

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

WRIT PETITION NO. 1042 OF 2017

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SANJAY UDDHAVROA KAWADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Doke Kishor
AGP for Respondents 1-4 : Mr. S P Tiwari
Advocate for Respondents 5-7 : Mrs M.A Kulkarni

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WITH
WRIT PETITION NO.12376 OF 2017

MANDAKINI PRABHAKAR JOSHI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

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Mrs M.A. Kulkarni, Advocate for the petitioners.
Mr. S. P. Tiwari AGP for Respondents State.
Mr K.R.Doke Advocate for Respondent No.5.

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CORAM : V.K. JADHAV, J.
Dated: March 07, 2018

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PER COURT :-

1. Both the writ petitions can be disposed off by directing the Sub Divisional Officer, Kallamb to dispose off the File No.2016/ROR/KAVI/235 as expeditiously as possible.

2. By this writ petition, the petitioner is challenging the action of respondent no.2 i.e. the Collector District Osmanabad, granting stay to the proceedings to the Eksal Lagan land of Matapuri Devasthan. In all six lands as detailed in the petition admeasuring 6H 37R in total belonging to the 'Matapuri Devasthan' Washi and there is an entry of the name of Devasthan in Khasara and Pahani Patrak and also in the form namuna no.9 and namuna no.3 as well as in the 7/12 extract of the suit property. The Collector, Osmanabad vide order dated 2.3.2006 had directed the Tahsildar and Talathi Washi to delete names of respondent nos. 5 to 7 and to record the name of Matapuri Devasthan in the record of ownership column and accordingly, the concerned Talathi has recorded mutation entry no.8807 dated 24.4.2006 in respect of the suit property. Though, Mutation Entry no.8807 came to be sanctioned way back in the year 2006 and though it was expected that such a land should have been allotted to the needy and interested agriculturists on yearly basis on Eksal Lagan but unfortunately, land was not allotted to anybody on

Eksal Lagan since 2006. On 30.5.2011 proclamation was issued for granting the suit land on Eksal Lagan by the learned Tahsildar, Washi. It is the case of the petitioner that, present respondent nos. 5 to 7 through respondent no.5 had taken land on Eksal Lagan basis by offering highest bid for the year 2011 to 2012. It is also the contention of the petitioner that respondent nos. 5 to 7 herein have not handed over the possession of the suit land to the Government in the year 2012 when the term of their bid Eksal Lagan expired in the year 2012 and respondent authorities have also not done anything. It is further contention of the petitioner that in consequence thereof respondent nos. 5 to 7 remained in illegal possession of the suit land up to the period of March, 2016. On 8.6.2016 the learned Tahsildar, Washi has issued a proclamation in respect of the suit land for Eksal Lagan basis. Meanwhile, respondent nos. 5 to 7 have filed an objection on 13.6.2016 before the learned Tahsildar, stating therein that the suit properties are their ancestral properties and Matapuri Devasthan had no any concern with the

same. It has been also contended that Mutation Entry No.8807 is illegal and they are going to challenge the same. By order dated 29.8.2016 the learned Tahsildar has rejected the objection filed by respondent nos. 5 to 7 and completed the process of Eksal Lagan. The present petitioner has tendered highest bid for the suit land for the year 2016-2017. Accordingly, respondent no.4 i.e. Tahsildar has directed the petitioner to deposit the amount of bid in the treasury. Petitioner also deposited the said amount and submitted the Challan. Learned Tahsildar vide letter dated 5.10.2016 had granted suit land to the present petitioner on Eksal Lagan.

3. Being aggrieved by the same, respondent nos. 5 to 7 have approached the learned Collector, Osmanabad by preferring an appeal challenging the process of Eksal Lagan. However, in the said appeal, present petitioner were not impleaded as party respondent. Learned Additional Collector, by order dated 4.10.2016 allowed the said appeal and remitted the matter to the Sub Divisional Officer, Kallamb to decide the objections as

raised by the parties in accordance with law. Learned S.D.O. has proceeded with the matter and by impugned order dated 29.10.2016 stayed the further proceedings of the Eksal Lagan in respect of the suit property in favour of the petitioner and kept matter for final hearing.

