

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11868 OF 2019
AND
WRIT PETITION NO. 3132 OF 2019

LIMBA GENU SAWANT THROUGH LRS & ORS
VERSUS
KISHAN PRASAD TANDON LRS & ORS

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Advocate for Applicants : Shri Pandav Suresh P.
a/w Shri Walujkar A.N.

Advocate for Respondent 1 : Shri Arora S.C.
AGP for Respondents 2 to 5 & 7 : Shri Yadav-Lonikar S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 04, 2019

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PER COURT :-

1. By this Civil Application the applicants, who are respondent Nos.5 and 6, have raised an issue in this application that the ad-interim relief granted by this Court needs to be vacated in view of the fact that firstly, the petitioner falsely claims to be a trustee representing a faction in the trust. There is another group, which also claims to be the governing body of the trust. Secondly, the order impugned in the petition is passed by the Tahsildar, which has to be assailed in an appeal, being the statutory remedy under Section 90(2) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 ('HTAL Act').

2. He then adds that two groups of the trust have already

preferred two appeals before the Collector under Section 90(2) by way of a statutory appeal challenging the same order impugned in the Writ Petition dated 21.12.2018. The concerned Collector has already stayed that order and has protected the trust. This Court has also passed an order on 25.4.2019 only taking into account that the impugned order was passed against a dead person. Specific contention raised about the maintainability of the petition and the locus of the petitioner, were referred to in paragraph No.7 of the said order, though no decision was given on the objections of these applicants.

3. The learned Advocate for the original applicant has vehemently contended that for the past several decades, the trust is being mis-managed by several trustees. Though a statutory remedy is available, the petitioner has approached this Court so that all such issues could be considered while taking into account the challenge to the impugned order of the Tahsildar dated 21.12.2018.

4. He further contends that though the Hyderabad Tenancy Act does not impose any Bar on filing an appeal as a statutory remedy, though the impugned order is passed against a dead person, the petitioner has approached this Court since he finds that he would get justice from this Court. He then submits that he is prepared to meet the objections of the applicants as to whether the signatory to this

petition is a validly elected trustee.

5. The learned Advocate for the applicants submits that this petition has been filed through Shri Gurumohan Kakkad, whose change report has already been rejected. His claim to be an elected trustee is thus put to rest and his appeal challenging the rejection of the change report is pending without any interim relief. With these factors in focus, it is obvious that the signatory to this petition is not a trustee and therefore, cannot file the petition.

6. The learned Advocate for the petitioner concedes that the Change Report, by virtue of which Shri Kakkad claims to be a trustee, has been rejected. He, however, submits that he can justify that Shri Kakkad is competent to represent the trust.

7. Considering the above factors, I have gone through the entire memo of the Writ Petition. I find that the signatory to this petition, allegedly being competent to file this petition, has shrewdly suppressed the rejection of the Change Report, from this Court. So also, it is a pleading on page No.11, second paragraph, that one of the deceased trustees Shri C.P.Arora is the father of Advocate S.C.Arora, who has filed this petition and is before the Court in his capacity of being an Advocate for the petitioner. Without stretching this aspect any further, I feel that in these circumstances when the

name of the Advocate is a part of the pleadings in connection with the said trust and his deceased father had claimed to be a trustee, it is left to the learned Advocate to decide as to whether he should conduct this matter as an Advocate.

8. Nevertheless, as Shri Kakkad has filed this petition by suppressing from this Court that his change report has been rejected, such conduct would attract the law laid down by the Honourable Apex Court in the matter of Bhaskar Laxman Jadhav and Ors. Vs. Karamveer Kakasaheb Wagh Education Society and Ors. (AIR 2013 SC 523), wherein, the Honourable Apex Court has held that it is not for a litigant to filter the facts and decide what is to be conveyed to the Court and what is to be suppressed. Every fact needs to be divulged to the Court and if a litigant indulges in suppression of facts, the petition deserves to be dismissed by imposition of costs.

