

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9727 of 2015

Bharati Vidyapeeth, A Public Charitable
Trust through its Joint Secretary,
Dr.Mahadeo Shivaling Sagare .. Petitioner
Versus
State of Maharashtra & ors .. Respondents

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Mr.V.P. Sawant with Mr.P.M.Jadekar and Tanaya Patankar for
the petitioner.

Mr.Shekhar Jagtap with Mr.Akshay Kapadi and Sairachita
Chaudhary i/b J. Shekhar & Co. for respondent no.5.

Mr.B.V. Samant, AGP for the respondent nos.1 to 4.

**CORAM: S.C. DHARMADHIKARI &
SMT.BHARATI H.DANGRE,JJ.**

DATED : 16th FEBRUARY, 2018

P.C :-

1 The petitioner Bharati Vidya Peeth – a public
charitable trust has challenged the order passed on 7th August
2013 and 20th August 2013 by which it says that it is
seriously aggrieved.

2 It is aggrieved because the Revision Application has been filed by Pune Zilla Sahakari Doodh Utpadak Sangh, Pune a respondent to this petition, namely, Respondent no.5. That proceedings styled as "Revision Application" at the instance of this Sangh, claims that the land Survey No.130 to 133 is a public property. The State Government had allotted allegedly 20 acres land on lease basis to this Sangh. Out of that, 5 acres land was resumed because the Sangh allegedly breached the terms and conditions of allotment/lease. That order of 13th February 2007 was challenged and before the Additional Commissioner on 26th February 2007, that proceeding is pending.

3 In that, there is a reference to a Government order dated 31st August 2009 allotting allegedly five acres of the Government land to the petitioner before us and to one to Pune Zilla Shikshan Mandal. For implementing this order, the Doodh Sangh was directed to hand over the five acres of land. However, aggrieved and dissatisfied against that notice to hand the Doodh Sangh which is respondent no.5 before us

filed a writ petition being Civil Writ Petition No.10528 of 2009. On this petition, an order came to be passed by this Court, copy of which is at page 38 of the paper book dated 25th April 2013. That order reads as under :-

“1 Learned counsel for the parties, after arguing the matter for some time, request that the petition be disposed of with following directions and no reasons in support thereof be given.

- i. The petitioner will file a Revision Application challenging the order passed by the Respondent No.2 - District Collector, Pune, dated 13th February 2007 to the State of Maharashtra.
- ii. The Principal Secretary (Revenue), State of Maharashtra will hear the Revision Application filed by the petitioner.
- iii. The Revision Application will be filed by the petitioner within a period of three weeks from today and the Secretary will decide the same within four weeks thereafter.
- iv. The ad interim protection granted by this Court by order dated 16th December 2009 will continue to operate during the pendency of the Revision Application and for a period of three weeks after service of the order on the petitioner. If the order is adverse to the petitioner.
- v. All contentions of the parties on merits are expressly kept open.

2 The Writ Petition is disposed of in the above terms".

4 It is stated that preceding this order, an order came to be passed on 8th February 2010 at the instance of the present petitioner in Civil Application No.296 of 2010 directing the respondent no.5 Sangh to implead it as a respondent to that writ petition. Therefore, the grievance is that even this Revision Application cannot proceed unless and until the petitioner is impleaded as a party-respondent to that Revision Application.

5 Such an application seeking joinder or alternatively permitting intervention was made before the State Government and on 7th August 2013, by the impugned order, that application is rejected. After that, the final order has been passed in the Revision Application on 20th August 2013. Both are challenged on the ground that the petitioner ought to have been heard particularly when in substantive proceedings such as a Civil Suit, as also a Civil Writ Petition before this Court, the petitioner was made party by this Doodh Utpadak Sangh.

6 Mr.Sawant, learned Advocate appearing for the petitioner would submit that the impugned orders are contrary to law and in any event have resulted in miscarriage of justice. The petitioner should have been made a party or at least allowed to intervene for the real position could be pointed out to the Government by them. It is likely that the facts are distorted and misrepresented by both the respondent no.5 and 6 to this writ petition.

7 We are unable to agree with Mr.Sawant for more than one reason. Firstly, the proceedings are arising out of the Maharashtra Land Revenue Code, 1966. By Sections 20 onwards, for such of the lands belonging and vesting in the State for management and administration, the State is in the position of a trustee for the public. The Law permits the State to grant a lease of these properties or dispose them of in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 and particularly the Maharashtra Government Lands Disposal Regulations 1971 made thereunder. When such allotments are made by the State and

there are disputes in relation to that because if the same land is allotted to another party, or if the same land is claimed by both parties in equal shares, which of them may not be defined, then, the grievance partake the character of an inter-se dispute. That means two private parties relying upon the grant or order of allotment claim the land to be allotted to them individually or jointly or in distinct shares which are not demarcated. Such litigation then ought to be fought between them by approaching the competent civil courts. If one does not make other the party, in proceedings before the Government, wherein neither such issues are settled, much less conclusively decided, then we do not see how there is any miscarriage of justice or the order under challenge can be said to be suffering from perversity or an error of law apparent on the face of the record. The petitioner is not prevented from bringing in substantive proceedings and relying on the order of allotment of land, particularly Government land to it and disputing the assertions of both the respondent nos.5 and 6 to this petition. If the proceedings before the State Government are understood in the proper perspective and as aforesaid,

then we do not see any prejudice much less serious in nature. Merely because in writ petitions brought by the respondent no.5 to this Court concerning the dispute, the petitioner was directed to be made a party and was indeed a party, but the orders therein which are brought to our notice have not dealt with the issues of right, title and interest in the immovable property which is claimed by the petitioner.

8 Hence, reliance placed on these orders does not carry the matter any further nor are they binding on us.

9 In the circumstances, without expressing any opinion on the merits of the controversy, we dispose of this petition.

10 While we dispose it of, we are extremely cautious and careful in clarifying that this Court has not expressed any opinion on the entitlement of either parties and if the petitioner is prejudiced by any acts of the Government as also the private respondent, the petitioner can bring in substantive proceedings, including approaching the State

Government. All such avenues and contentions therein are kept open.

(SMT.BHARATI H. DANGRE,J)

(S.C.DHARMADHIKARI,J)