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

WRIT PETITION NO.9747 OF 2014

Murudeshwar Devasthan Trust
through its President
Karna s/o Manikrao Pudale
age 58 years, Occu. Agril.,
R/o Murud, Tq. & Dist. Dhule … PETITIONER

VERSUS

1. The State of Maharashtra
   through its Secretary,
   Revenue & Forest Department,
   Mantralaya, Mumbai – 32

2. The Deputy Commissioner (Revenue)
   Commissioner Office, Aurangabad

3. The Additional Collector (Atiyat)
   Collector Office, Latur.

4. The Sub-divisional Officer (Atiyat),
   Sub-divisional Office, Latur.

   (Copies to be served on G.P.,
   High Court of Bombay,
   Bench at Aurangabad)

5. Prakash s/o Namdeorao Nade
   Age major, Occu. Agril.,
   R/o Murud, Tq. & Dist. Latur ... **RESPONDENTS**

.....

Shri V.J. Dixit, Senior Counsel with
Shri M.D. Shinde, Advocate for petitioner
Shri P.M. Kulkarni, A.G.P. for respondents No.1 to 4
shri V.G. mete, Advocate for respondent No.5

.....

<u>CORAM</u>: <u>R.G. AVACHAT, J</u>.

Date of reserving judgment : 18th September, 2019

Date of pronouncing judgment : 13th November, 2019

<u>J U D G M E N T</u> :

Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the parties.

2. The challenge in this Writ petition is to the judgments and orders dated 28.8.2013, passed by Additional Collector (Atiyat), in Case No.2013/Religious/CR-42 and one passed by passed by the Deputy Commissioner (Revenue), Aurangabad Division, Aurangabad on 16.10.2014 in File No.2013/Ma.Sha.Ka./LR/Inam/Kavi/CR/130/2013.

<u>FACTS</u> :

3. The petitioner is Devasthan Trust. It has property, being land in Survey No.597, admeasuring 7 Hectors 3 R, situated at Murud. The name of petitioner Trust is appearing in the revenue record of land Survey No.597. The said land has also been recorded in the PTR Register. The respondent No.5 made a complaint to the revenue authorities. The assertions in the complaint are – land in Gat No.597 is an inam land. Forefathers of some of the villagers had

donated the said land for maintenance and upkeep of Murudeshwar Devasthan. Members of Gurav community are the Pujaris of the Devasthan. They started misusing the land. Later on, the Devasthan came to be registered as a public trust. The trustees mismanaged the trust property. Constructions have been made on the land without permission of the Charity Commissioner and without obtaining permission for change of its user from agriculture to non-agriculture. Some portion of the land and constructions thereon have been unauthorisedly alienated.

The Sub-Divisional Officer (S.D.O.), therefore, issued notice to the trustees of the petitioner Trust. The S.D.O., on hearing the parties, made a report to the Collector, stating therein that the land is an inam land. It has been encroached upon. The trustees of the petitioner Trust misused the land. He, therefore, recommended for de-registration of the petitioner Trust and taking over the agricultural land and giving it for cultivation (Eksala Lavni).

4. The Additional Collector (Atiyat), Latur, by his order dated 22.8.2013, accepted the recommendations.

5. The petitioner Trust, therefore, preferred an appeal to the Deputy Commissioner (Revenue), Aurangabad Division, Aurangabad. The respondent No.5 appeared as an intervener in the

said appeal. He moved an application raising objection as to maintainability of the appeal. On hearing the parties, the Deputy Commissioner (Revenue) was pleased to observe to have no jurisdiction to entertain the said appeal. The petitioner is, therefore, before this Court.

6. Shri V.J. Dixit, learned Senior Counsel for the petitioner Trust would submit that, the petitioner is a registered public trust. The land in Survey No.597 is a trust property. Revenue record and entry in PTR Register would vouch for the same. The respondent No.5 is a political heavy weight. He made a false complaint. The authorities concerned budged to the pressure exerted by the respondent No.5. The Sub-Divisional Officer, therefore, recommended for de-registration of the petitioner Trust and taking over possession of the agricultural land. The Additional Collector approved the recommendations of the Sub-Divisional Officer, by order dated 6.8.2013. The Additional Collector, however, made a farce to show that the parties have been given opportunity of hearing and then again passed order dated 22.8.2013.

7. According to learned Senior Counsel, the learned Additional Collector ought to have decided the appeal on merits since the application raising issue as to maintainability was raised long after presentation of the appeal.

8. The learned A.G.P. representing respondents No.1 to 4 and the learned counsel Shri V.G. mete appearing for respondent No.5 supported the impugned order. The learned counsel for respondent No.5 relied on the judgment of this Court in case of Shivraj s/o Manik Bargale & ors. Vs. Shankar s/o Hanumant Hude & anr. [2002 (2) ALL MR 312].

9. A short question that falls for consideration in this Writ Petition is as to whether the appeal No.No.2013/Ma.Sha.Ka./LR/ Inam/Kavi/ CR/130/2013 is maintainable before the Revenue Commissioner.

