



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

WRIT PETITION NO. 3757 OF 2024

1. Ismail Baig S/o Mirza Isam Baig
Age: 44 years, Occ: Labour,
R/o.: Khirdi, Tq. Khultabad,
Dist. Aurangabad.
Through GPA of petitioner nos.2 to 8
2. Naser Baig S/o Mirza Isam Baig
Age: 40 years, Occ: Labour,
R/o.: Gangapur, Dist. Aurangabad.
3. Najma W/o Mirza Anwar Baig
Age: 45 years, Occ: Household.,
R/o.: Gangapur, Dist. Aurangabad.
4. Mirza Akber Baig S/o Mirza Anwar Baig
Age: Major, Occ: Business,
R/o.: Jahgir Colony, Harsul, Dist. Aurangabad.
5. Mirza Azhar Baig S/o Mirza Anwar Baig
Age: Major, Occ: Business,
R/o.: Gangapur, Dist. Aurangabad.
6. Shirin D/o Mirza Anwar Baig
Age: Major, Occ: Household,
R/o.: Gangapur, Dist. Aurangabad.
7. Akhtar Begum W/o Shaikh Hasan Jahagirdar
Age: 57 years, Occ: Household,
R/o.: Gangapur, Dist. Aurangabad.
8. Afsar Begum W/o Shaikh Yasin
Age: 52 years, Occ: Household,
R/o.: SakharamPanth Nagar,
Gangapur, Dist. Aurangabad.

VERSUS

Baburao s/o Bapurao Warkad
Died Through L.Rs.

- 1-1 Tara Bai W/o Baburao Warkad
Age: 60 Years, Occ: Household,
R/o. At Post, Khedi, Tq. Kultabad,
Dist. Aurangabad.
- 1-2 Anil S/o Baburao Warkad
Age: 45 Years, Occ: Teacher,
R/o. At Post, Khedi, Tq. Kultabad,
Dist. Aurangabad.
- 1-3 Sandhya D/o Baburao Warkad
Age: 47 Years, Occ: Household,
R/o. At Post, Khedi, Tq. Kultabad,
Dist. Aurangabad.
- 1-4 Binny D/o Baburao Warkad
Age: 40 Years, Occ: Household,
R/o. At Post, Khedi, Tq. Kultabad,
Dist. Aurangabad.

Mr. Akram Inamdar i/b. Mr. S. S. Kazi, Advocate for the
Petitioners

Mr. A. A. Khande i/b. Mr. G. V. Sukale, Advocate for
Respondent Nos.1-1 to 1-4

CORAM : AJIT B. KADETHANKAR, J.

DATED : 28th September 2026

JUDGMENT :-

. Rule. Rule made returnable forthwith.

2. Mr. Akram Inamdar instructed by Mr. S. S. Kazi, learned
Advocate for the petitioners submits that the subject matter

land i.e. agricultural piece of land admeasuring 4 Acres 23 Gunthas situated at Old Survey No. 61 (New Gat No. 130) located at Mausala, Tq. Khultabad, Dist. Aurangabad was an inam land. He submits that taking departure from the strict rule under the Hyderabad Abolition of Inams and Cash Grants Act, 1954 of obtaining prior permission from the competent authority to transfer such land, one Aziz Baig Vazir Baig executed a registered sale deed bearing No. 969 on 03.02.1968 in favour of the present respondents.

3. Mr. Inamdar submits that since the transfer was not permissible for want of prior sanction of the competent authority, the petitioners took recourse to Section 6 of the Act before the competent authority vide an application at Exhibit A. The petitioners sought cancellation of the sale deeds and cancellation of the mutation entry. The said application was turned down by the then Additional Collector on 30.10.2019 in terms of the amended provision of Section 6(3)(b) of the Act. The respondents were left at liberty to get the sale deeds regularized. The petitioners were set at liberty to file an appeal under Section 12 of the Act before the Maharashtra Revenue Tribunal.

