

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

WRIT PETITION NO.10940 OF 2014

Chandrakala w/o Asaram Shelke & anr. ... PETITIONERS

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

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Shri R.A. Tambe, Advocate for petitioners
Shri U.H. Bhogale, A.G.P. for State
Shri P.R. Patil, Advocate for respondent No.6
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CORAM: T.V. NALAWADE, J.

DATED: 30th August, 2016.

ORAL ORDER :

1. The petition is filed to challenge the order made by the Committee constituted under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 by which the Committee has asked the present petitioners to produce probate issued by the competent Civil Court in respect of the will. Both sides are heard.

2. The submissions made and the record show that, one Malhari Kadam, was owner of land Gat No.63 (Old Survey No.28 & 31), admeasuring 45 acres and 3 gunthas. He had married two wives like Dropadabai and Laxmibai. Present petitioners are claiming to be successors of Malhari from Laxmibai. Laxmibai left behind daughter Yamuna and Chandrakala is daughter of Yamuna. Shantabai also is daughter of Yamunabai and one Anil is son of Chandrakala. On the other hand, respondent No.6 Chandrakant Gaikwad is claiming that, Dropadabai, the other wife of Malhari has executed a will in his favour and due to that, he has become owner of this property.

3. The property was given by way of lease by Malhari to Maharashtra Sugar Mills Association for cultivation purposes in the year 1953. The land was declared against this association of Mill as surplus and then further steps were taken. It appears that, due to amendment made to the Land Ceiling Act, and introduction of provisions of Section 28-1AA of the Act, it has become possible to the Government to make an allotment of the land to the lessor. Due to the circumstance, and the aforesaid circumstances on the basis of which the petitioners and

respondent No.6 are claiming title, they want to get the allotment of the land from the Government.

4. There is one will executed by Malhari and there is dispute about the interpretation of the contents of the Will on one hand, the respondent No.6 is contending that the disputed property was bequeathed to Dropadabai and so he is entitled to get the property, and on the other hand, the petitioners are contending that the property was bequeathed to Anil and so, the petitioners are entitled to get the allotment.

5. It appears that, in the past, suit for injunction was filed by Dropadabai, but she could not succeed to get relief of injunction in respect of the two properties and it appears that, present Gat number was also mentioned in the suit though it was with the Government. Learned counsel for the petitioners took this Court through various issues framed in the said suit. This Court feels it necessary to observe that those issues are not at all involved in the injunction suit, and injunction suit involves only the possession and rights in respect of the property. The question of validity of the Will was not at all involved in the said suit. Thus, the rights of the parties who are mentioned in the will

executed by Malhari are not yet decided by the Civil Court. In probate proceedings also such rights are not decided. The learned counsel for the petitioners submitted that, in respect of the will executed by Malhari, the probate is already obtained by Anil. This circumstance also cannot be used against Dropadabai or respondent No.6 as probate proceeding does not decide the title and the probate is given only for the purpose of administration and ultimately the property goes to the persons who are entitled to the properties. In view of the aforesaid circumstances, the authority has directed the parties to approach the Civil Court.

6. It can be said that, the authority is competent to ask to show the entitlement. Learned counsel for the petitioners submitted that the said order of the Committee is not reasoned order and on that ground the order needs to be set aside.

7. in view of the aforesaid circumstances, this Court holds that the authority cannot be directed to do anything when there is dispute of aforesaid nature between the petitioners and respondent No.6. They will be required to obtain the decision of the Civil Court in respect of their entitlement and till then, the

authority is not expected to make allotment under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act. This is not a fit case where interference is warranted. In the result, the petition is dismissed.

(T.V. NALAWADE, J.)

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