

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3240 OF 2014

- 1) Shri Ramchandra s/o Damodhar Dhanwate,
Age-50 years, Occu:Agril.,
R/o-Puntamba, Tq-Rahata,
Dist-Ahmednagar,
- 2) Shri Dattatrya s/o Damodhar Dhanwate,
Age-50 years, Occu:Agril.,
R/o-Puntamba, Tq-Rahata,
Dist-Ahmednagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Revenue and Forest Department,
Mantralaya, Mumbai-32,
- 2) The Collector, Ahmednagar,
Dist-Ahmednagar,
- 3) The Committee for Distribution
of Land at Changdevmala,
Through Deputy Collector,
Election Branch, Ahmednagar,
- 4) The Tahsildar,
Rahata.

...RESPONDENTS

...

Mr. V.D. Sapkal Advocate for Petitioners.
Mr. P.S. Patil, A.G.P. for Respondent Nos.
1 to 4.

...

**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

DATE OF RESERVING JUDGMENT : 27TH JANUARY, 2016

DATE OF PRONOUNCING JUDGMENT: 18TH MARCH, 2016

JUDGMENT [PER A.I.S. CHEEMA, J.] :

1. Heard. Leave to amend. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, the Petition is taken up for final disposal at admission stage.

2. This Writ Petition is filed by the Petitioners seeking quashing and setting aside of allotment dated 11th September 2013 showing allotment of land from Gut No.390 and Gut No.374/1 of village Puntamba in favour of the Petitioners and their family. The Petitioners pray that the Respondents should be directed to allot them land from Survey No.265 (old), new Gut No.340 of Puntamba, as per the guidelines issued by the State.

3. It is the case of the Petitioners and it has been argued on behalf of the Petitioners that father of the Petitioners had entered into lease agreements with Changdeo Sugar Mill, Puntamba ("Karkhana" in brief) on 13th April 1940 and 21st February 1956 with regard to lands then Survey Nos. 265, 288, 289/1, 289/2, admeasuring 27 Acres 22 Gunthas. Land was given on lease to the said mill. Subsequently, Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 ("Ceiling Act" in brief) came into force and land holdings above the ceiling limit held by public were taken away by the Government. Total holding by Karkhana was considered and surplus was taken away by the Government. Section 28-1AA of the Ceiling Act contains the provision of power of State Government to grant surplus land taken over from industrial undertakings to State Corporations. In this Section, amendments were made vide Maharashtra Amendment 17 of 2003 making provision

to disburse surplus land in favour of person who had previously leased the land to the Undertaking. For re-distribution of the land, guidelines have been prescribed. Respondent No.3 is Committee formed by State for distributing land under Section 28-1AA of the Ceiling Act, under overall control of the Collector.

4. It is argued for the Petitioners that Respondents had prepared & notified map showing lands in yellow colour which had become available for distribution at Puntamba. Initially, land Survey No.265 (old) - now 340 (new), was not shown as available for distribution and consequently the Petitioners, who were required to apply within statutory period of 90 days, made application for land. They were asked to give preference on affidavit for Gut Nos. 374/1 and 390, which came to be allotted to them. The Petitioners had not applied for any specific land but they were asked to give affidavits for Gut Nos. 374/1 and 390 and

thus they had filed such affidavits. Subsequently, the Petitioners smelled foul play and started making inquiries and came to know that their earlier Survey No.265 of Puntamba, now Gut No.340, had also become available for re-distribution. The Petitioners claim that as per guidelines they have preferential right to their own land and made written request for grant of the said land instead of land from Gut Nos. 374/1 and 390, but the Respondents have not responded. Thus, this Petition.

5. Respondents have filed affidavit in reply dated 30th June 2014. Learned A.G.P. has submitted, and it is not in dispute that father of Petitioners had entered into lease agreement with Changdeo Sugar Mill, Puntamba with regard to Survey No.265 of Puntamba. Respondents had prepared map with reference to lands available for re-distribution. According to them, the map prepared was correct. The affidavit mentions that

"initially the land Survey No.265, now Gut No.540 (should be - Gut No.340?) at Puntamba was not available for the allotment and therefore the same was not shown in the map prepared by Maharashtra State Farming Corporation." It is argued for the State that the Petitioners had made request for Gut Nos. 374/1 and 390 as their preference and as the said land had been made available at that time by the Maharashtra State Farming Corporation, the same was distributed to the Petitioners. Old Survey No.265 was not available for distribution and therefore it was not shown in yellow colour in the map which was to indicate the lands available for re-distribution. It is argued that the Petitioners willingly opted for land from Gut Nos. 374/1 and 390 and accordingly filed affidavits, copies of which have been filed. Such application was made before Respondent No.2 - Collector on 6th March 2013. It is stated that nobody has submitted demand application for land from Survey No.265 (old) of Puntamba in respect of Changdevnagar

Farm. The Committee members recommended Survey No.265 (old) to be allotted to the Petitioners but the same cannot be taken into consideration as Petitioners have already been allotted land from Survey Nos. 374/1 and 390 as per their wish. Initially Survey No.265(old) was not available for distribution, therefore, recommendations of the Committee are not useful looking to the factual position. The land from Survey Nos. 374/1 and 390 was distributed to the Petitioners on 9th April 2013. Survey No.265(old) - 340(new) become available from Maharashtra State Farming Corporation by its letter dated 19th August 2013, for distribution. The request of the Petitioners to allot Survey No.265(old) - 340(new) cannot be considered at this stage. The learned A.G.P. agreed at the time of arguments, that till now land Survey No.265(old) - 340(new) has not been allotted to anybody.

