

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7637 OF 2013
WITH CA/11692/2015 IN WP/7637/2013

SHIVAJI VISHWANATH THORAT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Narwade Narayan B.
AGP for Respondents 1 to 3: Mr. S.N. Morampalle
Advocate for Respondent No. 4 : Mr. R.A. Tambe
Advocate for Respondent Nos 4C-2, 4C-3, 4C-5, 4C-6: Mr. S.S. Pawar
Advocate for Respondent Nos. 4B-1, 4B-2, 4B-3 : Mr. V.R. Autade
Advocate for Respondent Nos. 4C-1, 4C-7, 4C-8, : Mr. N.P. Bangar

.....

CORAM : V. K. JADHAV, J.
DATED : 5th MARCH, 2018

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. By way of this petition, the petitioners are seeking directions against the respondents-authorities, particularly respondent No.3 Deputy Collector and the Chairman of Ceiling Land Distribution Committee, Collectorate, Ahmednagar, to include the names of the petitioners in the list of Namuna No.3 prepared by the respondent authorities for allotment of land to the original holders and further direction to distribute the land to the present petitioners.
3. Brief facts giving rise to the present writ petition are as follows:-

In the year 1958, Maruti Vithoba Thorat had executed a rent agreement in respect of agricultural lands, which consist of four survey numbers, in favour of Maharashtra Sugar Mills Company. In the year 1961, after enactment of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter for short, referred to as "the Act of 1961") the excess lands, held by the Maharashtra Sugar Mills Company and other industrial undertakings, were declared surplus and the possession of the lands was taken over by the Government. Accordingly, those lands were handed over to the Maharashtra State Farming Corporation, established under the Act of 1961. Thus, the lands given on lease by deceased Maruti Thorat were now in possession of Maharashtra State Farming Corporation. In view of the amendment to Section 28-1AA of the Act of 1961, the process of re-allotment was commenced. In the said process, according to the petitioners, though their names are shown in the preliminary list of allottees, subsequently, the name of respondent No.4 remained in the said list of allotment, at item No. 68 alongwith the names of other respondents at Item No. 16. Hence, this writ petition.

4. Learned counsel for the petitioners submits that the names of the petitioners have been deleted from the list of allottees without any reason whereas the learned counsel for respondent No.4 submits that mistakenly the names of the petitioners were appearing in the preliminary list and subsequently that mistake came to be rectified

considering the relevant record in respect of the said property.

5. I have also heard learned counsel appearing for the legal heirs of deceased respondent Nos. 4-C and legal heirs of deceased Maruti Vithoba Thorat. The learned counsel appearing for other respondents have adopted the submissions made on behalf of respondent No.4.

6. The affidavit in reply has been filed on behalf of respondent Nos. 2 and 3 by one Arun Waman Thakur, who is working as Deputy Collector/Special Land Acquisition Officer No. 14. In para 4 of the said affidavit in reply, it has been specifically contended that as per the decision, it has been directed to restore the land to the original owner i.e. Khandkari Shetkari being a legal heirs. The petitioners herein prayed for enlisting them in Namuna No.3 for allotment of land at village Khandala, Tq. Shrirampur, District Ahmednagar. It has been further stated in the said affidavit in reply that respondent No.3 has issued a letter to the petitioners stating that the legal heirs certificate of original lessor Shri Maruti Thorat is necessary for taking their names in Namuna No.3. It has also been communicated to the petitioners that as soon as the legal heirs certificate is received, the appropriate action will be taken. Copy of said letter dated 13.9.2013 is placed on record alongwith the aforesaid affidavit in reply. It has been further stated in para 6 of the affidavit in reply that the petitioners produced their legal heirs certificate to the proper authority and necessary action will be taken in accordance

with law.

7. Learned counsel for the petitioners and learned counsel appearing for respondent No.4 submit that during pendency of this writ petition, both the parties have obtained the legal heirs certificate from the competent Court and they are ready to approach the authority. Learned counsel for respondent No.4 submits that in terms of guidelines issued by the Government for distribution of surplus land, more particularly guideline No.2.3, if any objection is raised in respect of the list as per Namuna No.3, and if that objection pertains to entry of heirship, it is for the parties to substantiate their case by filing legal heirship certificate obtained from the competent court.

8. In view of above, if the parties now obtained the legal heirship certificate from the competent court, the parties may approach respondent No.3, who shall decide the dispute in accordance with law by giving opportunity of being heard to both the parties. Learned counsel for respondent No.4 submits that respondent No.4 has some other point available to argue his case on merits. In view of the same, keeping all points open, I proceed to pass the following order:

O R D E R

I. Writ petition is hereby partly allowed. No costs.

II. The respondent No.3 shall pass the appropriate order with regard to the allotment of land of original land holder deceased Maruti Vithoba Thorat to the petitioners and respondents afresh, with the following directions:-

- a) The parties shall appear before respondent No.3 on 20.03.2018.
- b) The respondent No.3 shall give opportunity of being heard to both the parties and also permit them to substantiate their case by producing on record the relevant documents in support of their rival claims and pass the appropriate order in accordance with law, within six months from today.

III. All points are kept open.

IV. Writ petition is accordingly disposed of.

9. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

rlj/