

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4489 OF 1998

**Sambajirao @ Bapurao Hanumantrao
Mane Deshmukh & others** ... **Petitioners**

V/s

The State of Maharashtra & others ... **Respondents**

Mr. N. V. Gangal, Advocate for the Petitioners

Mr. A. R. Metkari, AGP for Respondent Nos. 1, 3 & 4

CORAM : M. S. SONAK, J.
DATE : 5th MAY, 2016.

P.C. :-

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This petition challenges the following orders :-

- (a) Order bearing No. A-4-KV-418-98, dated 6th June, 1998 made by the Sub Divisional Officer, Pandharpur Division, District Solapur; and
- (b) Order bearing No. ICH-2797/PK/354/L7 dated 12th June, 1998 made by the Administrative Officer, Revenue & Forest Department.

2] One of the main grounds upon which the petitioners were sought to be denied distribution of properties, was that the income of the petitioners was beyond the limit of Rs. 4000/- per annum.

3] The Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961 (said Act) has since been amended and in terms of the amended provisions, this income limit of Rs. 4000/- per annum is no longer applicable. In these circumstances, it is necessary that the case of the petitioners is re-considered in the light of the amended provisions.

4] In fact, the Sub Divisional Officer, Pandharpur, who is respondent no. 4 in the present petition has filed an affidavit dated 20th December, 2005 in this Court urging that the present petition be disposed of as infructuous, since, the State Government is in the process of formulating rules for disposal of surplus lands to the original owners, in the light of the amendments to the said Act, by which the income ceiling has been done *ab initio*. The paragraphs 2 to 7 of the said affidavit in reply read thus :

- “ (2) *The Respondent no. 3 has informed the petitioner that his application is rejected by order No. ICH/2797/PK/354/L7 dated 12.6.1998. In the said order, the following points have been mentioned, they are ;*
- (a) *That the applicants do not fall under the income limit of Rs. 4000/- spelt out in section 28-1-AA of the Ceiling Act.*
 - (b) *The consent decree before the Hon. Supreme Court that has been referred to by the petitioner has been considered while passing the order. The order notes that the petitioners failed to prove that they were residing separately.*
 - (c) *The order refers to a status-quo order of the Aurangabad High Court in another writ petition relating to suit lands filed by respondent no. 2, the Maharashtra State Farming Corporation so the land could not be disposed of.*
- (3) *Subsequently, the Maharashtra Act XVII of 2003 has been passed. This is in the nature of an amendment to section 28-1-*

AA of Ceiling Act, 1961. The income limit of Rs. 4000/- has been removed according the new amendment.

- (4) The Aurangabad Bench of the High Court has recently disposed of a bunch of writ petitions, filed by the original land owners, similar to the present petitioner demanding the return of their lands. The Aurangabad Bench of the High Court has made a finding that the amended section 28-1-AA completely addresses the grievances of those petitioners.*
- (5) Accordingly, respondent no. 1 is in the process of formulating rules to return the surplus lands to the original owners. Once these rules are formulated the respondents will consider return of surplus lands to the petitioner.*
- (6) In the light of the above stated facts, it can be clearly seen that finding (a) recorded by respondent no. 3 (as stated above in point no. 2) has been rendered infructuous by the amendment to the section 28-1-AA. Due to the disposal of the pending writ petitions by the Aurangabad High Court, the finding (c) of respondent No. 3 (as stated above in point no. 2), no longer holds.*
- (7) After the rules are formulated by respondent no. 1, the claims of the petitioner will be examined on merits in the light of finding (b) of the respondent no. 3 (as stated above in point no. 2) and a decision can be taken on the prayer of the petitioner. In the meantime, the suit lands continue to vest with respondent no. 2, the Maharashtra State Farming Corporation and the apprehensions of the petitioner with regard to distribution of the suit lands to strangers is ill founded and without substance. In the circumstances, no order is required to be passed at this stage. However, the writ petition may be taken off for final disposal, which is become infructuous.”*

5] Neither the learned counsel for the petitioners nor the learned AGP were in a position to make any statement as to whether necessary rules have been formulated and orders made with regard to

disposal of surplus lands, *inter alia* to the petitioners. The learned counsel for the parties however state that since there was a stay to the operation of the order made in this petition, it is likely that the said process has not been undertaken or completed.

6] In the aforesaid circumstances, it will be appropriate, not only to take note of the amended provisions, but further to direct the respondents to examine the claim of the petitioners for allotment of surplus land, particularly since, the respondents have themselves agreed to undertake this exercise in the light of the amended provisions of the said Act. On the aspect of partition, the said issue is kept open, particularly since the grievance of the petitioners that Judgments and decrees of partition have not been taken into consideration or in any case not been considered in their proper perspective. Accordingly, the petitioners will be at liberty to make their submissions on this aspect as well and the authorities will also take appropriate decision on the said aspect on the basis of the material which may be produced before as also the law as applicable. Until final decision is taken upon the claims raised by the petitioners, the petitioners shall not be dispossessed, particularly since there was an interim relief obtaining in their favour in this petition. The petitioners shall also themselves maintain *status-quo* and not to alienate or create any third party interest.

7] The impugned orders are formally set aside. However, it is made clear that the impugned orders are not being set aside on merits, but on the ground of the amendments to the law. Therefore, all issues are specifically kept open to be decided by the respondents, in accordance with law.

8] The respondents are directed to take final decision upon the claims of the petitioners within a period of one year from today. In case such decision is adverse to the petitioners, then the same shall not be implemented for a period of four weeks from the date of communication of such decision to the petitioners. The petitioners to appear before respondent no. 4 on 20th June, 2016 and produce authenticated copy of this order.

9] Rule is accordingly made absolute to the aforesaid extent, subject to restraint upon dispossession, the interim order granted earlier is hereby vacated.

10] No order as to costs.

11] All concerned to act upon the authenticated copy of this order.

(M. S. SONAK, J)