

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1813 OF 2010

IN

LETTERS PATENT APPEAL NO. 192 OF 2009

IN

WRIT PETITION NO. 3467 OF 2003

Vitthal Rukhmini Devasthan Trust
Through its Secretary
Genu Khandu Bagade, Age : 76 Years,
Occu. Agriculturist, R/o. Hanga
Tal. Parner, Dist. Ahmednagar

..APPLICANT

VERSUS

1. Dnyandeo Kondiba Nagare
Deceased through his L.R.s
- 1(A) Janabai Dnyandeo Nagare,
Age : 45 Years, at and Post
Hanga Tal. Parner,
Dist. Ahmednagar
- 1(B) Surekha Dattatraya Londhe
Age : 25 Years, At and Post
Hanga, Tal. Parner,
Dist. Ahmednagar
- 1(C) Chaya Satish Lalbage
At Bhingar, Gondhali Mala
Mahatma Phule Chowk,
Dist. Ahmednagar
2. Smt. Anusaya Kondiba Nagare
Age : 73 Years
3. Smt. Kamal Kanifnath Nagare
Age : 38 Years
4. Ganesh Kanifnath Nagare
Age : 12 Years, Minor
5. Manisha Kanifnath Nagare
Age : 7 Years, Occ. Minor

- R. No. 4 & 5 R/o. Hanga
Tq. Parner, Dist. Ahmednagar
6. Shivaji Chandrarao Dalvi
Deceased
- 6(A) Shri. Pratap Shivajirao Dalvi
Age : 43 Years, Occ. Agricultural
R/o. Hanga Tal. Parner
Dist. Ahmednagar
- 6(B) Sou. Jayashri Yashwantrao Bhosale
Age : 43 Years, Occu. Household
R/o. Sakri Tal. Sakri
Dist. Dhule
- 6(C) Sou. Alka Santosh Somwanshi
Age : 38 Years, Occu. Household
- 6(D) Sou. Nanda Rajendra Somwanshi
Age : 36 years, Occu. Household

R/ Nos. 6-C and 6-D R.o. Sarola-
Somwanshi, Taluka Shrigonda,
Dist. Ahmednagar
R. Nos. 6-C and 6-D R/o. Sarola-
Somwanshi, Taluka Shrigonda
Dist. Ahmednagar

- 6(E) Sou. Pushpa Sanjay Zende
Age : 29 years, Occ. Household,
R/o. Chikhali, Tq. Shrigonda
Dist. Ahmednagar
7. Sambhaji Chandrarao Dalvi
Age : 68 Years,
8. Krushnarao Chandrarao Dalvi
Age : 70 Years

R. Nos. 7 and 8 Occu. Agricultural
R/o. Hanga Tal. Parner
Dist. Ahmednagar

9. The State of Maharashtra
Through The Special Land
Acquisition Officer No.12
At and Dist. Ahmednagar

..RESPONDENTS

.....
 Advocate for the Applicant : Shri. S.D. Kulkarni
 Advocate for respondent No.7 : Mr. D.R. Jaybhar

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WITH

CIVIL APPLICATION NO. 1873 OF 2009
IN
LETTERS PATENT APPEAL NO. 141 OF 2009
IN
WRIT PETITION NO. 384 OF 2002

Vithal Rukhmini Devasthan Trust
 Through its Secretary
 Genuie Khandu Bagade
 Age : 76 Years, Occ. Secretary
 of Trust R/o. Hanga
 Tq. Parner, Dist. Ahmednagar .. applicant

VERSUS

1. Smt. Anusya Kondiba Nagare
 Age : 79 Years
2. Dnyandeo Kondiba Nagare
 Deceased through his L.R.s
- 2(A) Janabai Dnyandeo Nagare
 Age : 45 Years,
 At and post Hanga Tq. Parner
 Dist. Ahmednagar
- 2(B) Surekha Dattatraya Londhe
 Age : 25 Years, At and Post Hanga
 Tq. Parner, Dist. Ahmednagar
- 2(C) Chaya Satish Lalbage
 At Bhingar, Gondhali Mala
 Mahatma Phule Chowk
 Dist. Ahmednagar
3. Smt. Kamal Kanifnath Nagare
 Age : 44 Years
4. Ganesh Kanifnath Nagare

Age : 18 Years

5. Manish Kanifnath Nagare
Age : 13 Years, Minor
6. Shivaji Chandrarao Dalvi
Age : 76 Years, Deceased
7. Sambhaji Chandrarao Dalvi
Age : 71 years
8. Krushn Chandrarao Dalvi
Age : 66 Years

All above R/o. Hanga
Tq. Parner Dist. Ahmednagar

..RESPONDENTS

....
Advocate for the Applicant : Mr. S.D. Kulkarni
Advocate for respondents No 7 : Shri. D.R. Jaybhar

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**CORAM :T.V. NALAWADE AND
SUNIL K. KOTWAL ,JJ.
ORDER : 07.02.2019**

ORDER(PER T.V. NALWADE, J] :-

Both the applications are filed for review in the common order passed by this Court in Letters Patent Appeal Nos. 141 of 2009 and 192 of 2009.