4. It appears that, the Additional Collector, in his impugned order dated 4.10.2016 has not touched to the merits of the case and he has simply remitted the matter to the S.D.O. Kalamb. On careful perusal of the impugned order passed by the S.D.O., Kalamb dated 29.10.2016, it appears that, the learned S.D.O. has observed that, it is not clear whether before initiating the proceedings of Eksal Lagan, the process of Inam abolition was completed or not. The learned S.D.O. Kallamb has also observed that, in the Muntkhab, kind of said Inam is stated as Dan-Khairatmash and the learned S.D.O. has observed that, it is not clear in the order of the Tahsildar whether in case of such kind of Inam land of Devasthan, such lands can be given to other agriculturists on Eksal Lagan. Learned S.D.O.

has also observed that, appeal against Mutation Entry no. 8807 is also pending in his office and as such, it is necessary to see whether the entries are there in Namuna no.3 and Namuna no.9 in respect of the suit land as Inam Land. Learned S.D.O. has also observed that said process of Eksal Lagan was not completed as per the Government circular.

5. It appears that, the respondent nos. 5 to 7 herein have also independently challenged the order passed by Tahsildar dated 29.8.2006 rejecting thereby the objections raised by respondent nos. 5 to 7 by filing Writ Petition No.12376/2017. It also appears that, respondent nos. 5 to 7 are claiming certain rights in respect of the suit properties, however, the petitioner herein is only concerned with the Eksal Lagan. In my considered opinion, it is only for the learned Sub Divisional Officer to decide the pending proceedings after giving an opportunity of being heard to both the parties in accordance with law. It would be premature to observe anything in these two writ petitions when the

matter is under consideration before the learned Sub Divisional Officer, Kalamab.

6. It is brought to the notice of this Court by the learned counsel appearing for respondent nos. 5 to 7 in Writ Petition no.1042/2017 that during the pendency of these writ petitions, respondent no.6-Mandakini Prabhakar Joshi died. It would be futile exercise to take on record the legal representatives of respondent no.6 Mandakini, when these two writ petitions can be disposed of by giving directions to the learned Sub Divisional Officer, Kallamb to dispose of the pending proceedings in time bound manner. I, therefore, permit the petitioner to delete the name of respondent no.6-Mandakini Prabhakarrao Joshi from the array of respondents in Writ Petition No.1042/2017. Similarly, petitioners in Writ Petition No.12376/2017 are also permitted to delete name of Petitioner no.1-Mandakini Joshi, forthwith at present. Both the parties are at liberty to file an application before the learned Sub Divisional Officer, Kallamb in the pending proceedings

to bring on record the legal representatives of respondent no.6- Mandakini Joshi, if needed, and the learned Sub Divisional Officer, Kallamb may decide the said application in accordance with law.

7. It appears from the affidavit-in-reply filed by respondent nos. 2 and 3 i.e. the Collector, Osmanabad and Sub Divisional Officer in writ Petition No.1042/2017 particularly, in paragraph No.9 that, the Additional Collector has passed the order to take action on merit basis and not passed any order in respect of the stay to the Mutation Entry No.8807 and as such in forthcoming year due to process for calculation of offset price and auction of land under Eksal Lagan will be done in accordance with the law.

8. In view of the above, both the writ petitions are disposed of with the direction to the learned Sub Divisional Officer, Kalamb to dispose of the pending file No.2016-R-KAVI-235 as expeditiously as possible and preferably within a period of THREE MONTHS from the

date of this order, after giving an opportunity of being heard to both the parties. All points kept open. The parties are also at liberty to file an application before the learned Sub Divisional Officer, Kallamb for bringing on record the legal representatives of deceased respondent No.6-Mandakini Prabhakar Joshi, if needed. Writ Petitions are accordingly disposed of. No costs.

(V.K. JADHAV, J.)

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