9. The learned Advocate for the petitioner submits that he is not heard on all the factors involved in the Writ Petition and he wants this Court to consider this petition on all the pleadings set out in the memo notwithstanding whether there is a statutory remedy available and whether there are two statutory appeals filed by the same trust under Section 90(2) of the HTAL Act.

10. The learned Advocates for the respective sides have raised

several contentious issues as regards whether the demise of the trustee Shri C.P.Arora was known to the authority which passed the impugned order and whether the impugned order has been passed knowingly against a dead person. The learned Advocate for the applicants submits that it cannot be presumed that an order was passed against a dead trustee. The said order was passed against the trust and not individually against a particular trustee. A trust is an independent legal entity, until it is de-registered and the mere passing away of a trustee would not mean that a trust could not have been represented by any other trustees.

11. I find from the record that this Court (Coram : N.W.Sambre,J.) had considered Writ Petition No.6198 of 2013 filed by the same petitioner / trust herein, challenging the validity of the order dated 7.6.2013 passed in Case No. LR/TNC/90-Gandheli/A-17/2011. By a reasoned order, this Court dismissed the Writ Petition and concluded that the contentions of the parties are left open for consideration before an appropriate authority and these parties could, therefore, canvass all their points before the appropriate forum. Pursuant to this rejection, the impugned order has been passed and a statutory appeal is the remedy.

12. The learned Advocate for the petitioner / trust requests that the ad-interim protection granted by this Court on 25.4.2019 be

continued so as to enable the trust to prefer an appropriate appeal before the Collector under Section 90(2) of the HTAL Act. He clarifies that a rival warring faction from amongst the trustees of this trust are already before the Collector in substantive appeals challenging two orders. One of the impugned orders is dated 21.12.2018, which is subject matter of the petition in hand. He, therefore, prays that this petitioner faction representing the trust be permitted to file an appeal for challenging the order dated 21.12.2018 before the Collector by keeping all contentions and issues open. He also requests that the time spent by the petitioner in this Court from 5.2.2019 may be considered as a good ground for condonation of delay, if any.

13. The learned Advocate for the applicants submits that they would not oppose the delay caused in filing of the appeal after the petitioner / trust prefers such a proceeding and would not come in the way of the petitioner in so far as the condonation of delay is concerned. They would however, reiterate and object that the person through whom this petition is filed and the appeal that is likely to be filed, has no *locus standi*.

14. In view of the above, the Civil Application is partly allowed and the Writ Petition is disposed off with the following directions:-

(A) The petitioner / trust is at liberty to prefer an appeal for challenging the impugned order dated 21.12.2018 passed in proceeding No.2-2017/Bhusudhar/E-Disnik/CR-54.

(B) The learned Advocate for the petitioner submits that the petitioner would prefer the appeal on/or before the 5.11.2019.

(C) The time spent by the petitioner in this Court from 5.2.2019 till 5.11.2019 shall therefore be considered as a good ground for condonation of delay and the respondent herein shall not oppose such condonation.

(D) All the contentions of the litigating sides, including objections as regards *locus standi* / *res judicata* and all objections as are permissible to be raised in law, are kept open for the competent authority to consider on their merits.

(E) If the competent authority finds it appropriate to take up all the appeals pertaining to the impugned order, together, in view of the same trust being at issue, notwithstanding the rival factions, it would be at liberty to do so.

(F) The litigating parties are at liberty to enter their written notes of submissions as well as compilation of case law, if so advised.

(G) The order passed by this Court dated 25.4.2019 shall continue as the competent authority has already stayed

the impugned order dated 21.12.2018 in the pending appeals, until the competent authority decides the appeal.

15. The record and proceedings in case Nos. LR/TNC/90-Gandheli/A-17/2011 and 2-2017/Bhusudhar/E-Disnik/CR-54 shall stand remitted forthwith.

(RAVINDRA V. GHUGE, J.)

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