



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

WRIT PETITION NO. 8018 OF 2022

Laxmibai Raosaheb Kadam And Others

VERSUS

The State Of Maharashtra Through Its Secretary And Others

Mr. R. S. Deshmukh, Senior Advocate a/w Mr. Shriram Deshmukh i/b Mr. R. J. Nirmal, Advocate for Petitioners
Mr. B. A. Shinde, AGP for Respondent Nos. 1 to 4
Mr. P. R. Katneshwarkar, Senior Advocate i/b Mr. A. A. Fulfagar, Advocate for Respondent No. 5

CORAM : R. M. JOSHI, J.

RESERVED ON : 25th February, 2025

PRONOUNCED ON : 03rd March, 2025

PER COURT :-

1. This petition takes exception to order dated 22.07.2022 passed by Tahsildar Aundha, Dist. Hingoli which reads thus :-

उपरोक्त संदर्भीय विषयी अर्जदार 1)शिवाजी दादाराम कदम व इतर 2 रा.तपोवन यांनी दि.11/03/2022 रोजी दिलेला अर्ज 2)अर्जदार श्री. मारुती पि.जयराम कदम रा.तपोवन यांचा विनंती अर्ज दि. 26/04/2022 सदरचे दोन्ही मुळ अर्ज आपल्याकडे पाठविण्यात येत असुन प्रकरणात मा.विभागीय आयुक्त, औरंगाबाद यांनी दि.04/01/2022 रोजी दिलेल्या निर्णयानुसार आपण मा.उपजिल्हाधिकारी (भुसुधार) परभणी यांचे आदेश दि. 21/11/1993 नुसार मो.तपोवन येथील सर्वे नं. 31 गट क्र. 76 मधील 3 हे 25 आर जमीनीचा ताबा हा मारोती जयराम कदम यांना देण्याची कार्यवाही मंडळ अधिकारी विभाग, जवळा बाजार व तलाठी सज्जा,आजरसोडा यांच्या समवेत जायमोक्यावर जावुन करावी (प्रकरणात न्यायालयाचा स्थगिती आदेश आहे किंवा कसे या बाबत अर्जदार गैरअर्जदार यांच्याकडून आपण पडताळणी करुन) व सदरची जमीनीचा ताबा मारोती जयराम

कदम यांना दिल्या बाबत पंचनामा व ताबा पावती करून करून
आपला लेखी अहवाल या कार्यालयास सादर करावा. करीता
आपणास कळविण्यात येत आहे.

2. The facts led to the filing of the petition can be narrated in brief as under :-

It is the case of petitioner that in respect of the land bearing Sy. No. 31, admeasuring 10A 39R, situated at village Tapowan, Tq. Basmat, Dist. Parbhani, Inamdar is declared as re-grantee as per the Hyderabad Abolition of Inam and Cash Grants Act, 1954 (for short "the Act") The legal heirs of the Inamdar sold the land to the one Sawandkar and subsequently the same to the father and uncle of petitioners in the year 1988. The petitioners claimed to be in possession of the subject land.

3. In the year 1986, suo-moto proceedings (File No. 1986/INAM/47 and 80) was initiated by Deputy Collector Land Reforms under the provisions of the Act. By order dated 18.05.1993, direction was issued to hand over the possession of the subject land to Maroti Jayram Kadam i.e., Respondent No. 5. This order came to be assailed by petitioners before the Commissioner in case No. 1993/WTN/A/18 and by order dated 20.08.1993 the proceedings before Deputy Collector was remanded by setting aside order dated 18/05/1993. On remand Deputy Collector passed order dated 21.12.1993, declaring Maroti as re-grantee,

but direction was issued to take land under government supervision. A review was sought of the said order. Deputy Collector (Land Reform) by order dated 05/01/1994, set aside order dated 21.12.1993, with further direction that in case purchasers fail to deposit "Nazarana" within stipulated period, the land would be taken under Government supervision. Against, this order appeal was filed under Section 2A(2) of the Act, before Additional Divisional Commissioner, Aurangabad, ebig case No. 1994/WTN/App/1. In this proceedings, order dated 21.12.1993 was set aside and case before Deputy Collector (Land Reform) was restored. This order was subjected to challenge in Writ Petition No. 14276/2017. This Court by order dated 04/03/2020, set aside the said order and remanded appeal for decision a fresh. On remand, Additional Division Commissioner, passed order dated 04/01/2022, confirming order dated 21.12.1993 passed by Deputy Collector (Land Reform). Being aggrieved by this order Writ Petition No. 928/2022 was preferred by present petitioners. By judgment dated 25.04.2022, petition was dismissed. The challenge to this order is pending before Supreme Court in SLP(C) No. 001731-001732/2023. It is a case of the petitioner that in the light of above facts, impugned order dated 22.07.2022 came to be passed by Tahsildar directing handing over of the possession of the subject land to Maroti. Being aggrieved by the said order, present petition.

