IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.6608 OF 2017
WITH
CIVIL APPLICATION NO.2611 OF 2017

Anil Ramchandra Diwate and others ... Petitioners
versus
The Deputy Superintendent of Land Records and others ... Respondents

WITH
WRIT PETITION NO.3479 OF 2017

Vasant Anant Tarlekar and others ... Petitioners
versus
The Deputy Superintendent of Land Records and others ... Respondents

Mr.Umesh Mankapure for petitioners.
Mr.B.V.Samant, AGP, for State.

CORAM : S.C.DHARMADHIKARI AND PRAKASH D. NAIK, JJ.
DATE : 28th February 2018

PC :

1. Heard both sides. Perused the petitions, the annexures thereto and the affidavits placed on record.

2. We have an affidavit of respondent no.4 in Writ Petition (Stamp) No.6608 of 2017. The fourth respondent to this petition is the Senior Deputy Accountant General/Administration in the office of Accountant General (Audit)-II, Maharashtra, Nagpur. In her affidavit she stated that the office of Accountant General conducts the audit of the accounts of the Government of Maharashtra i.e. for

and on behalf of the Comptroller and Auditor General of India (for brevity, `CAG'). The CAG is an independent constitutional authority. How the audit is carried out and for what purpose, is then set out in paragraphs 3 and 4 of this affidavit. It is then stated that these audit reports/paragrphs of CAG are examined by Public Accounts Committee, a Parliamentary Committee constituted by the State Legislature of Maharashtra in accordance with the provisions of the Rules of Procedures and Conduct of Business in Maharashtra Assembly. Accordingly, the CAG of India presents the audit report to the Hon'ble Governor of Maharashtra which is laid before the State Legislature. It is in these circumstances that she says that she is not a party who can be impleaded on the basis of any contest. Beyond pointing out the discrepancies and deficiencies in the accounts and forwarding such a report, there is no role ascribed to respondent no.4.

3. We are here concerned with the stand of Deputy Superintendent of Land Records and which is to be found in the affidavit filed. That affidavit from page 57 states that in exercise of the powers vested under Rule 42 of the Land Revenue Rules, 1921, the Government granted plots for construction of residential houses to landless persons including the petitioners. The plots were allotted by allotment order dated 6th May 1960. In the year 2004 a review of cases of such allotment was taken by Taluka Inspector of Land Records, which revealed that in respect of 81 cases, there was breach of conditions of allotment committed by these land owners. The breaches are then set out at pages 59 and 60 of the affidavit. In running paragraphs 5 and 6 it is stated that after a scrutiny the Tahsildar forwarded the review report to the District Collector, Sangli

in the year 2004. The third respondent to this petition directed the second respondent to initiate necessary action against the petitioners for breach of conditions. Thereafter a letter was issued on 25th January 2017 and the third respondent directed the second respondent to issue notices to the concerned parties. Some of the parties are the present petitioners to whom notice was issued to pay unearned income.

4. Various government resolutions are referred and it is stated that an opportunity was given to the petitioners by the Deputy Superintendent of Land Records to pay unearned income and to get the breaches regularized. That is how the order passed by respondent no.1 Deputy Superintendent of Land Records is justified. We have perused that order which is common to almost all the petitioners.

5. In our view, that is nothing but a mere communication and not a speaking order. The record does not show anything as to how the amounts which are now claimed have been arrived at and in what facts and circumstances, what is the breach, which term and condition is breached, what are the legal consequences of such breach and whether that breach can be regularized. These matters which ought to be considered on case to case basis. There cannot be a general presumption irrespective of the factual position which may be diferring from, petitioner to petitioner or noticee to noticee. Thus, on the basis of an audit report or the objections contained therein or a mere notice to show cause, the petitioners cannot be called upon to pay huge sums.

6. In these circumstances it is not possible to justify the communications which are styled as orders and impugned in these petitions. Each of them stand quashed and set aside. The writ petitions are allowed in these terms.

7. However, it will be open for the authorities to issue a show cause notice to alleged defaulters including the present petitioners alleging specific breaches committed by them, calling for their explanation and after considering that explanation, proceed subsequently by taking necessary action as is permissible in law. Meaning thereby that if the authority finds any breach, it will call for an explanation from the alleged defaulter by issuing show cause notice, it will allow the alleged defaulter to place his or her version before it in writing, it will then consider the same and pass a speaking order. It is only then and after complying with the procedures, that the recovery by coercive means be made. It is for these reasons that we have quashed the impugned communications. We, therefore, grant liberty to the authorities to proceed in accordance with law and clarify that our order passed on these petitions, shall not be construed as an expression on the merits of the controversy.

8. Both the petitions are disposed off. Civil Application No.2611 of 2017 does not survive and stands disposed off as such. No order as to costs.

(PRAKASH D. NAIK, J.) (S.C.DHARMADHIKARI, J.)

MST