6. Sub-section (3) of Section 28-1AA of the

Ceiling Act, substituted by Maharashtra Act 17 of 2003, in which third and fourth Proviso were added by Maharashtra Act 8 of 2006 and Act of 1 of 2012, respectively, reads as under:

"(3) The State Government may, subject to the provisions of sub-section (4), after ascertaining the views of the persons interested in the land referred to in sub-section (1), also grant such land to a person who had previously leased his land to the undertaking, who (not being a public trust), requires that land for his personal cultivation, to the extent of the ceiling area as stipulated in the Act, or the actual area of the land leased by such person to the undertaking, whichever is less, subject to such other terms and conditions as may be specified in this behalf :

Provided that, a person, who was required to file return under section 12 or 12A of the Act in respect of the lands held by him as on the 19th September 1975, and whose land was declared surplus under the provisions of this Act, shall not be entitled to such grant :

Provided further that, a person, who has applied for grant of such land after 90 days from the commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2001, shall not be eligible for grant of such land:

Provided also that, a person who had not applied for grant of such land within the period of 90 days from the date of commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2001, or who has applied for grant of such land after the said period, shall be eligible for grant of such land if he applies for grant of such land within a period of 90 days from the date of commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2006.

Provided also that, a person who had not applied for grant of such land within the period of 90 days from the date of commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2001, or who has applied for grant of such land after the said period, shall be eligible for grant of such land if he applies for grant of such land within a period of 90 days from the date of commencement of the Maharashtra

Agricultural Lands (Ceiling on Holdings)
(Amendment) Act, 2011."

7. In this regard, Maharashtra Government issued guidelines vide Government Resolution No. ICH-3498/Pra.Kra.23/Part-G/L-7, dated 4th May 2012. The Annexure, inter-alia, in Para 4.6 of the guidelines provides that while doing the distribution to earlier lessors, priority should be given to the person who had previously leased the land. It is rightly argued on behalf of the Petitioners that earlier when the concerned map was issued showing in yellow colour portions of lands available, the earlier Survey No.265 (old) - 340(new) was not included and thus the Petitioners had no other option but to request for land from other Gut Numbers. The Petitioners were under the pressure of applying within prescribed 90 days and thus fault cannot be found with the Petitioners. According to the learned counsel for Petitioners, when admittedly the old Survey No.265 of the

Petitioners was not shown in the map and the same was released by the Corporation vide letter dated 19th August 2013, Petitioners were entitled to exercise their right of preference to their own land, which they did vide application dated 1st October 2013 (Exhibit E) followed by complaint dated 26th August 2013 (Exhibit F) and other letters, copies of which have been filed at Exhibits G and H. Looking to the guidelines issued by the Government and the provisions as referred above, we find that there is substance in the contentions raised by the Petitioners.

8. In the matter of ***Shrigonda Taluka Sakhar Kamgar Union, 'Shramik' and others vs. the State of Maharashtra, through Secretary, Revenue and Forest Department and others, reported in 2014(3) ALL M.R. 138***, while dealing with the provisions of Section 28-1AA of the Ceiling Act, this Court has, even otherwise, observed in Para 44 that, stipulation of period of 90 days or the time for

claiming such return by itself can not play any decisive role and can not be always material factor.

9. Looking to the facts of the present matter, we find that the Petitioners were entitled to their preferential claim to old Survey No.265 of Puntamba. The land was released by the Maharashtra State Farming Corporation vide Exhibit R-4 dated 19th August 2013 & was not notified and thus application Exhibit E dated 1st October 2013 and Complaint Exhibit F dated 26th August 2013 of the Petitioners could not have been ignored.

10. At the time of arguments, the learned counsel for Petitioners submitted that the Petitioners and their family members to whom land has been allotted from Gut Nos. 374/1 and 390, would surrender the same to the Government and should be allotted, in exchange, the concerned land from Survey No.265(old) - 340(new). The

submission needs to be accepted.

11. For the above reasons the Writ Petition is allowed. Subject to Petitioners and their family members offering and surrendering to Respondent No.2 the land from Gut Nos.374/1 and 390 of village Puntamba allotted to them vide allotment dated 11th September 2013 within a period of three months from today, the Respondents shall simultaneously allot land from Survey No.265(old) - 340(new) from Puntamba, to the Petitioners and their family members. The land shall be to the extent of the ceiling area as stipulated in the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, or the actual area of the land leased by Damodhar Dhanwate to the Undertaking, whichever is less, subject to such other terms and conditions as may be specified and subject to Proviso below sub-section (3) of Section 28-1AA of the Ceiling Act.

12. These orders are passed in peculiar facts and circumstances of this case and shall not be treated as precedent.

13. Rule is accordingly made absolute in above terms. There shall be no order as to costs.

[A.I.S. CHEEMA, J.]

asb/MAR16

[R.M. BORDE, J.]