

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.5801 OF 2015

Shri Madhukar Mhaskuji Galande]
Age Adult, Occupation Agriculture]
Through Power of Attorney Holder]
Shri Deepak Vailasrao Jagtap]
R/at. "Abjhivandan", 1248-B, Shivaji]
Nagar, Pune – 411005].... Petitioner.

Versus

- 1] Shri Balu Khandu Ramoshi @ Shitkal]
Age 56 years, Occ. Agriculturist]
]
- 2] Smt. Shantabai Baban Shitole]
Age 64 years, Occ. Agriculturist]
]
- 3] Smt. Muktabai Dada Chavan]
Age 61 years, Occ. Household]
]
- 4] Smt. Shaila Balu Chavan]
Age 57 years, Occ. Household]
]
- 5] Smt. Bebi Gulab Ramoshi]
Age 50 years, Occ. Household]
]
- 6] Smt. Shobha Gulab Ramoshi]
Age 27 years, Occ. Household]
]
- 7] Smt. Sadhana Gulab Ramoshi]
Age 24 years, Occ. Household]
]
- 8] Smt. Alka Mahadu Ramoshi]
Age 47 years, Occ. Household]
]
- 9] Shri Gotya Mahadu Ramoshi]
Age 22 years, Occ. Education]
]
- 10] Shri Raju Dagadu Ramoshi]
Age 44 years, Occ. Business]

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| 11] | Smt. Anjana Sopan Jadhav |] |
| | Age 47 years, Occ. Household |] |
| | |] |
| 12 | Smt. Sangita Raju Jadhav |] |
| | Age 44 years, Occ. Household |] |
| | |] |
| | All R/at. Vadgaon Sheri, Taluka Haverli |] |
| | District Pune |] |
| | |] |
| 13] | The State of Maharashtra through the |] |
| | Revenue & Forest Department, |] |
| | Mantralaya, Mumb ai 400 032 |]..... Respondents. |

Dr. V V Tulzapurkar, Senior Advocate, a/w Mr. Mandar Soman and Mr. Ketan Joshi i/by Mr. S A Sawant for the Petitioner.

Mr. Y S Jahagirdar, Senior Advocate a/w Mr. M S Karnik i/by Ms. Leena Patil for the Respondent Nos.1 to 12.

Mr. A D Kango, AGP for the Respondent No.13.

CORAM : R. M. SAVANT, J.

DATE : 1st July, 2015

ORAL JUDGMENT

1 Rule with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 6-9-2014 passed by Appellate Authority i.e. the then Hon'ble Minister for Revenue, Government of Maharashtra, by which order, the Appeal filed by the Respondent Nos.1 to 12 came to be allowed, resultantly the order dated 24-4-2008 passed by the Collector, Pune, came to be set aside.

3 It is not necessary to burden this order with unnecessary details considering the order to be passed and directions to be issued. Suffice it would be to state that the said proceedings are arising out of the Bombay Inferior Village Watans Abolition Act, 1958 and relate to the re-grant of the lands in question being Gat Nos.59/1, 59/2, 59/3 admeasuring 76 Ares , 63 Ares, and 2.55 Ares respectively situated at Village Vadgaon Sheri, Taluka Haveli, District Pune. The predecessor of the Petitioner herein purchased the said lands in the Court auction which took place in the year 1893 which auction was held pursuant to Darkhast No.266 of 1892 which was pending in the Court of Civil Judge, Pune. The Petitioner's predecessor Nanaji Bin Bhivji Galande was the highest bidder, whose offer of Rs.500/- was accepted. The sale certificate in favour of the said Nanaji Galande came to be issued on 3/10/1893 and the document was registered with the Sub-Registrar, Haveli. The 7x12 extracts of the said lands show the entries made in the name of the heirs of the said Nanaji Galande. There are certain intervening events which have transpired namely the said Nanaji Galande giving the lands to two persons for a particular purpose. However, in the context of the present Petition, the said facts are not relevant. It appears that in the Register for Land Alienation an entry has been made that the said lands have been deleted as Inam Lands pursuant to the Government Resolution being 8378 of 1951 dated 29/5/1953. The Respondent Nos.1 to 3 herein who claimed to be Ramoshi Watandars, for the

