

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 10548 OF 2015
WITH
CIVIL APPLICATION NO.379 OF 2016
IN
WRIT PETITION NO.10548 OF 2015**

Shri Ananta Sakharam Mhatre Petitioner.

V/s

State of Maharashtra
(Through Revenue Department)
and Others Respondents.

Mr. Chaitanya Bhandarkar i/b Dhruv Parekh for the
Petitioner.

Mr. P.P. Kakade AGP for Respondent No.1/State.

Mr. P.K. Dhakephalkar, Senior Counsel with Mr. Rajesh Datar
for Respondent No.3.

**CORAM: V. M. KANADE &
M.S. KARNIK, JJ.**

DATE: 25th April, 2016

P.C.:- (Per V.M. Kanade, J.)

1. By this Petition which is filed under Article 226 of the Constitution of India, Petitioner is seeking the following reliefs:-

“a) That this Hon'ble Court be pleased declare that the Defence Department of Government of India requisitioned the land from the Private Holder including the Petitioner and put the Prantiya Sarkar Respondent No.1 only to control it without losing Title, Ownership and possession of persons who were effected by the Requisition order dated 01/12/1943.

b) It be declared that Respondent No.1 has no right, title and interest in the property requisitioned by Defense Department by Order No.01/12/1943.

c) It be declared that the Order of Revenue Minister dated 03/07/2004 is null and void and nor enforceable against the Petitioner.

d) It be declared that the Mutation entry No.322 and 345 are illegal and void.

e) It be declared that tenancy right of the Petitioner is not influenced by the Order of Revenue Minister dated 03/07/2004 and also not influenced by the Mutation entry No.322 and 345 made by Tahasildar Ulhasnagar.

f) Rule NISI be issued restraining the Respondent No.3 not to create third party interest in the suit Property i.e. the land lying in Survey No.40/1, 40/6, 41/1, 41/3 and 51/4 admeasuring area of 9.33 acres in Maharal Village, Ulhasnagar Dist. Thane of the Petitioner during the pendency of Petition.

g) Ad-interim and interim relief as per prayer clause (f) be granted in favour of the Petitioner.

h) Any other relief deemed proper be issued in favour of Petitioner.

i) Cost of the Petition be provided for.”

2. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

3. Petitioner claims to be a tenant in respect of the land in question viz. the land admeasuring 9.33 acres situated at

Village Maharal, Ulhasnagar, District Thane since 1936. According to the Petitioner, the land was requisitioned by Military by invoking Defence of India Act, 1939 by Requisition Order dated 01/12/1943 for defence purposes. According to the Petitioner, even after the land was requisitioned, he continued to cultivate the land and the Petitioner's name was shown as tenant in the revenue record. It is the case of the Petitioner that though an order of requisition was passed, actual possession of the land was not taken by the Defence Department. It is the case of the Petitioner that Respondent No.2 formed a Co-operative Society and the land was leased by the Collector in favour of Respondent No.2 on Eksal basis i.e. year to year basis from 1957. According to the Petitioner, Respondent No.2 did not renew the lease of the said property and therefore the Collector initiated judicial proceeding against Respondent No.2 and an order of eviction was passed. The matter ultimately was heard by the Revenue Minister who allowed the appeal and set aside the order of the lower Revenue Authorities. Petitioner filed Tenancy Application before Tahsildar vide Application No.1/2010 which was dismissed and disposed of on 02/03/2010. Appeal filed by the

Petitioner before Sub-Divisional Officer was also dismissed. The matter travelled right up to the Supreme Court and all Courts, including High Court and the Supreme Court dismissed the Application filed by the Petitioner. Review Petition filed in the Supreme Court was also dismissed.

4. Petitioner has now filed this Petition and he claims that the property was requisitioned by the Defence Department and was never acquired by the State Government.

5. It is submitted that therefore the Petitioner may either be permitted to withdraw the Petition and file fresh Petition by amending prayers which are made in the Petition. Alternatively, it is prayed that the Petitioner is entitled now to pursue his remedy under Article 226 on the ground that Revenue Authorities had wrongly proceeded on the footing that the land was acquired by the State Government when, in fact, it was requisitioned by the Defence Department.

6. Petitioner is therefore seeking a declaration that the land in question was requisitioned by the Defence Department and Respondent No.1 was put in possession to look after the said

land without losing the title of ownership of the said land. Petitioner is also seeking an appropriate writ for setting aside the order of the Revenue Minister dated 03/07/2004 and for a declaration that the Mutation Entry Nos.322 and 345 are illegal and void and other consequential reliefs.

7. On the other hand, Mr. Dhakephalkar, the learned Senior Counsel appearing on behalf of Respondent No.3 submitted that after the Petitioner lost before the Revenue Authorities and after the said order was confirmed right up to the Supreme Court, the Petitioner is now trying to take a new stand that the land in question was requisitioned by the Central Government and not acquired by the State Government. He invited our attention to the order passed by the Maharashtra Revenue Tribunal which was confirmed by the High Court and the Supreme Court. He submitted that it was not now open for the Petitioner to take a different stand and have a second round of litigation.

8. Petitioner has also filed Civil Application seeking more or less the same reliefs which he sought in the Petition.

9. In our view, submissions made by the learned Counsel appearing on behalf of the Petitioner are without any substance. The order of the Revenue Tribunal discloses that finding has been given by the Revenue Tribunal that the land was acquired by the State Government and it vested in State Government in 1949. It is not now open for the Petitioner to take a different stand and argue that the land was requisitioned by the Central Government and not acquired by the State Government. The order passed by the Tribunal was confirmed by the learned Single Judge of this Court vide order dated 14/08/2013 and also by the Apex Court. Even Review Petition was dismissed by the Apex Court. All the Courts therefore have given a finding of fact that the land was acquired by the State Government and vested in State Government which finding has been confirmed up to the Supreme Court. Petitioner had initiated proceeding under the Tenancy Act in 2010 which was also dismissed.

10. Petitioner is now seeking to challenge the order passed by the Revenue Minister dated 03/07/2004 after a lapse of almost 11 years. No explanation has been given for delay caused in filing this Petition. Reliance is placed on the

judgment of the Apex Court in *H.D. Vora vs. State of Maharashtra and Others*¹ and particularly on para 6 of the said judgment. We have gone through the said judgment of the Apex Court. In the said case, an order of requisition was challenged by the Petitioner after 30 years mainly on the ground that the order of requisition could not be continued for indefinite period since it was temporary in nature and therefore there was no delay in challenging the said order of requisition, though it was challenged after 30 years after the order was passed. The Apex Court in the said judgment had considered the transitory nature of an order of requisition and observed that it could not be continued beyond the reasonable period of time and therefore entertained the Petition.

11. In the present case, Petitioner having lost in proceeding which was initiated by him under Tenancy Act, is now claiming that the Central Government had requisitioned the land during the second world war. It is not now open for the Petitioner to take a different stand and have a second round of inquiry when in earlier round, finding of fact has been given by all the Courts that the land was acquired by the

¹ (1984) 2 SCC 337

State Government and vested in it in 1949 itself. Viewed from any angle therefore there is no substance in the said submission made by the learned Counsel appearing on behalf of the Petitioner.

12. Hence, Writ Petition is dismissed and disposed of. Since Writ Petition itself is disposed of, Civil Application taken out therein does not survive and the same is also accordingly disposed of.

(M.S. KARNIK, J.)

(V.M. KANADE, J.)