4. Accordingly, the petitioners filed Case No. 49/A/2019/A before the Maharashtra Revenue Tribunal. On 25.02.2021, at the request of the petitioners, the Tribunal granted leave to withdraw the proceedings. As per the further request, the petitioners were permitted to take up proceedings before the proper forum and it was also observed that in case the petitioners approached any such forum, the delay may be condoned under Section 14 of the Limitation Act, 1963. Consequent to the withdrawal of the appeal under Section 12 of the Act, the petitioners filed proceedings before the Divisional Commissioner, Aurangabad. After hearing the parties vide order dated 21.12.2021, the Divisional Commissioner, Aurangabad dismissed the proceedings on the point of jurisdiction.

5. Mr. Inamdar submits that the petitioners are now remediless. That, pursuant to the order passed by the Additional Collector, they had been rightly before the Maharashtra Revenue Tribunal under Section 12 of the Act. However, since the Tribunal has permitted the petitioners to take up the proceedings before the appropriate forum, the Divisional Commissioner ought to have decided the matter on

its own merits. He would submit that the proceedings before the Divisional Commissioner were filed under Section 12 of the Act. With this, Mr. Inamdar prays to allow the Writ Petition and relegate the matter back either to the Divisional Commissioner or even to the Maharashtra Revenue Tribunal.

6. Mr. A. A. Khande instructed by Mr. G. V. Sukale, learned Advocate for the respondents would stand in support of the order passed by the Divisional Commissioner. He submits that an appeal before the Divisional Commissioner under Section 12 of the Act is not at all maintainable, and hence there could be no error in the order passed by the Divisional Commissioner. Mr. Khande further submits that it is not the case that the Maharashtra Revenue Tribunal has dismissed the proceedings on merits. Apparently, since the Tribunal was not in favour of the petitioners, the petitioners sought leave to withdraw the proceedings from the Tribunal. Mr. Khande concludes his argument with a submission that the petitioners cannot take undue benefit of the liberty granted by the Tribunal. Thus, he prays to dismiss the Writ Petition.

7. With able assistance of the learned Advocates for the respective parties, I have perused the case in hand.

8. Apparently, the petitioners have initially taken a right step under Section 12 of the Act to approach the Maharashtra Revenue Tribunal against the first order dated 30.10.2019 passed by the then Additional Collector, Aurangabad. I cannot comprehend the submissions of Mr. Inamdar that an opportunity to withdraw the appeal and to move before the appropriate forum, was in fact a direction by the learned President of the Tribunal to the petitioners to withdraw the proceedings and to go before a proper forum.

9. While arguing the matter, Mr. Inamdar insisted that although it is recorded as leave to withdraw, in fact, it was a direction by the learned President of the Tribunal to the petitioners to approach the appropriate forum. Looking to the text of the order passed by the then learned President of the Tribunal on 25.02.2021, it is clear that the petitioners themselves voluntarily chose to withdraw the proceedings. Suffice to note, an adverse inference is drawn against the petitioners that since the Tribunal was not in favour of the petitioners, they sought leave to withdraw the proceedings

with liberty to take another proceeding before the appropriate forum. Although leave is granted by the Tribunal, it is trite law that a leave cannot override the provisions of law. Mere grant of leave does not create another forum for a party to take up the proceedings for separate filing. Leave to file appropriate proceeding is always subject to the law and availability of a legal remedy.

10. In view of this, the petitioners now cannot take benefit of their own wrong to contend that the Divisional Commissioner ought to have heard their matter on merits. Although Mr. Inamdar has submitted that an appeal before the Divisional Commissioner was filed under Section 12 of the Act, taking recourse to Section 2-A of the Act, this is not a convincing argument. Section 12 of the Act is an independent appellate remedy and is placed into service before the Maharashtra Revenue Tribunal vide an appeal. From the text of the order dated 25.02.2021 passed by the learned President of the Tribunal, it nowhere appears that the Tribunal defined appropriate remedy before any other forum.

11. As observed above, the petitioners cannot take undue benefit of their own wrong. No merit is found in the Writ

Petition.

12. The Writ Petition stands dismissed.

13. Rule stands discharged.

(AJIT B. KADETHANKAR, J.)

PRW