

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7844 OF 2018
WITH CA/13708/2018 IN WP/7844/2018

PRAKASH NAMDEORAO GAIKWAD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Patil Pradip R.
AGP for Respondents: Mr. S. M. Munde
Advocate for Respondent No.3 : Mr. Sanket S. Kulkarni
Advocate for Respondent No.5 : Mr. Y.B. Bolkar

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CORAM : N. M. JAMDAR, J.
DATED : 4 DECEMBER 2018

PER COURT:-

1. By this petition, the petitioners have challenged the order passed by the Collector, under Section 3 of Bombay Inferior Village Watan Abolition Act, 1958.

2. The learned counsel for the respondents have taken preliminary objection that the petitioners have remedy of appeal to the State Government under Section 3 of the Act itself. He submitted that in view of ad-interim relief granted in this petition the further proceedings have been stalled. He has therefore, circulated this petition for urgent hearing as to admission.

3. To appreciate the preliminary objection raised by the

respondents, Section 3 of the Act of 1958 needs to be quoted. Section 3 of the Act reads thus:-

“3. Powers of Collector to decide certain questions and appeal.

(1) If any question arises,"

(a) whether any land is watan land,

(b) whether any person is a watandar,

(c) whether any person is an unauthorised holder,

the Collector shall, after giving the party affected an opportunity to be heard and after holding an inquiry, decide the question.

(2) Any person aggrieved by such decision may file an appeal to the State Government within ninety days of such decision.

(3) The decision of the Collector, subject to an appeal under sub-section (2) and the decision of the State Government in appeal under sub-section (2) shall be final.”

Thus, the provisions of Section 3, as quoted above, states that the Collector has power to decide the question whether any person is Watandar and against the said decision the appeal is provided to the State Government.

4. Learned counsel for the petitioners, relying on the order passed by the State Government in the earlier round on 30 April 1981, submitted that the issue as to whether the petitioners can be considered as Watandars has been decided in favour of the petitioners by the State Government itself and therefore, it is not necessary for the petitioners to file an appeal, as the Collector has to give deference to the earlier decision.

5. The question is whether the petitioners have alternate efficacious remedy under the statute. It is a matter of self imposed discipline that the power under Articles 226 and 227 of the Constitution of India is not to be exercised if there exists an efficacious alternate remedy in which relief can be granted to the petitioners. If it is the contention of the petitioners that the impugned order is in violation of the earlier order, the petitioners can urge said contention in the appeal and if the petitioners are right in their contention, the appellate authority will consider the same. The relief sought for by the petitioners and the arguments advanced, can be effectively addressed before the appellate authority. There is no reason to keep this petition pending.

6. The learned counsel for the petitioners states that the petitioners will file statutory appeal and to enable the petitioners to file an appeal, the interim order mandating the respondents not to create third party rights be continued for some period. Learned counsel for the respondents state that the statement made by the respondents regarding not to create third party rights will be continued for a period of four weeks from today. The statement is accepted.

7. In case the petitioners files an appeal, the appellate authority will take into consideration pendency of this petition for the purpose of excluding the period of pendency of petition from the period of limitation.

8. Thus, keeping all contentions of the parties open, the writ petition is disposed of.

9. In view of disposal of main writ petition, pending civil application is disposed of.

(N. M. JAMDAR, J.)

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