

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**APPEAL NO.766 OF 2004
IN
WRIT PETITION NO.1029 OF 1998**

State of Maharashtra & Ors. ... Appellants

Vs

India Farmers Pvt. Ltd. & Ors. ... Respondents

Mr.E.P. Bharucha, Senior Advocate with Ms.G.R. Shastri, Addl. G.P. and Mr.S.B. Gore, AGP, for Appellants

Mr.Atul Rajadhyaksha, Senior Advocate, with Mr.Vaibhav Sugdare, Mr.Nirav Jani and Ritu Shetty i/b Hariani & Co. for Respondents

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

**JUDGMENT RESERVED ON: SEPTEMBER 5, 2019
JUDGMENT DELIVERED ON: OCTOBER 1, 2019**

JUDGMENT (PER AKIL KURESHI, J.):

1. This litigation has chequered history. We may record bare necessary facts at the outset.

2. This appeal is filed by the State of Maharashtra and its authorities, who would hereafter be referred to as the appellants. Respondent No.1, a private limited company and Respondent No.2, its Director, are the original petitioners. They would hereafter

be referred to as the petitioners. The petitioner No.1 company was granted land admeasuring 114 acres and 8 gunthas and 4 annas situated at villages Marve, Malwani and Akse in the year 1950 on lease for a period of 999 years by the Collector on condition of reclamation of land. The terms and conditions of such grant came to be formalised when the petitioners and the government executed a lease deed dated 7.7.1956. The lease was for a period of 999 years starting from 1.8.1950. The lessee at its own cost would complete the reclamation of the land so as to put it in a state fit for use for agricultural purpose, of which at least 50% would be reclaimed within 10 years and the entire land within 20 years from 1.8.1950 and would maintain such reclamation during the remainder of the period of lease. The lease deed also provided that upon breach of any of the conditions by the lessee, the lessor may re-enter upon the leased land or part thereof. In case of failure on the part of lessee to reclaim the land as envisaged within the prescribed periods, the lessor may re-enter the land and terminate the lease. It was further provided that for the time being, the land would be held for agricultural purposes but if subsequently appropriated to purposes unconnected with agriculture, the assessment (for land revenue) shall be leviable on such basis.

3. According to the petitioners, with considerable expenditure and efforts, substantial portion of the land was reclaimed. However, the state authorities hold a different belief. According to them, the petitioners had not carried out the task of reclamation in earnest and failed to reclaim any worthwhile portion of the leased land. Show-cause notices came to be issued by the Additional Collector/Collector in 1968, 1970, 1974 which the petitioners replied denying the allegations of insufficient progress in reclamation. No further steps were taken by the Additional Collector / Collector, pursuant to these show-cause notices. Finally, the Additional Collector, Bombay Suburban District issued a notice dated 23.3.1981 conveying to the petitioners that inspections were carried out during the crop seasons of 1977-1978, 1978-1979 which showed that very little reclamation of the land was carried out and only a small portion of the land was made cultivable. This showed the breach in condition of the lease. Despite sufficient time being granted, the petitioners had not remedied these breaches. He, therefore, put the petitioners to notice about the intention of the Government to terminate the lease and to re-enter the land after a period of one month from the date of receipt of the

notice. He called upon the petitioners to vacate the land within such time failing which their continued possession of the land would be deemed to be unauthorised and steps would be taken to evict the petitioners. He subsequently passed the order of eviction on 4.5.1981.

4. The petitioners preferred appeal against the said notice of termination of lease and order of eviction. The Officer on Special Duty (Appeal and Revision), dismissed the appeal by an order dated 24.7.1985. The petitioners thereupon filed Writ Petition No.1975 of 1985 challenging the said appellate order dated 24.7.1985. The High Court disposed of the Writ Petition by an order dated 31.7.1991 setting aside the said order as well as the orders passed by the Additional Collector. The communication dated 23.3.1981 would be treated as a show-cause notice. Consequently, the petitioners were given liberty to file reply to said show-cause notice within prescribed time. The Collector, Bombay would give reasonable opportunity of hearing to the petitioners and dispose off the matter expeditiously.

5. The Collector, Bombay, thereupon passed an order dated 26.4.1993. He held that the lessee had committed breach of the

conditions of the lease. He noted that as per the terms of the lease, it was necessary for the lessee to continue to maintain the reclaimed land fit for agriculture for the entire period of lease. The reports of the inspecting committees establish that there was breach of the conditions of the lease. He recorded that for over 20 years from the grant of land, the entire land was not reclaimed nor the reclaimed land was maintained fit for cultivation. In view of these conclusions, he terminated the lease and asked the Tehsildar to take back the possession of the leased land after expiry of appeal period.

