

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 11708 OF 2015

Digambar Gangaram Girme (Deceased)

Through LRs

.. Petitioners

Vs.

The State of Maharashtra & Ors.

.. Respondents

WITH

WRIT PETITION NO. 12279 OF 2015

Smt. Sindhubai Nivrutti Tilekar & Ors.

.. Petitioners

Vs.

The State of Maharashtra & Ors.

.. Respondents

Mr. S. G. Karandikar for the Petitioners.

Mr. M. L. Patil for Respondent No.3.

Mr. A. I. Patel, AGP for Respondent No.1 in WP No. 11708/15.

Ms. Vaishali Nimbalkar, AGP for Respondent No.1 in WP No. 12279/15.

CORAM : M.S.SONAK, J.

DATE : 10th DECEMBER, 2015.

P.C.

1. The challenge in both these petitions is to the order dated 08.10.2015 made by the Deputy Commissioner and Enquiry Officer under the provisions of the Maharashtra Agricultural Land (Ceiling on Holding) Act, 1961 (said Act). By the impugned order, the objections raised by the petitioners as to the jurisdiction have been dismissed and the petitioners have been called upon to file returns under the provisions of the said Act and on failure thereof, to show cause as to why the penalties as provided under the provisions of the said Act be not imposed upon them.

2. At the outset it is to be noted that the impugned order has only

rejected the preliminary objections raised by the petitioners as to the jurisdiction of the Enquiry Officer. Final orders, in the matter, are yet to be made. As against the final orders, there is possibly, remedy by way of an appeal and if not, it is always permissible for the petitioners to institute substantive proceeding challenging the final orders on both grounds of jurisdiction as well as merits. Under these circumstances, there is no necessity to entertain these petitions at this stage.

3. Mr. Karandikar, learned Counsel for the petitioners in both the petitions, has submitted that the Enquiry Officer, though directed by the Hon'ble Apex Court to hold an administrative enquiry is bent upon holding enquiry which is quasi-judicial in nature. This according to Mr. Karandikar constitutes breach of the directions issued by the Hon'ble Apex Court in Civil Application No. 1751 of 2015 and connected matters which came to be disposed of on 11.02.2015. Further, Mr. Karandikar contends that the Enquiry Officer is insisting upon the proceeding under the unamended provisions of the said Act, thereby, refusing to take cognizance of the amended provisions of the said Act. Mr. Karandikar submits that both these are jurisdictional matters and an appropriate writ is liable to be issued to the Enquiry Officer to refrain from proceeding any further in the matters.

4. As noted earlier there is no necessity to entertain these petitions at this stage, particularly because the Enquiry Officer is yet to make any final orders in the matters. Besides it is always permissible for the petitioners to comply with the directions contained in the impugned order, without prejudice to their rights and contentions to agitate the validity of the impugned orders in any substantive proceeding which the petitioners may choose to take, in case, the Enquiry Officer ultimately makes any final orders against the petitioners. The contentions, now raised in these petitions, can

always be raised at that stage.

5. There is yet another reason as to why these petitions are not being entertained. In so far as action under the provisions of the said Act is concerned, certain petitioners had earlier approached this Court. This Court by common judgment and order dated 22.12.2006 dismissed such petitions. As against the common judgment and order the said persons had instituted Civil Appeal Nos. 1751 of 2015, 1752 of 2015, 1753 of 2015 & 1754 of 2015 before the Hon'ble Apex Court which came to be disposed of by detailed judgment and order dated 11.02.2015. The learned Counsel for the respondents states that the issues which the petitioners seek to now raise in these petitions were also the issues which were raised by the said persons, both before this Court as well as Hon'ble Apex Court. Mr. Karandikar, learned Counsel for the petitioners, however disputes this position. Be that as it may, the Hon'ble Apex Court, in its judgment and order dated 11.02.2015 has taken serious note of the attempts on the part of the parties stalling inquiries under the provisions of the said Act right from the year 1989. The observations of the Hon'ble Apex Court contained in para 23 read thus:

23. It is noticed by this Court that right from the year 1989, the orders passed by the State Government have been successfully stalled by the appellants to conduct the administrative enquiry into the matter for the last quarter century, the most valuable period is lost in the process of untenable litigation made by the appellants. Therefore, we direct the State Government and the Enquiry Officer appointed for the purpose or if the said Officer has already retired, then the Deputy Commissioner of the Pune Division who is in office at present is required to expedite the administrative enquiry within six months as directed by the High Court in its operative portion of the order or any officer can be appointed by the State Government in his place within two weeks from the date of receipt of this order and submit compliance report to this Court for its perusal and further direct the State Government to proceed with the matter in accordance with law after affording opportunity to all

the parties.

For the foregoing reasons, the impugned judgment and order of the Division Bench in affirming the orders of the State Government is not required to be interfered with for one more reason, namely, the High Court, after adverting to certain findings recorded in the criminal cases with regard to the land ceiling and on the alleged fraud against the declarants in getting the orders passed under Section 21 of the Act, has recorded the findings and reasons holding that the orders of the State Government do not warrant interference as the same are in the interest of public at large.

In view of the foregoing reasons, the appeals are dismissed with costs of Rs.50,000/- to be paid by the appellants in each of these appeals out of which 50% to be given to the State Government of Maharashtra, and the remaining 50% to be given to the contesting private respondents at whose instance the orders were passed by the State Government. The parties are directed to maintain status quo regarding the nature of land and not to create any encumbrance upon the land involved in these proceedings till the enquiry is over.

6. In view of the aforesaid, there is no case made out to interfere with the impugned order. These petitions are, therefore, dismissed. It is however made clear that in case the Enquiry Officer finally decides against the petitioners and the petitioners choose to take substantive proceedings against such final orders, then the petitioners shall be at liberty to agitate all the contentions now raised by them in the present petitions.

(M.S.SONAK, J.)