4. Learned Senior Counsel for petitioners submits that when the petition came to be filed on 27.07.2022, application for review of the order passed by this Court in Writ Petition No. 928/2022 was pending. It is his contention that after the said review application was heard, same was reserved for judgment, order impugned came to be passed, which indicates that the order in question is passed hurriedly. Apart from this, it is his contention by drawing attention of the Court to the order passed by the Additional Commissioner which is confirmed by this Court, that now order passed by Deputy Collector (Land Reform) dated 21.12.1993 holds the field. According to him in the said order, there is no direction of handing over of possession to Maroti and on the contrary, it is said that the land being taken under the Government supervision. It is thus his submission that in no circumstances, order could have been passed for handing over of the possession thereof to Maroti. By referring to Section 53 of the Maharashtra Land Revenue Code (for short "the Code"), it is sought to be argued that for the purpose of eviction of any person who is in unauthorised use and occupation of the land, atleast a summary enquiry is mandated before taking over of the possession of land. It is his submission that in absence of any direction in the substantial proceedings of handing over of the possession, it would not be open for authorities to by pass this provision. Finally, he argues that the challenge to the order passed by this Court confirmed the order of the Commissioner is subjudice before the Hon'ble Supreme Court and hence,

it would not be in the fitness of justice that the order impugned is allowed to be executed.

5. Learned senior counsel appearing on behalf of the contesting respondents opposes the said contention by pointing out the previous litigation between the parties. It is his submission that in the substantive proceedings under the Act, the Competent Authority has held Maroti to be re-grantee and occupancy rights are also said to have been vested in him. Thus, it is his contention that once the occupancy rights are vested, question of following procedure contemplated under Section 53 of the Code does not arise. It is his submission that the order of the Commissioner is upheld by this Court and that there is no stay granted by the Hon'ble Supreme Court to the said order and as a result of which there is no impediment in implementing the order impugned. It is his further submission that by referring to the order impugned, it is merely a notice and not an order in order to cause challenge thereof in the writ petition. On these amongst other submissions, he seeks dismissal of the petition.

6. There is no dispute about the fact that proceedings were held before the Deputy Collector under the provisions of the Act wherein it is held that Maroti is re-grantee of the subject land so also his occupancy is accepted and this order holds field as on today. It would be relevant to

take note of the operative part of the order dated 21.12.1993, which reads thus :-

ORDER

The Non-Applicant Maroti Jairam Kadam, R/o Tapowan Taluka Basmat now Taluka Aundha Nagnath is declared as a regrantee of the suit land. Occupancy rights are hereby vested in him.

The land Sy.No. 31 Gat No. 76, admeasuring 3 H. 25 R situated at village Tapowan, Tq. Basmat now Taluka Aundha Nagnath be taken under Govt. Supervision immediately without waiting for further orders.

Inform all the Non-applicants accordingly through their respective advocates by issuing intimations.

Inform the Tahsildar Aundha Nagnath alongwith a true copy of this judgement & order by issuing intimation for necessary compliance.

Close the case & consign to record.

7. Additional commissioner in appeal passed order dated 04.01.2022, which is confirmed by this Court in Writ Petition No. 928/2022. It is necessary to reproduce operative part thereof :-

१. अपीलार्थी यांचे पुनर्स्थापित अपील मान्य करण्यात येत आहे.

२. उपजिल्हाधिकारी (भूसूधार) परभणी यांचा आदेश क्रमांक १९९३/एच/इनाम/सीआर/३४ दिनांक ०५/०१/१९९४ रोजीचा आदेश रद्द करण्यात येत आहे.

३. उपजिल्हाधिकारी (भूसूधार) परभणी यांचा आदेश क्रमांक १९९३/एच/इनाम/सीआर/३४ दिनांक २१/१२/१९९३ रोजीचा आदेश कायम करण्यात येत आहे.

४. सर्व संबंधितांना निर्णय कळवून प्रकरण या न्यायालयात बंद करा व संचिका अभिलेख कक्षात वर्ग करा.

