue germain, because in the case at hand powers were exercised by the Superintendent due to the reference of issue by the Civil Court. Judgment in the matter of Jalindar Sadashiv Hirde and others Vs. The State of Maharashtra and others (supra) is also relied by the respondent No. 5. It pertains to the power of the competent authority to entertain application U/Sec. 31A of the Act beyond particular period that is not the issue germain in the present petition. I have already recorded that in present case Sec. 31A of the Act should have been invoked.

42. Further reliance is placed on the judgment in the matter of Padmabai Narayan Chaudhari and others Vs. The Deputy Director of Land Records, Aurangabad Region and others (supra). It is on the point that if the period of limitation is not prescribed, then what would be construed to be reasonable period. This judgment has no relevance on the merits of the matter. Judgment in the matter of Murlidhar Ramnarayan Chechani Died through L.Rs. Omprakash Chechani and others Vs. Narayandas Raghunathdas Chechani died thorough L.Rs. Ramprasad Chechani and others (supra) is also relied by the respondent No. 5. This judgment is about powers U/Sec. 31A of the Act. It cannot be made applicable to our case.

43. The respondent No. 5 has also placed reliance on the

judgment of the Supreme Court in the matter of S. P. Chengalvaraya Naidu (Dead) by L.Rs. Vs. Jagannath (Dead) by L.Rs. and others (supra). It is on the point that judgment or decree obtained by fraud that would be treated as nullity. It is not applicable to the case at hand. Further reliance is also placed on the judgment of the Supreme Court in the matter of Collector Land Acquisition, Anantnag and another Vs. Mst. Katiji and others (supra). It is for condonation of delay and has no application to the case at hand. Last judgment relied by the respondent No. 5 is in the matter of Ashok Balaji Ratan Vs. Nagpur Improvement Trust, Nagpur (supra). It is about approach of the Court in dealing with delay condonation. It is not applicable to our case.

44. Upshot of the above discussion is that :-

- A. The writ petition is dismissed by upholding the order of the Minister, with certain modification.
- B. The Superintendent of Land Record shall conduct an inquiry and return findings on modified issue, “what are the constituents survey numbers of land gut Nos. 17 and 19 and what is their total area before and after the implementation of the consolidation scheme ?”
- C. Parties shall appear before the Superintendent of Land Record, Dharashiv on 07.08.2025.
- D. The exercise shall be completed within a period of three months from today.

- E. Opinion expressed in the judgment is *prima facie* in nature.
- F. Rule is discharged. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

45. After pronouncement of the judgment, learned counsel for the petitioners prays for continuation of interim relief. The request is opposed by the learned counsel Mr. Deshmukh for the respondents.

46. Interim relief was in operation till final disposal of the matter. I have already directed the Superintendent of Land Record to complete the enquiry for returning finding on a particular issue within a period of three (03) months from today. Interim relief continued till this day shall be extended for a period of three (03) weeks from today only. On expiration of the said period, interim relief shall stand vacated automatically without reference to this Court.

47. However, litigating parties shall report the Superintendent of Land Records, Dharashiv on 07.08.2025 and, they may pray for time.

[SHAILESH P. BRAHME, J.]

bsb/July 25