Admittedly, the petitioner is a religious trust. The land in Survey No.597 is an inam land held by the petitioner trust. The respondent No.5 made a complaint, alleging the trustees of the petitioner trust to have mismanaged the land. The S.D.O., therefore, made a recommendation for de-registration of the trust and taking over possession of the inam land. The Additional Collector (Atiyat) accepted the recommendation. The learned Senior Counsel for the petitioner trust was right in submitting that the Collector made a farce of hearing. The petitioner trust preferred application under Right to Information Act and obtained certain documents. It is evident from one of such documents that, the Additional Collector approved and accepted the recommendations vide order dated 6.8.2013. The roznama of the proceedings, however, indicates that, thereafter the parties to the proceedings were heard and impugned order dated 22.8.2013 came to be passed.

10. The petitioner trust admits the land to be an inam land. It preferred appeal against the decision of the Additional Collector, treating it to be an appeal under Section 2-A of the Hyderabad Inam Abolition and Cash Grants Act, 1954. Section 1 of the said Act needs to be adverted to. It is, therefore, reproduced below :-

> "(1) This Act may be called the Hyderabad Abolition of Inams and Cash Grants Act, 1954."
>
> 2. It extends to the Hyderabad area of the State of Maharashtra and shall be applicable to all inams except :
>
> (i) inams held by or for the benefit of charitable and religious institutions;
>
> (ii) inams held for rendering village service useful to the Government or to the village community including sethsendhi neeradi and balutha inams."

11. The aforesaid provisions undoubtedly indicate that the Act has no application to inam land held by or for the benefit of

charitable and religious institution. It has also no application in case of inams held for rendering religious service useful to the Government or to the village community. Since the land in Survey No.597 is an inam land, held by the petitioner charitable trust, the Hyderabad Abolition of Inams and Cash Grants Act has no application. Necessarily, no appeal under Section 2-A could be preferred.

Section 3-A of the Hyderabad Atiyat Enquiries Act, 1952 reads as under :

> **"3-A. Inquiries as to Atiyat grants :-**
>
> 1) In the case of Atiyat grants specified in sub-clause (i) of clause (b) of sub-section (1) of section 2, Atiyat inquiries and inquiries as to any right, title or interest therein shall, notwithstanding anything contained in the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli (LXIX of 1358 F.), be held in Atiyat Courts in accordance with the provisions of this Act, and in the course of such inquiries, Atiyat Courts shall also be competent to inquire into claims to succession arising in respect of such grants.
>
> Provided that, claims to succession arising after the completion of Atiyat inquiry of any such grant shall not be entertained in any Atiyat Court and all such claims shall be filed in and decided by

the competent Civil Court.

2) In the case of Atiyat grants specified in sub-clauses (ii) to (vi) of clause (b) of sub-section (1) of section 2, all Atiyat inquiries, inquiries as to claim to succession to, or any right, title or interest therein and matters ancillary thereto shall be held in Atiyat Courts in accordance with the provisions of this Act."

12. While Section 11 of the said Act provides for appeal from the original decision, Section 11 reads thus :

11. Appeals :

1. From the original decision of :

(a) an Atiyat Deputy Collector, an appeal shall lie to the Atiyat Collector;
(b) an Atiyat Collector, an appeal shall lie to the Nazim Atiyat before the appointed date, and as from that date to the Board of Revenue;
(c) the Nazim Atiyat, an appeal shall lie to the Board of Revenue.

13. In this case, the original order has been passed by the Collector (Atiyat). An appeal against his decision shall, therefore, lie to the Board of Revenue. Board of Revenue means – Maharashtra Revenue Tribunal.

14. In case of Shivraj Bargale (supra), it has been held :-

> "On 6.9.1994, a notification was issued by the Government under Section 315(3) of the Maharashtra Land Revenue Code, whereby the Tribunal was empowered to entertain and decide appeal and revision against the orders passed by the Atiyat Collector and Atiyat Deputy Collector.
>
> Vide yet another notification dated 27.4.1994, issued by Revenue and Forest Department, Government of Maharashtra, in exercise of power under Section 315(3) of M.L.R.C., the Tribunal is already conferred with the jurisdiction to entertain and decide appeal against original judgments and orders passed by Atiyat Deputy Collector."

15. In view of the above, the Commissioner (Revenue) was justified in holding that the appeal preferred by the petitioner Trust is not maintainable before him. No interference is, therefore, called for with the impugned order dated 16/10/2014.

16. In the result, the Writ Petition fails. The same is, therefore, dismissed. Rule discharged.

The petitioner Trust is, however, at liberty to take exception to the order of the Deputy Commissioner, Latur, dated 16/10/2014 before the appropriate forum.

With a view to enable the petitioner Trust to take appropriate steps in this regard, interim order shall continue for a period of two months from the date of this order.

(R.G. AVACHAT)
JUDGE

fmp/-