Initially, Deputy Collector (Land Reform) passed order dated 18.05.1993 and operative part thereof is as under :-

::O R D E R ::

The possession of the land Sy. No. 31 Gat No. 76, admeasuring 3 H. 90 R situated at village Tapowan, Taluka Basmat be handover to the regrantee Maroti Jairam, R/o Tapowan, Taluka Basmat from taking over the possession of the suit land from Dadarao, Raosaheb, Sudam sons of Babarao, R/o. Tapowan, Taluka Basmat or who so ever may be in possession of the suit land.

Inform both the parties accordingly be issuing intimation letter.

Inform the Tahsildar Basmat accordingly with a true copy of this judgement and order by issuing intimation for information and compliance.

Return the lower court's record & Proceedings if any, Close the case and consign to record.

This order specifically directs the handing over possession of subject property to Maroti. However, this order is already set aside and

as such now there is no order directing handing over of possession directly to Maroti. By order dated 21.12.1993 land in question is required to be taken in Government supervision. In case of any direction to hand over possession of land to Maroti, there was no need for authorities to undertake any other proceeding but in absence thereof it would not be permissible to do so.

8. Hence, question arises as to whether the said order dated 21.12.1993 would entitle the authorities to seek possession of the subject land from petitioners to hand it over to Maroti/Respondent No. 5., without compliance of Section 53 of the Act.

9. At this stage, it would be relevant to refer to provisions of Section 53 of the Code which reads thus :-

53. Summary eviction of person unauthorisedly occupying land vesting in Government:

(1) If in the opinion of the Collector, any person is unauthorisedly occupying or wrongfully in possession of any land or foreshore vesting in the State Government or is not entitled or has ceased to be entitled to continue the use, occupation or possession of any such land or foreshore by reason of the expiry of the period of lease or tenancy or termination of the lease or tenancy or breach of any of the conditions annexed to the tenure, it shall be lawful for the Collector to evict such person.

(1-A) Before evicting such person, the Collector shall give him a reasonable opportunity of being heard and the Collector may make a summary enquiry, if

necessary. The Collector shall record his reasons in brief for arriving at the opinion required by sub-section(1).

(2)The Collector shall on his finding as aforesaid, serve a notice on such person requiring him within such time as may appear reasonable after receipt of the said notice to vacate the land or foreshore, as the case may be, and if such notice is not obeyed, the Collector may remove him from such land or foreshore.

(3) A person unauthorisedly occupying or wrongfully in possession of land after he has ceased to be entitled to continue the use, occupation or possession by virtue of any of the reasons specified in sub-section (1), shall also be liable at the discretion of the Collector to pay a penalty not exceeding two times the assessment or rent for land or such amount may be prescribed, whichever is higher, for the period of such unauthorised use or occupation.

These provisions indicate that for the purpose of taking possession in respect of the land from the unauthorised occupant summary inquiry is mandatory to be held.

10. It is sought to be argued on behalf of the contesting respondents that in view of the orders passed by the Competent Authority under the Act, this is not the case wherein the compliance of Section 53 is necessary.

11. This Court is unable to accept the said submission for the reason that orders referred above clearly indicate that the order of

granting possession to re-grantee i.e., Maroti does not subsist, in view of the subsequent order dated 21.12.1993, wherein it is held that the subject land be taken under the Government supervision and there is no direction of handing over the possession thereof to the respondent No. 5.

12. In a given case, where in a substantial proceedings direction is given for handing over a possession of the subject land to the Respondent No. 5, then question of compliance of Section 53 may not arise. However, when the order dated 21.12.1993, available for implementation, does not direct for handing over possession of subject land to Maroti, the compliance of Section 53 before taking over the possession is imperative. Apart from this, perusal of the impugned order indicates that though there was no direction to hand over the possession of the subject land to Maroti, it is so observed therein, which is erroneous consideration of fact. Thus, apparently, Tahsildar, has exceeded his jurisdiction while implementing the order passed by Divisional Commissioner confirming order dated 21.12.1993. Thus, direction of handing over of possession to Maroti (Respondent No. 5), without following mandatory procedure contemplated by Section 53 of the Act, cannot sustain.

13. As a result of the above discussion, Petition stands allowed. Impugned order is set aside. It is however open for the authorities to adopt appropriate procedure of law as contemplated by the Land

Revenue Code for the purpose of the implementation/execution of the order dated 21.12.1993.

(R. M. JOSHI, J.)

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