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

PUBLIC INTEREST LITIGATION NO.10 OF 2015

Shankarlal s/o Shriram Lohiya
Age 77 years, Occu. Pensioner,
R/o Nalani, Tal. Dist. Jalna
At present C/o Manoj Lohiya,
Supdt. of Police (Rural), Pune
PAN - Non Tax Payer

... PETITIONER

VERSUS

1. The State of Maharashtra
(through the Secretary,
Revenue Department,
Mantralaya, Mumbai - 32)
2. The Collector,
Jalna
3. The Tahsildar, Bhokardan,
District Jalna.

... RESPONDENTS

.....
Shri B.R. Warma, Advocate for petitioner
Shri P.K. Lakhotiya, A.G.P. for respondents
.....

CORAM: PRASANNA B. VARALE AND
 R.G. AVACHAT, JJ.

Date of reserving judgment : 3rd JULY, 2019.
Date of pronouncing judgment : 8th AUGUST, 2019

JUDGMENT (PER R.G. AVACHAT, J.) :

The petitioner, by this Public Interest Litigation (P.I.L.),
has sought for the direction to the respondent No.1, the State of

Maharashtra, to issue 7/12 extracts of agricultural lands in adherence with Scheme of Section 148 of the Maharashtra Land Revenue Code (for short M.L.R.C.), by incorporating word 'owner' instead of 'occupant - Class - I' and/ or to issue necessary directions for correction of revenue record to that effect.

2. The petitioner claims to be the owner, in possession of agricultural land, being Gat No.2/4, situated at village Nalani, Taluka Bhokardan, District Jalna. Before the year 2010, 7/12 extracts of agricultural lands were issued in printed form and manually filled in. The 7/12 extract issued before 2010 contained information regarding identification of agricultural lands, owner thereof, cultivator, nature of crop and other rights. Now-a-days, record of rights of agricultural lands is preserved in Computer. Computer prints thereof are issued. Of late, the 7/12 extracts contain word 'occupant' instead of 'owner'. There is inconsistency in maintaining record of rights of agricultural lands in State of Maharashtra. The 7/12 extracts issued in some parts of Maharashtra contain the column 'owner' while in other parts, it is 'occupant'. The petitioner, therefore, made several representations to the Director of Land Records, the Collector, Jalna and other authorities to do away with the anomaly. Since no heed was paid to the representations preferred by the petitioner, the present P.I.L. came to be filed.

3. Heard. Mr. B.R. Warma, learned counsel for the petitioner made his submissions consistent with the pleadings in the P.I.L. The learned counsel took us through the relevant provisions of the M.L.R.C. and the Rules made thereunder, to submit that the 7/12 extracts issued now-a-days do not contain the column 'owner'. The practice of issuing 7/12 extracts disclosing name of the occupant of the land is inconsistent with the mandate of Section 148 of M.L.R.C. In all other allied Laws, such as Bombay Tenancy and Agricultural Lands Act, Ceiling Act, the records maintained under these Acts disclose the names of the owners of the lands. There is quite a distinction between the term 'owner' and 'occupant'. The term 'occupant' infers the person even other than the 'owner'. When a particular person is the owner of the land, his name should appear as such in the 7/12 extract, showing his name as 'occupant'. The 7/12 extracts containing term 'occupant' causes great inconvenience for raising loan from financial institutions. According to learned counsel, it is, therefore, necessary that necessary corrections/ change is made in the form of the 7/12 extract with a view to disclose in what capacity the occupant holds the land such as, whether by way of ownership, lessee, mortgagee etc.

4. The learned counsel relied on the judgment of the Apex Court in case of **Narayan Laxman Patil V/s Gala Construction Company Private Limited & others**, reported in

2015 AIR (SCW) 6333, to submit that “when Statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner”, it has to be done in that manner alone.

5. An affidavit-in-reply has been filed on behalf of the respondent – State. It is contended therein that the M.L.R.C. does not contain the term 'owner'. The person holding the land is described in the 7/12 extract as Occupant Class-I, Occupant Class-II, Government lessee etc. The term 'Occupant Class-I' denotes that the holder is the owner of the land with an unrestricted right to transfer that land. The record of right is maintained in consonance with the provisions of M.L.R.C. and the Rules thereunder. It is now preserved in Computerised form. In some of the districts, Talathis would obtain printed format of 7/12 extract from the market and used to fill in manually before being issued. General instructions have now been issued with a direction that the 7/12 extract in computerised form maintained by the State shall be issued and such practice is now in vogue all over the State.

6. The learned A.G.P. also took us through the relevant provisions of the M.L.R.C. to submit that the record of rights of agricultural land is maintained in complete adherence to the statutory mandate. There is no need to effect any change, as has

been suggested or prayed for by the petitioner.

