

(2001) 02 BOM CK 0098**Bombay High Court****Case No:** Writ Petition No. 4513 of 1992

Shri Narayan S. Bite and Others

APPELLANT

Vs

Shri Mahadeo Shripati Pise and
Others

RESPONDENT

Date of Decision: Feb. 14, 2001**Acts Referred:**

- Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 -
Section 36(A)

Citation: (2001) 2 ALLMR 414 : (2001) 3 BomCR 262 : (2001) 3 BOMLR 540**Hon'ble Judges:** A.M. Khanwilkar, J**Bench:** Single Bench**Advocate:** Shri S.B. Deshmukh, Anil and V. Anturkar, for the Appellant;**Judgement**

A.M. Khanwilkar, J.

This writ petition takes exception to the order passed by the Civil Judge. J D. Atpadi dated 14.8.1992 below Exh. 28 in R.C.S. No. 20 of 1989.

2. By the application below Exh. 28 the Petitioners original defendants prayed that the Court may frame issue regarding Consolidation Scheme and the same be referred to the Competent Authority, under the Bombay Fragmentation and Consolidation Act for being adjudicated as the said issues would arise out of the pleadings of the parties and could be exclusively settled, decided and/or dealt with by the Competent Authority under the said Act. This application was, however, rejected by the Court below mainly on the ground that the Consolidation Officer has no power to decide the title of the parties while implementing the Consolidation Scheme. The Court held that no powers are conferred on the Consolidation Officer to deprive a person of his title, because the issue of title is an absolute jurisdiction of Civil Court. In the circumstances, the Trial Court rejected the said application for referring the issues mentioned in the said application for being decided by the

Competent Authority under the said Act.

3. Although all the Respondents have been served, none appeared when the matter was called out for hearing.

4. Mr. Deshmukh placed emphasis on the averments made in the plaint filed by the Respondent No. 3 to contend that issues framed and mentioned in the application would arise in view of the said pleadings. On going through the plaint, I have no hesitation in accepting the said argument, for the Respondent No. 3 in the plaint has based his claim on the assertion that the Consolidation Officer did not follow the due procedure of law while preparing the Consolidation Scheme. Undoubtedly, the issues that have been mentioned in the application below Exh. 28 would arise for consideration in view of the assertions in the plaint filed by Respondent No. 3. The issues are reproduced thus :-

"(1) Whether village committee was established at the time of Consolidation Scheme at village Awalavi.

(2) Whether plaintiffs or defendants were involved in the village committee.

(3) Whether previous notices were given to the land holder.

(4) Whether plaintiffs as well as defendants were present at the time at formation of Scheme.

(5) Whether parties to the suit have consented for formation of Scheme.

(6) Whether record was prepared on the strength of any evidence by Consolidation Officer.

(7) Whether Scheme was confirmed finally."

5. Since each of the abovesaid issue, mentioned in the application, can be exclusively tried and decided by the Competent Authority under the Act, it is not possible to sustain the conclusion reached by the Court below that suit could proceed before the Civil Court. In my view each of the issue mentioned in the application below Exh. 28 is relevant for full and complete adjudication of the matter. It is well settled that the Civil Court has no jurisdiction to settle, decide and/or deal with any question which can or under the Act required to be decided by the Authority or the State Government. There is express bar of jurisdiction of the Civil Court in this behalf as provided for in Section 36A of the said Act. It would be apposite to refer to the decision of the Apex Court in *Shevantabai Maruti Kalhatkar v. Ramu Rakhamaji Kalhatkar and Anr*, relied upon by the Petitioners to contend that when any issue would arise for consideration in the suit which can be decided, settled or dealt with by the Competent Authority under the Act, it is not open for the Civil Court to adjudicate the same because of the express bar u/s 36A of the Act.

6. The Court below has relied on the decision of the Apex Court in State of Punjab and Anr. v. Suraj Parkash Sapur etc... In my view, the said judgment has no bearing on the question that would arise for consideration in the present case. The Trial Court misdirected itself on relying on the said judgment. However, I would prefer to rely on the latest decision of the Apex Court relied upon on behalf of the Petitioners which squarely applies to the question that arises in the present proceedings.

7. In the circumstances, the petition succeeds and the impugned order passed by the Court below dated 14.8.1992 is quashed and set aside and instead the application preferred by the petitioners before the Lower Court below Exh. 28 is allowed.

8. Order accordingly. No order as to costs.