2. Both the sides are heard.

3. Respondent Dnyandeo Nagare, now deceased, had started proceeding under Section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 against the present applicants. The said proceeding came to be decided in favour of the Tenant and this decision

was taken up to the authority whose decision is final like the Maharashtra Revenue Tribunal ("M.R.T." for short). The decision of the M.R.T was challenged by the applicant of first proceeding, the trust, by filing Writ Petition Nos. 384 of 2002 and 3467/2003. The defences were taken by the present applicant before the Tenancy Court that the trust was registered in respect of lands involved though subsequent to coming into force of the Bombay Tenancy Act and so the provisions of the Bombay Tenancy Act cannot be made applicable. Another defence was taken that in the year 1992, the land was acquired by the Government for public purpose and landlord-tenant relationship was not in existence. There was specific finding of the Tahsildar that on tiller's day Kondiba Nagare was in possession of the land as a tenant and as there was no trust registered at the relevant time, it was held that Kondiba had become deemed purchaser. The other ground taken that proper opportunity was not given to the trust was also considered by the learned single Judge. The learned single Judge considered the position that the land was not given for rendering services to the Government and so the exemption under Section 88(1)(a) of the Bombay Tenancy and Agricultural Lands Act, 1948 was not available. It was not the case of the applicant that land was given by the Government on the lease basis to Kondiba, father of Dnyandeo. Some case law with regard to the Bombay Inferior Village Watanas Abolition Act, 1958 was also cited before the learned single Judge by submitting that the land was

governed by the Bombay Inferior Village Watanas Abolition Act, 1958 and all these points were considered and decided against the present applicants. Thus, after considering all the defences, the learned Single Judge had held that Dnyandev had established that he was tenant on the tiller's day and so he was entitled to purchase the land.

4. Letters Patent Appeal came to be dismissed after considering the submissions which were made on the same line in Letters Patent Appeal. Similar reasoning is given by this Court while deciding Letters Patent Appeal against the present applicants.

5. Though the point of tenability of Letters Patent Appeal also could have been considered, in view of the decision already given by this Court in Letters Patent Appeal on merits, this Court is not discussing in depth that point. It was submitted by the learned counsel for the applicant that while deciding the Letters Patent Appeal this Court has committed error in appreciating the facts and also in appreciating the provisions of the law. It was submitted that as per the revenue record, it was necessary to hold that Kulkarni and Patil who were managing temple were Inamdaras of the land and on that basis the matter ought to have been decided. It was also submitted that the other provisions of the Bombay Tenancy Act ought to have been considered exempting the Inam land from the application of that Act though for some time, till the re-grant, but that provision is also not considered.

6. The learned counsel for the applicants placed reliance on the case reported 1979 Maharashtra Law Journal 628 (Dattu Dnyanu Padalkar Vs. Hari Natha Patil and Others). This case is on the point of land belonging to the Government and also the land which are given on lease by the Government. There is specific finding that the land was neither belonging to the Government nor it was given on the lease basis by the Government and that is on the basis of the revenue record and so it can be said that it is a decision given on merits and re-consideration of that finding is not possible in review.

7. On the point of tenability of Letters Patent Appeal the learned counsel placed reliance on the case reported as 2011(3) Bom. C.R. 12 (Advani Ltd Vs. Machindra and others). Full Bench of this Court has given the criteria for consideration of tenability of Letters Patent Appeal. There cannot be a dispute over the propositions made on the point. The Apex Court subsequently/recently decided a case reported as (2015) 9 SCC 1 (Jogendrasinghji Vijay Singhji Vs. State of Gujarat and Others). In the reported case the Apex Court has made it clear that if the learned single Judge of the High Court has exercised the jurisdiction, the power given under Section 227 of Constitution of India which is supervisory in nature, then Letters Patent Appeal against the decision of the learned single Judge does not lie. It is made clear that only if the decision of the learned Single Judge amounts to original

decision then the proceeding can be treated as one under Article 226 of the Constitution of India and in that case Letters Patent Appeal would be tenable. It is further laid down that if the order made by the learned Single Judge is one under both the Articles 226 and 227 of the Constitution of India then also the Letters Patent Appeal is tenable. The relevant provisions like Chapter XVII, Rule 18 of High Court Appellate Side Rules show that under supervisory jurisdiction of the High Court, the matter is decided by the learned single Judge. Considering the nature of the order made by the Tenancy Tribunal and the grounds for the same this Court holds that learned Single Judge had passed the order under Articles 227 of the Constitution of India. As decision is already given on merit by this Court in Letters Patent Appeal, this point need not be considered in detail. This Court holds that the contentions made in the review application are beyond the scope of the review.

8. In the result, both the review applications stand dismissed.

[SUNIL K. KOTWAL]
JUDGE

[T.V. NALAWADE]
JUDGE

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