

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3031 OF 2016

Shri Vithoba Deo,
Khed, Taluka Karjat,
District Ahmednagar.
A Trust registered with the
Ld.Assistant Charity Commissioner,
Pune Region, Pune, through its
Trustee – Smt.Pratibha w/o
Prabhakar Parkhe @ Joshi,
age: 70 years, Occ: Trustee,
R/o Sandesh Society,
Plot No.1, Market Yard,
Pune 411 037.

Petitioner

Versus

01 The State of Maharashtra,
through the Secretary,
Revenue Department,
Mantralaya,
Mumbai 400 032.

02 The District Collector,
Ahmednagar District, Ahmednagar.

03 The Sub Divisional Officer,
Karjat Division, Karjat,
Tq. Karjat, District Ahmednagar.

04 The Tahsildar,
Karjat, Tq. Karjat,
District Ahmednagar.

05 Nilesh s/o Shahaji Agawan,
age: major, Occ:
Resident of At & Post Khed,
Tq.Karjat, District Ahmednagar.

Respondents

Mr.A.D.Soman, advocate for the petitioner
Ms.R.P.Gour, A.G.P. for Respondents No.1 to 4.

Mr.A.K.Gawali, advocate for Respondent No.5.

CORAM : S.B.SHUKRE, J.

DATE : 08th February, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 By the impugned order passed by the Hon'ble Minister dated 09.09.2014, Revision Application filed by Respondent No.5, has been allowed and exemption from payment of land revenue granted in respect of *inam* Class III land allotted to the petitioner, has been withdrawn. In the Revision before the Hon'ble Minister, petitioner was not joined as a party, although the grievance is made in respect of *inam* class III land allotted to the petitioner, which was exempted from payment of revenue.

3 It is the contention of learned Counsel for the petitioner that since the order specifically affects interest of the petitioner, it ought not to have been passed in the absence of the petitioner and certainly without granting opportunity of hearing to the petitioner. He also submits that status of Respondent No.5, as protected tenant, itself is in dispute and this issue, when the order dated 09.09.2014, was passed by the Hon'ble Minister, was pending adjudication of the learned Tahsildar, before whom proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'the Act of 1948'), were pending.

4 According to learned Counsel for Respondent No.5, the impugned order does not cause any prejudice to the petitioner and, therefore, they were neither necessary parties nor were entitled to any right of hearing in the Revision Application before the Hon'ble Minister. The learned Counsel further submits that principle of natural justice must not be applied by resorting to straitjacket formula and it must be considered whether any hearing is insisted upon and whether the party, seeking such hearing, would be prejudiced in its interest or not in the absence of such hearing. In support, he places reliance on the judgment in the case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others**, reported (2015) 8 SCC 519.

5 On going through the order of the learned Tahsildar passed in proceedings under Section 32G of the Act of 1948, I find that there is substance in the submission of the learned Counsel for the petitioner that the applicants have sought a declaration that the land is not Inam Class III land and, therefore, land revenue should be paid by the person/s in possession of the land i.e. protected tenant/s. He submits that the land in question continues to be a Inam Class III land as the circular issued by the State Government would show that the inam lands have not been abolished by the Government. In such a scenario, if the declaration without hearing the petitioner that the land in question is not inam class III land and, therefore, land revenue should be paid by the person/s in possession of the land i.e. protected tenant, is made, it would certainly affect substantial interest of the petitioner. This is all the more so because an appeal has been preferred by the petitioner against the order passed by

the learned Tahsildar in the year 2015 in the proceedings under Section 32G of the Act of 1948. Even if that appeal has been disposed of by now, I do not see that the matter would attain finality as the petitioner would like to raise further challenge to the order passed in appeal, if any. In these circumstances, it was absolutely essential for the Hon'ble Minister to have issued notice *suo motu* to the petitioner, whose interest is going to be affected by any of the order that would be passed in the application and since this was not done, the impugned order deserves to be quashed and set aside.

6 Even in the case of **Dharampal** (*supra*), the Hon'ble Apex Court has held that opportunity of hearing is not necessary in the situation where the ultimate conclusion would not change even after hearing the necessary parties. In the instant case, I find that the conclusion reached by the Hon'ble Minister could have been changed had it been brought to his notice that the challenge to the status of Respondent No.5 was pending adjudication before the competent authority. It appears from the impugned order that the Hon'ble Minister has presumed that Respondent No.5 is a protected tenant and accordingly proceeded to pass the order in the manner in which he done it. Therefore, by following the law laid down in the case of **Dharampal** (*supra*), by the Hon'ble Apex Court, this is a case where opportunity of hearing was must so far as interest of petitioner is concerned.

7 In the result, this petition deserves to be allowed and it is accordingly allowed. The impugned order dated 09.09.2014, passed by the Hon'ble Minister, is quashed and set aside and the

matter is remanded back to the Hon'ble Minister for decision afresh, in accordance with law, after giving an opportunity of hearing to the petitioner. Petitioner shall be allowed to intervene in the Revision Application and he shall be heard accordingly. Parties to appear before the Hon'ble Minister on 20th March, 2017.

8 Rule is made absolute to the above extent. No costs.

S.B.SHUKRE
JUDGE

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