

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

WRIT PETITION NO.1286 OF 2015

JANKABAI SHANKARAPPA DHARKANDE AND OTHERS
VERSUS
BHAGWAN BABURAO BHISE AND OTHERS

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Advocate for the Petitioners : Shri Khande Avinash A.
Advocate for Respondents 1 to 3 : Shri A.A.Munde
AGP for Respondent 4 : Shri N.T.Bhagat

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th September, 2019

Per Court:

1 On 11.06.2018, I had passed the following order :-

- "1. This matter is heard for sometime. The records, which are disputed by the petitioners, indicate that the late Shankarappa, in whose favour the land was allotted under the Maharashtra Agriculture Lands (Ceiling on Holdings) Act, had entered into a transaction with respondent No.1 and hence the permission dated 9.4.2008.
2. Learned counsel for the petitioners, on the one hand concedes that the dispute has been raised by the petitioners, after about 6 years of the passing away of Shankarappa and on the other hand submits, that this dispute has been raised after a passage of time only because these petitioners were not aware about any transaction between Shankarappa and respondent No.1. It is stated that a fraud has been played upon the deceased Shankarappa who was not even aware of such a surreptitious sale of the land purportedly in the name of Shankarappa. It is also stated that the land is in the possession of these

petitioners.

3. *Learned counsel for respondent No.1 submits that the conduct of the petitioners is fraudulent. It is only for self serving purposes that the petitioners are making allegations of fraud against respondent No.1. The petitioners are seeking a re-enquiry at the hands of the Deputy Collector (Land Records), Jalna and are attempting to reopen the entire proceedings. He, therefore, submits that if the proceedings are remanded to the Revenue authorities for re-enquiry, each of the petitioners should be subjected to heavy costs, if it is revealed that their conduct was fraudulent and no malafides are established against the Revenue Authorities.*
4. *In the above backdrop, I called upon the learned counsel for the four petitioners to file an affidavit/undertaking, if they are agreeable, that if this matter is remitted to respondent No.4 for a re-enquiry and it is revealed that there is no fraud involved and the conduct of the petitioners is vexatious and frivolous, they should pay costs of Rs.1,00,000/- per petitioner. Learned counsel for the petitioners seeks time to take instructions and make a statement.*
5. *S.O. to 26.6.2018 for making the statement."*

2 Inadvertently, the word "no" appearing before the word "fraud" in paragraph 4 of the order dated 11.06.2018 has to be deleted and the same is, therefore, deleted.

3 The learned advocate for the petitioners submits that they have filed an affidavit on 30.07.2018. Petitioner nos.1 and 2 (Vishnuappa Shankarappa Dharkande and Bhagwan Shankarappa Dharkande) have made the statement that if after remand, respondent no.4 notices a fraud or a vexatious act on the part of these two petitioners, they would pay

costs of Rs.1 lac per petitioner in the said proceedings and respondent nos.1 to 3 would be at liberty to withdraw the said amount in equal proportion. It is clarified that petitioner no.3 (Sau.Mainabai Mahaduappa Dahihande), though is a contesting party, has not chosen to file an undertaking and petitioner nos.1 and 2 (Vishnuappa Shankarappa Dharkande and Bhagwan Shankarappa Dharkande) are representing all of them.

4 The learned advocate for respondent nos.1 to 3 is agreeable and submits that if respondent no.4 declares that petitioner nos.1 and 2 have committed the fraud, they shall deposit an amount of Rs.1.5 lac each within four weeks without raising any dispute and after depositing the amount, they would be at liberty to raise a challenge.

5 In view of the above, this Writ Petition is disposed off. The impugned orders dated 05.04.2008 and 09.04.2008 are quashed and set aside. The proceedings in Case No.2008/ LR/ Ceiling/ Sale of Land/ CR-34 shall stand remitted to the office of respondent no.4. The parties shall appear before respondent no.4 on 30.09.2019 at 03:00 pm. Formal notices need not be issued. The parties shall abide by the dates of hearing as may be posted by respondent no.4 and the Roznama shall be properly recorded.

6 Considering the request of the litigating sides, respondent no.4 shall conclude the said proceedings and deliver a reasoned order on

30.12.2019 at 03:00 pm and the litigating sides shall be obliged to remain present for noting the pronouncement of the order. The copies of the order shall be kept ready to be supplied to the parties.

7 Needless to state, if respondent no.4 concludes that the petitioners' behaviour is fraudulent or vexatious, petitioner nos.1 and 2 (Vishnuappa Shankarappa Dharkande and Bhagwan Shankarappa Dharkande) shall deposit the total amount of Rs.3 lac on behalf of all the three petitioners before respondent no.4 within four weeks and respondent nos.1 to 3 shall be at liberty to withdraw the said amount in equal proportion. In the event, the petitioners desire to challenge any such adverse order, they shall first deposit the said amount and then raise a challenge.

8 Until respondent no.4 decides the proceedings, none of the parties, who may be in possession or holding the suit property, shall create third party interest or encumbrances thereon.