

WRIT PETITION NO.5439 OF 2014

Shri Santosh Dattatray Sawant
and Ors. Petitioners

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh .. Respondent
Bharati

WITH

WRIT PETITION NO.5440 OF 2014

Sau. Devashri Satyasheel Petitioners
Mohite-Patil and Ors.

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh .. Respondent
Bharati

WITH

WRIT PETITION NO.5441 OF 2014

Mrs. Sheetal Dhairyasheel Petitioners
Mohite-Patil and Ors.

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh .. Respondent
Bharati

WITH

WRIT PETITION NO.5442 OF 2014

Shri. Dhondiram Appa Phale Petitioners
and Ors.

Vs

Shree Swami Jagadguru
Shankaracharya Peeth Karvir .. Respondent
through its Secretary Mr. Prasad
Dattatray Kulkarni and Anr.

WITH

WRIT PETITION NO.5443 OF 2014

Mrs. Devshree Satyasheel Petitioners
Mohite-Patil and Ors.

Vs

Shree Swami Jagadguru
Shankaracharya Peeth Karvir .. Respondent
through its Secretary Mr. Prasad
Dattatray Kulkarni

WITH

WRIT PETITION NO. 5559 OF 2014

Mrs. Sheetal Dhairyasheel Petitioners
Mohite-Patil and Ors.

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh
Bharati

.. Respondent

WITH

WRIT PETITION NO. 7457 OF 2015

Mr. Dhairyasheel Mohite-Patil
and Ors.

Petitioners

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh
Bharati

.. Respondent

WITH

WRIT PETITION NO. 7458 OF 2015

Mr. Anand Bakling Todkari
Mohite-Patil and Ors.

Petitioners

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh
Bharati

.. Respondent

WITH

WRIT PETITION NO. 7459 OF 2015

Mr. Mahadeo Baban Surve and
Ors.

Petitioners

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh
Bharati

.. Respondent

WITH

WRIT PETITION NO. 7460 OF 2015

Shri Tanaji Lahu Kashid and Ors.

Petitioners

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh
Bharati

.. Respondent

WITH

WRIT PETITION NO.7461 OF 2015

Mr. Satyasheel Rajsingh
Mohite-Patil and Ors.

Petitioners

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh
Bharati

.. Respondent

WITH

WRIT PETITION NO. 7462 OF 2015

Mr. Ranjeet Narayan Mane and
Ors.

Petitioners

Vs

Shree Swami Vidya Shankar
Bharati Guruvidya Narsinh
Bharati

.. Respondent

Mr. Sandeep Dinkar Paigude, Advocate for Petitioners.
Mr. Rajesh Sudhakar Datar, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 29/07/2015

PC:

1. Heard Mr. Sandeep Paigude, learned counsel for the petitioners and Mr.Rajesh Datar, learned counsel for the respondent at length.

2. Rule. Mr.Rajesh Datar waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petitions are taken up for final hearing.

3. By these Petitions under Article 227 of the Constitution of India, original defendants no. 1,3, to 9, hereinafter collectively referred to as 'defendants, have challenged the Judgment and order dated 20.2.2014 passed by the learned Civil Judge, Jr. Dn., Radhanagari. By that order, the learned trial Judge rejected the application filed by the defendants, under Section 9-A of C.P.C for framing preliminary issue relating to jurisdiction and trying the same in terms of Section 9-A thereof. Since common questions of law and facts arise in all these petitions, same can conveniently be disposed of by this common order. For appreciating the controversy between the parties, facts from Writ Petition No. 5435 of 2014 are taken into consideration.

4. In support of these petitions, Mr. Paigude submitted that the respondent, hereinafter referred to as 'plaintiff', has instituted suit for declaration that sale deed dated 18.10.2007 executed by defendants no.2 to 9 in favour of defendant no.1 is illegal and not binding on the plaintiff; for possession of the property more particularly described in paragraph 1 of the Plaint (for short, suit property), among other reliefs. He submitted that during the pendency of the suit, the plaintiff took out application for interim relief at Exhibit-5. On 18.4.2011, the learned trial Judge framed issue Exhibit 27 as under:-

“Whether this Court has jurisdiction to entertain and try the suit?”

