

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4107 OF 2015

WITH

CIVIL APPLICATION NO.407 OF 2016

IN

WRIT PETITION NO.4107 OF 2015

Mr. Dhondeo Shambhuroo Limaye
and ors.

...Petitioners.

vs.

State of Maharashtra and ors.

...Respondents.

Mr. A. M. Gokhale along with Mr. M.G. Khambete for the
Petitioners.

Mr. P. G. Sawant, AGP for the Respondents.

CORAM : R.M. BORDE AND
A.S. GADKARI, JJ.

DATE : 05th January, 2017

PC:

The petitioners' contention is that one Ganesh Antaji Limaye was the ancestor of the petitioners and was landlord in relation to certain properties. He was functioning as Shekdar i.e. Recovery Officer appointed by the Ruler or Jamindar The ancestor was holding various lands in different villages in various Districts.

2. It is not controverted that the Ganesh Antaji Limaye was the ancestor of Shri. Shambhuroo Govindrao Limaye and

the property was inherited by Shambhurao Limaye. Shri. Shambhurao Limaye passed away leaving behind his widow Gourbai and four minor sons. The widow Smt. Gaurbai, intimated the Senior Assistant Secretary, Revenue Department Government of Bombay as regards the mis management of the property and on consideration of the report of Smt. Gaurbai, under the Government Resolution No.1921 of 1945 dated 3.10.1946 the superintendence of the estate left behind by Shambhuro was assumed by the Court of Wards. The petitioner is claiming termination of superintendence assumed by the Court of Wards. The request of the petitioner was favourably considered by the Government of Maharashtra and the order for superintendence has been issued by the Government of Maharashtra on 18.10.1973. The Government Resolution issued on the aforesaid date records thus:-

“Government is pleased to accord sanction under section 40(2)(e) of the Bombay Court of Wards Act, 1905 to the withdrawal of Superintendence over the estate of minors Dhondeo Shambhurao, Waman Shambhurao, Bhalchandra Shambhurao and Mukund Shamburao, sons of the late Shri. Shambhurao Govindrao Limaye of Ashta Taluka, Walva, District Sangli and to direct that the

Estate should be handed over to the above mentioned four sons and the mother i.e. widow of the late Shri. Shambhurao Limaye. The Collector and Court of Wards should see that the management fees, audit fees and other fees if any, are recovered from the balance of the estate before the withdrawal of superintendence.

2. The Collector and the Court of Wards should notify the withdrawal in the Maharashtra Government Gazette and such new papers as he may deem necessary under section 43 of the Act.

3. This Government Resolution issues with the concurrence of the Finance Department, vide its unofficial reference NO.18085/A-3/73 dated the 12th September 1973.

sd/-

Section Officer, Government of Maharashtra
Revenue and Forests Department

3. The petitioner submits that although the Government of Maharashtra has also taken a decision on 18.10.1973 as regards the withdrawal of superintendence over the lands belonging to the family, no further steps have been taken and even notification of withdrawal as assured in Para 2 of the resolution has also not been issued. It is the

responsibility of the Collector to notify the withdrawal in the Maharashtra Government Gazette under Section 43 of the Act.

However, in spite of repeated persuasions by the petitioners, the decision taken by the Government of Maharashtra dated 18.10.1973 has not been implemented by the respondents.

4. An affidavit of reply has been filed by the State Government wherein the factual aspects as stated above have not been controverted. It is contended that the record of the case is scattered over in different Tahsildar Offices and it is quite old. The respondents are trying to collect the record and after collecting the necessary record from the different Tahsil offices in different Districts appropriate steps will be taken. It is contended that the petition is premature since the respondents have not finally decided the application tendered by the petitioners.

5. We do not find any reason for the State Government not to implement the decision taken on 18.10.1973. It is not conveniently pointed out on behalf of the State Government as to what are the steps taken from 1973 till this date for compliance of the order passed by the Government of Maharashtra under resolution dated 18.10.1973. It is also not

controverted that the decision of the State Government dated 18.10.1973 has been over ruled or modified at any subsequent point of time. It is therefore, incumbent upon the State Government to implement the decision under Resolution dated 18.10.1973.

6.` Considering the contentions raised by the respondents in affidavit-in-reply, we fed it appropriate to direct the said Respondent No.1 and its officials to ensure compliance of the decision taken by the State Government under Resolution dated 18.10.1973 as expeditiously as possible, preferably within a period of six months from today and it is accordingly directed. .

7. With the directions as above, writ petition is disposed off.

8. Rule is made absolute to the extent as specified above.

9. In view of the disposal of the petition, Civil Application No.407 of 2016 deserves no consideration and the same stands disposed off.

(A.S.GADKARI, J.)

(R.M. BORDE, J.)