7. The following provision of the M.L.R.C. needs to be referred to, for answering the issues raised in this P.I.L.

Section 2:- Definitions :- In this Code, unless the context otherwise requires –

2(2) “alienated” means transferred in so far as the rights of the State Government to payment of rent or land revenue are concerned, wholly or partially, to the ownership of any person;

2(17) “Landlord” means a lessor;

2(18) “land records” means records maintained under the provisions of, or for the purposes of this Code and includes a copy of maps and plans of a final town planning scheme, improvement scheme or a scheme of consolidation of holdings which has come into force in any area under any law in force in the State and forwarded to any revenue or survey officer under such law or otherwise;

2(23) “occupant” means a holder in actual possession of unalienated land, other than a tenant or Government lessee; provided that, where a holder in actual possession is a tenant, the landholder or the superior landlord, as the case may be, shall be deemed to be the occupant;

Section 29 gives classes of persons holding land as under :

S. 29. : Classes of persons holding land :

- (1) There shall be under this Code the following classes of persons holding land from the State, that is to say -
 - (a) Occupants - Class I,
 - (b) Occupants - Class II,
 - (c) Government lessees.
- (2) Occupants - Class-I shall consist of persons who;
 - (a) hold unalienated land in perpetuity and without any restrictions on the right to transfer;
 - (b) immediately before the commencement of this Code hold land in full occupancy or Bhumiswami rights without any restrictions on the right to transfer in accordance with the provisions of any law relating to land revenue in force in any part of the State immediately before such commencement; and
 - (c) On the 21st April 2018, being the date of commencement of the Maharashtra Land Revenue Code (Amendment) and the Maharashtra Land Revenue (Inclusion of certain Bhumidharis in Occupants - Class-I Permission) Rules (Repeal) Act, 2018, were holding the land in Vidarbha in Bhumiswami

rights with restrictions on right to transfer, or in Bhumidhari rights in any local area in Vidarbha.

- (3) Occupants - Class-II shall consist of persons who, -
 - (a) hold unalienated land in perpetuity subject to restrictions on the right to transfer;
 - (b) immediately before the commencement of this Code hold -
 - (i) x x x x (deleted)
 - (ii) elsewhere hold land in occupancy rights with restrictions on the right to transfer under any other law relating to land revenue; and
 - (c) before the commencement of this Code have been granted rights in unalienated land under leases which entitle them to hold the land in perpetuity, or for a period not less than fifty years with option to renew on fixed rent, under any law relating to land revenue and in force before the commencement of this Code; and all provisions of this Code relating to the rights, liabilities and responsibilities of Occupants-Class-II shall apply to them as if they were Occupants-Class-II under this Code.

Close reading of provisions of M.L.R.C. indicate that, it does not contain the term 'owner'.

8. Chapter X speaks of land records. Part - "A" thereof relates to record of rights. Section 148 of the M.L.R.C. mandates

to maintain record of rights in every village. Such record shall include the following particulars :-

- (a) the names of all persons (other than tenants) who are holders, occupants, owners or mortgagees of the land or assignees of the rent or revenue thereof;
- (b) the names of all persons who are holding as Government lessees or tenants including tenants within the meaning of the relevant tenancy law;
- (c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto;
- (d) the rent or revenue, if any, payable by or to any of such persons;
- (e) such other particulars as the State Government may prescribe by rules made in this behalf, either generally or for purposes of any area specified therein.

9. A person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, pledge or otherwise, any right as holder, occupant, owner, mortgagee etc. is expected to report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition.

10. Section 150 relates to register of mutation and register of disputed cases. It is obligatory on the Talathi to enter

in a register of mutations, every report made to him under Section 149 of any intimation of acquisition or transfer under Section 154 of from any Collector.

The mutation is continuous process and mutations of rights as they take place are to be recorded in chronological order, each change being given a separate number. When the effect of change is recorded in the 7/12 extract, the number relating to such change is also recorded in the 7/12 extract.

There are Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971. Rule 3 relates to form and record of rights.

11. The aforesaid provisions would indicate that the M.L.R.C. does not define the term 'owner'. For all practical purposes, the term 'owner' is synonymous to the term 'Occupant-Class-I'. The affidavit filed, in reply, does state that the record of rights of all the agricultural lands in the State of Maharashtra has now been maintained in computerised form and in complete adherence to the provisions of M.L.R.C. It needs no mention that, the 7/12 extract is not a document of title. The same is basically meant for fiscal purposes. The affidavit-in-reply further states that, inconsistency in the 7/12 extracts, as is pointed out by the learned counsel for the petitioner, is the result of some of the

Talathis obtaining printed forms of 7/12 extracts from the market and issuing them after filling in the blanks therein. It is stated in the affidavit-in-reply that, Circular has been issued directing all Collectors to ensure that the proforma of village form No.7/12 prescribed in the Maharashtra Land Revenue Manual, Volume IV is used to maintain village record and to issue village Form No.7/12 extract.

12. It is true that, the allied Statutes such as Bombay Tenancy and Agricultural Lands Act, Land Ceiling Act and Vatan Laws contain the term 'owner'. For addressing the issue involved in this P.I.L., no recourse to allied Statutes need be made when the M.L.R.C. is a self contained Code. It is reiterated that, the 7/12 extract is not a document of title. True, the entries in the 7/12 extract and register of mutations carry statutory presumption of correctness. The 7/12 extract along with the relevant entry from register of mutation is suffice to indicate in what capacity a person named in the 7/12 extract holds the land. The 7/12 extract also contains nature of tenure of the person in occupation of the land. If the person holds the land as an owner, he is shown as 'Occupant - Class-I'. We find that the record of rights has been maintained in complete adherence to the provisions of M.L.R.C. and the relevant rules thereunder, and name of owner of the particular land does figure in the 7/12 extract, with a nature of tenure as 'Occupant - Class-I', coupled

with the number of mutation, by virtue of which, the name of such person is recorded in the record of rights, is suffice to indicate whether the person holds the land as an owner thereof or otherwise. The certified copies of such record are acted upon by one and all including the financial institutions.

In the aforesaid backdrop, we are not inclined to grant the discretionary relief, as has been urged for. In the result, the Public Interest Litigation fails. The same is, therefore, dismissed.

(R.G. AVACHAT)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-