5. The trial Court directed both the parties to lead evidence, if they so desire. The plaintiff filed purshis-Exhibit-33 stating therein that he does not want to lead evidence. The defendants also filed Purshis Exhibit-34 stating therein that they do not want to lead evidence. Parties thereafter filed jointly purshis Exhibit-36 on 7.10.2011 and agreed that the suit be decided on merits and the preliminary issue may be decided at the time of final hearing of the suit. On the same day, the learned trial Judge passed order and merged the preliminary issue as well as application for temporary injunction in the main suit, meaning thereby application for temporary injunction and preliminary issue will be decided along with the suit.

6. Mr. Paigude submitted that in the proceedings instituted by the defendants under section 257 of the Maharashtra Land Revenue Code, 1966 (for short, 'Code'), Minister of State for Revenue directed Collector to hold an inquiry for the purpose of ascertaining nature of the properties which are subject matter of the suit. The said order was passed on 3.5.2011. Aggrieved by this decision, the plaintiff instituted Writ Petitions in this Court. One of the grievances raised in the petitions was that though in pursuance of the order dated 3.5.2011 the Collector held inquiry but did not pass order. The petitions were disposed of with direction to Collector, Kolhapur to pass speaking order regarding nature of the properties which are subject matter of the petitions as per the directions given by the Minister of State for Revenue. Mr. Paigude submitted that the plaintiff submitted to the jurisdiction of the State Government created by the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 (for short, 'Act')

7. In pursuance thereof, by order dated 31.5.2012, the Collector did not accept the case of the plaintiff that the suit lands are Devastan Inam lands. The Collector held that these lands are occupancy Class-I, which means that the occupants are directly paying land revenue to State Government without any intermediary. Mr. Paigude submitted that aggrieved by this decision, the plaintiff did not prefer Appeal before the State

Government as contemplated by Section 2 of the Act. He submitted that the order passed by the Collector on 31.5.2012 has attained finality and, therefore, the learned trial Judge ought to have framed and decided preliminary issue as regards jurisdiction of civil Court to entertain and try the suit. Mr. Paigude submitted that in view of subsequent developments, the defendants took out application Exhibit-43 on 7.1.2013 for framing and deciding preliminary issue in terms of Section 9-A of C.P.C.

8. On the other hand, Mr. Datar supported the impugned order. He submitted that admittedly the defendants moved Minister of State for Revenue under Section 257 of the Code challenging the order dated 31.12.2010 passed by Sub Divisional Officer, Radhanagari Division, Kolhapur. The said proceedings were not arising from the proceedings instituted under the Act. He submitted that in pursuance of the order passed by this Court, the Collector passed order on 31.5.2012. Aggrieved by that decision, the plaintiff has instituted Appeal before the Additional Commissioner and the said Appeal is pending. In other words, he submitted that the decision of the Collector has not attained finality.

9. Mr. Datar submitted that another set of the occupants (who are not defendants herein) of the properties other than the suit properties moved the Minister of State for Revenue under section

2(4) of the Act. By order dated 6.9.2014, the Minister of State for Revenue confirmed the order dated 31.5.2012 passed by the Collector and held that entire land in Mouze Konoli Taluka - Radhanagari, Dist-Kolhapur are not Deostan Inam lands. They are occupancy Class-I. Mr Datar submitted that aggrieved by this decision, the plaintiff has instituted Writ Petition in this Court and the same was admitted on 11.12.2014 by issuing Rule and interim relief in terms of prayer clause (b) of the petition is granted. He submitted that similar order was passed by the Collector on 31.5.2012 which is also at Exhibit 'N' (Pages 74 to 85) of this petition. He, therefore, submitted that the order of the Collector has not attained finality for more than one reason. In the first place, the plaintiff has challenged that order by filing appeal before the Additional Commissioner which is pending. Secondly, Writ Petition No.10792 of 2014 is admitted by this Court and interim order in terms of prayer clause (b) is granted thereby staying effect of order dated 6.9.2014 passed by the State Government. Finally, he submitted that the plaintiff has not submitted to the jurisdiction of the State Government created by the Act as those proceedings were under the Code and not the Act.

10. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the defendants have

filed application under section 9-A of C.P.C. mainly on the ground that by order dated 31.5.2012, the Collector, Kolhapur has held that the suit land is not Devasthan Inam land and is occupancy Class-I land. It is a matter of record that aggrieved by this order, the plaintiff has instituted Appeal before the Additional Commissioner. Mr. Paigude submitted that in view of Section 2(4) of the Act, the appeal before Additional Commissioner is not maintainable. Section 2(4) lays down that if any question arises, namely, whether any land is in alienation, the State Government has to decide that question and the said decision is final. He submitted that the plaintiff has preferred appeal against the order of the Collector dated 31.5.2012 before the Additional Commissioner and, therefore, the said Appeal is incompetent and not maintainable. Section 2(4)(i) of the Act reads as under :

“2. (4) If any question arises -

(i) whether any land is an alienation,

(ii) xx xx xx

(iii) xx xx

(iv) xx xx

(v) xx xx

(vi) xx xx

(vii) xx xx

the State Government shall decide the question and such decision shall be final:

Provided that the State Government may authorize any officer to decide questions arising under any of the clauses (i), (ii), (iii), (iv), (v), (vi) and (vii) and subject to an appeal to the State Government the decision of such officer shall be final.”

11. Mr. Paigude submitted that the proviso thereto lays down that State Government is empowered to authorize any officer to decide questions arising under any of the clauses including clause (iv) and the said decision is subject to an appeal to the State Government and if no appeal is preferred, the decision of such officer is final.

12. It is not possible to examine this contention in these proceedings. Admittedly the plaintiff has preferred appeal before Additional Commissioner challenging the order passed by the Collector on 31.5.2012. It will be open to the defendants to raise the contentions before the Additional Commissioner. I have been informed that next date of hearing before Addl. Commissioner is 26.8.2015. Mr. Paigude submits that application is already filed before the Addl. Commissioner raising this contention and the appeal is ripe for hearing. It will be open to the defendants to request Addl. Commissioner to decide appeal in a time bound manner. If such application is made, Addl. Commissioner will pass appropriate orders and decide the appeal in a time bound manner. The contention raised by Mr. Paigude that plaintiff has submitted to the jurisdiction of State Government created by the Act also cannot be gone into these proceedings, lest any observations made by this Court will have adverse effect on the pending proceedings between the parties.

13. As noted earlier, the plaintiff has challenged the order

dated 31.5.2012 before the Additional Commissioner by filing appeal and the said appeal is pending. That apart, similar order passed by the Collector on 31.5.2012 in proceedings of other set of occupants from the same village was considered by the Minister of State for Revenue who passed order on 6.9.2014. That order was also challenged by instituting Writ Petition No.10792 of 2014 and the said petition is admitted and the order dated 6.9.2014 is stayed. Prima facie, it cannot be said that the decision of the Collector has attained finality. In view thereof, in my opinion, the application at Exhibit-43 filed by the petitioner is premature. So long as the decision rendered by the Collector has not attained finality, in my opinion, it was not open for the defendants to file application under section 9-A for framing and deciding preliminary issue as regards jurisdiction of the civil court to entertain and try the suit. This is more so when on the earlier occasion the parties agreed that preliminary issue of jurisdiction and the application for injunction be heard along with main suit.

14. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. In view thereof, Petitions are disposed of in the following terms:

(a) Liberty is reserved to the petitioners to file application under section 9-A in case the order of the Collector attains finality. All contentions of both the parties in that regard are

expressly kept open.

(b) It is made clear that the authorities including the Civil Court will decide the proceedings uninfluenced by any observations made herein.

(c) Rule in all the Petitions is discharged. In the circumstances of the case, there shall be no order as to costs.

(R.G.KETKAR, J.)