first time in the year 1966 made an application before the Mamlatdar, Haveli for re-grant of the lands. It seems that the Mamlatdar entertained the said application and passed an order dated 13-10-1966, regranteeing the lands to the Respondent Nos.1 to 12. A Mutation Entry came to be made being No.1348 in respect of the said proceedings before the Mamlatdar. It appears that the Petitioner was not noticed though his predecessor had purchased the said lands in a Court Auction and there was a sale deed executed in his favour. The Petitioner accordingly filed an Application before the Collector Pune against the said order dated 13-10-1966 which was passed against him exparte. The Petitioner in his application specifically raised an issue as regards whether the said lands continued to be Watan lands in view of the intervening events which have occurred namely the auction sale of the said lands and the lands being deleted from the Register of Alienation as belonging to the category of Inam lands. The Petitioner also questioned the order passed by the Mamlatdar on the ground of jurisdiction as also on the ground as to whether the application could have been filed long after the Petitioner had purchased the said lands in the Court Auction and when there was absolutely no material in respect of the entry in favour of the Respondent Nos.1 to 12 in the revenue record as Watandars. The Collector in the light of the issue that was raised before him considered the said application filed by the Petitioner on the touchstone of the material which has been listed from clauses 1 to 5 in the order at internal page 4. The same is as under :- (English Translation)

- 1] Re-grant order of the Tahsildar.
- 2] Govt. Order No.E.R.R.D/8378/51 dated 29.05.1953.
- 3] Documents before the Inam Commission and entries in the alienation register.
- 4] Papers relating to Survey and Settlement (Consolidation) and Court orders.
- 5] Existing record of rights and papers in legal proceedings under other laws.

The Collector Pune, has considered the efficacy of the said material which is listed from clauses 1 to 5 separately in the order passed by him. It is on the consideration of the said material that the Collector recorded a finding that the said lands had ceased to be Watan lands. The Collector has also recorded a finding as regards the infirmities in the order passed by the Tahsildar. The Collector recorded that the application made before the Tahsildar was after a period of 40 years and was decided without notice to the Petitioner. The Collector observed that since the order passed by the Tahsildar is illegal, limitation would not come in the way from entertaining the application. The Collector, Pune accordingly by his order dated 24/8/2008 allowed the application and set aside the order passed by the Tahsildar dated 13/10/1966.

4 The Respondent Nos.1 to 12 carried the matter by way of an

Appeal to the State Government. The said Appeal was heard by the then Hon'ble Minister for Revenue who was exercising the appellate powers under the said Act. In the light of the findings recorded by the Collector, it was imperative for the Appellate Authority to consider the said findings and record its own findings thereon. However, a reading of the order passed by the Appellate Authority discloses that it is virtually bereft of any reasons. The Appellate Authority has not even adverted to the material which has been listed at Item Nos.1 to 5 on internal page 4 and thereby has not considered the efficacy of the said material vis-a-vis the issue as to whether the said lands were still Watan lands or not. The Appellate Authority has curiously relied upon the order passed by the Tahsildar dated 13/10/1966 which in fact is set aside by the Collector, and has allowed the Appeal by virtually placing reliance on the said order. It is well settled that the Appellate Authority has to consider the findings recorded by the Lower Authority, and to use the phrase used by the Apex Court has to come in close quarters with the findings recorded by the Appellate Authority. In the instant case the Appellate Authority has failed to do so. There is as indicated above absolutely no consideration by the Appellate Authority of the findings recorded by the Collector in his order, which order of the Collector is a well reasoned order.

5 In my view, since there is a abdication by the Appellate Authority of the duty casts upon it, the impugned order would have to be set aside and

the matter would have to be relegated back to the Appellate Authority for a de-novo consideration of the Appeal. Hence the following directions:-

- 1] The impugned order dated 6/9/2014 is quashed and set side and the Appeal is relegated back to the Appellate Authority for a de-novo consideration of the Appeal.
- 2] The Appellate Authority to decide the Appeal in terms of the observations made herein above. Needless to state that the Appeal to be decided by the Appellate Authority on its own merits and in accordance with law. The contentions of the parties are kept open for being urged before the Appellate Authority.
- 3] The Appellate Authority to also consider the issue of limitation raised by both the parties i.e. the Respondent Nos.1 to 12 in respect of the Application filed by the Petitioner before the Collector and the Petitioner in respect of the Revision filed by the Respondent Nos.1 to 12 before the State Government.
- 4] The Appellate Authority would be well advised to pass a speaking order whilst dealing with the issues that are raised before it.

- 5] The parties to appear before the Appellate Authority on 27th July 2015 at 3.00 pm. The Appellate Authority to hear and decide the Appeal latest by 31st October 2015.
- 6] The parties would be at liberty to file interlocutory applications. If any such applications are filed, the same also to be decided on their own merits and in accordance with law.
- 7] The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]