

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

WRIT PETITION NO. 2021 OF 2016

Ramchandra @ Chandrabhan Uma Jadhav
& others

... Petitioners

Versus

The State of Maharashtra & others

... Respondents

Mr. R.A. Tambe, Advocate for the Petitioners.

Mr. S.B. Pulkundwar, AGP for Respondents no. 1 to 6.

Mr. R.R. Karpe, Advocate for Respondents no. 11 and 12.

Coram : N.M. Jamdar, J.

Date : 21 November 2018.

Oral Order :

By this petition, the petitioners have prayed for the following reliefs :

B. By issuing writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus the respondent No. 1 to 6 may be directed to allot and hand over possession of land Gut No. 240 admeasuring 4

acre 9 gunthas situated at village Nipani Wadgon, Tq. Shrirampur, Dist. Ahmednagar in favour of the petitioners.

C. By issuing writ of certiorari or any other appropriate writ, order or directions in the like nature the observations appearing in list at Page No. 27 may kindly be quashed and set aside.

D. By issuing writ of certiorari or any other appropriate writ, order or directions in the nature of certiorari, the order dated 24.11.2015 passed in Heirship Inquiry Application no. 22/2013 by learned C.J.S.D., Shrirampur be quashed and set aside.

2. As regards prayer for mandamus is concerned, learned counsel for petitioners points out that it is not a stand alone prayer but is the consequence of writ of certiorari challenging order dated 24 November 2015 and also challenging the observations in a list prepared by the authorities pursuant to the provisions of Section 28-1AA of the Maharashtra Agricultural Lands Ceiling on

Holdings Act, 1961.

3. Having heard learned counsel for the parties at length, it appears that the genesis of dispute is allotment of land i.e. gut no. 240 admeasuring 4 acres 9 gunthas situated at village Nipani Wadgaon, Tq. Shrirampur, Dist. Ahmednagar. Petitioners and respondents 7 to 12 have prayed that allotment should be made in their favour by the State Government pursuant to the provisions of Section 28-1AA of the Act of 1961.

4. Section 28-1AA, more particularly Sections 3 and 3A lay down the procedure for allotment of land to the person who had previously leased his land to the undertaking that he requires the land for cultivation. The scheme of this section is as under :

28-1AA. Power of State Government to grant land to State Corporations :

[(3) The State Government may, subject to the provisions of sub-section (4), after ascertaining the views of the persons interested in the land referred to in sub-section (7), also grant such land to a person who had previously leased his land to the undertaking, who (not being a public trust), requires that land for his personal cultivation, to the extent of the ceiling area as stipulated in the Act, or the actual area of the land leased by such person to

the undertaking, whichever is less, subject to such other terms and conditions as may be specified in this behalf:

Provided that, a person, who was required to file return under section 12 or 12A of the Act in respect of the lands held by him as on the 19th September, 1975, and whose land was declared surplus under the provisions of this Act, shall not be entitled to such grant :

Provided further that, a person, who has applied for grant of such land after 90 days from the commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2001, shall not be eligible for grant of such land.]

[(3A) Notwithstanding anything contained in sub-section (3), the State Government may dispose of the lands vested in Maharashtra State Farming Corporation Limited, for a public purpose, and when such disposal is to the institutions other than the Government or Semi-Government institutions, such allotment will be made at the market rate fixed under the Bombay Stamp (Determination of the Market Value of Property) Rules, 1995 framed under the Bombay Stamp Act, 1958 or by public auction. On such terms and conditions as may be specified by the State Government, by special or general order issued in this behalf.

Thus, the decision as to who should be allotted the land is to be taken by the Committee constituted by the State Government. It is the

contention of petitioners that the said Committee has not taken any decision as yet.

5. It is the contention of petitioners that since respondents no. 7 to 12 have obtained a heirship certificate from the so called ex-allottee of the plot, merely on the basis of this heirship certificate, allotment cannot be done in their favour without looking into any other document. It is the contention of petitioners that heirship certificate confers no title. Petitioners have raised challenge to rejection of their request for impleadment in the heirship certificate and the learned Single Judge of this Court by order dated 23 February 2015 has disposed of the petition observing that the heirship certificate will not confer title over the property which is adjudicated upon. This position is settled. Therefore, since the heirship certificate cannot be considered as ownership document, it cannot form the sole basis thereof. However, it can form one of the pieces of evidence for consideration of the Committee as against the documents relied upon and produced by the petitioners. The evaluation of the documents produced by petitioners and the respondents including heirship certificate will have to be done by the Committee. After evaluation is done by the Committee as per law, the Committee will taken a decision as to whom the allotment is to be made. The said decision

thereafter can be challenged by the parties against whom the decision is rendered.

6. In view of above, at present, it is not necessary to adjudicate the matter any further. Leaving it to the concerned Committee to decide the matter of entitlement of allotment of plot as per law, the writ petition is disposed of. It is needless to state that the Committee will decide the matter on its own merit and as per law. The Committee will take decision thereupon within a period of four months from receipt of the order. It is open to the Committee to call for further documents, if the Committee so warrants. Considering the fact that the decision of allotment is to be taken by the Committee, it is obvious that no allotment will take place unless final decision is taken by the Committee.

7. The writ petition is disposed of in above terms.

N.M. Jamdar, J.