6. The petitioners challenged the said order of Collector before the Additional Commissioner. The Additional Commissioner allowed the appeal by his order dated 30.3.1994. He noted that previously, show-cause notices alleging breach of condition of reclamation were issued in 1968, 1970 and 1974 which were not pursued after the company furnished its replies. He was, therefore, of the opinion that this would act as a promissory estoppel against the government authorities. He observed that there was no condition in the lease deed that the reclaimed land must be brought under cultivation. He was of the opinion that the

area was a khar land along the coastal region and due to ingress of the sea water through creek during high tide, the salinity was such that the land was unfit for commercial cultivation. He referred to Collector's conclusion that a portion of the land was put to non-agricultural use which in the opinion of the Collector amounted to breach of condition. According to him, the lease did not prevent non-agricultural use of the land after reclamation. Essentially, he was of the opinion that the petitioners had reclaimed the land within the prescribed period.

7. Nearly 3 and half years later, the Minister of revenue, State of Maharashtra, in exercise of *suo moto* powers under section 257 of the Maharashtra Land Revenue Code took up the appellate order of the Additional Commissioner in revision. After putting the petitioners to notice, he passed an order dated 18.5.1998 setting aside the appellate order of the Additional Commissioner. He was of the opinion that the findings of the Additional Commissioner were erroneous. According to him, the company had put the land to non-agricultural use which was in breach of the condition of the lease. He, therefore, set aside the appellate order and restored the order of the Collector dated 26.4.1993.

8. Against the said order of the Minister, the petitioners preferred Writ Petition No.1029 of 1998. The learned Single Judge allowed the Writ Petition by the impugned judgment dated 23.3.2004. He noted the contention of the petitioners that the revisional powers were exercised after undue delay and though the statute did not prescribe the period of limitation for exercising such powers, the same cannot be exercised after a reasonable period of time. The learned Single Judge was of the opinion that this issue was not required to be decided because on facts also, the petitioners had made out a good case for interference. He analysed the reasons recorded by the Minister for reversing the order of the Additional Commissioner and found that the Minister had committed a serious error.

9. When this petition was pending, the Collector issued show-cause notice dated 19.3.2002 to the petitioner No.1 company alleging that the company had mortgaged the leased land for obtaining a loan of Rs.1 crore from the Indian Bank in July, 1988. According to the Collector, the loan was obtained for the purpose of construction of farmhouse, hotels, etc. on the land. As per the loan agreement, the company had created an equitable mortgage

in favour of the bank. The lease of the land was granted on condition that there will be no change of user of the land nor the land would be transferred. By executing the loan agreement, the company had breached the conditions of the lease. The Collector, therefore, called upon the petitioners to show cause and to produce the necessary loan documents before him on an appointed date for personal hearing. The petitioners amended the petition and included the challenge to the said show-cause notice.

10. The learned Single Judge by the impugned judgment allowed the petition. The revisional order of the Minister dated 18.5.1990 was set aside. Consequently, the order of the Additional Commissioner dated 30.3.1994 was restored. Additionally, the show-cause notice dated 19.3.2002 issued by the Collector was also quashed.

11. The State Government had earlier filed Appeal No.766 of 2004. The appeal was allowed. The judgment of the learned Single Judge was set aside on the ground that against the order of the Collector terminating the lease, the appeal before the appellate authority under section 274 of the Maharashtra Land Revenue Code was not available. The Division Bench was of the opinion

that the Collector while terminating the lease, had proceeded on the breach of the conditions of the lease and had not referred to any of the provisions contained in the Maharashtra Land Revenue Code. The Division Bench was of the opinion that by setting aside the order of the Minister passed under section 257 of the Maharashtra Land Revenue Code, the learned Single Judge had restored the appellate order passed by the Additional Commissioner which was without jurisdiction. Only on this ground, the appeal of the State was allowed and the decision of the learned Single Judge was set aside.

12. The petitioners challenged the said order of the Division Bench before the Supreme Court. The Supreme Court by an order dated 24.2.2011 allowed the appeal, set aside the order of the Division Bench holding that against the order of the Collector, appeal was available before the Additional Commissioner under section 247 of the Maharashtra Land Revenue Code. To enable the Division Bench to examine the remaining grounds, the appeal was revived for decision on merits afresh. That is how the present appeal was argued before us.

13. The learned Counsel Mr.Bharucha for the appellants submitted that the lessee had failed to reclaim any substantial portion of the land for a long period of time. The lease was granted on the condition that 50% of the land would be reclaimed within 10 years and the remaining land within 20 years of the grant of land. The petitioners had thus, breached the conditions of the lease. There was evidence suggesting that no worthwhile reclamation had taken place. The Collector had, therefore, after putting the petitioners to notice, passed the order cancelling the lease, giving elaborate reasons. The appellate authority had committed a serious error in setting aside the order of the Collector. The Minister, therefore, correctly restored the order of the Collector. The learned Single Judge, therefore, should have dismissed the petition.

14. The learned Counsel further submitted that there was sufficient evidence suggesting that the petitioners had put the land to non-agricultural use by constructing buildings. This was also in breach of the condition of the lease agreement. The Counsel further submitted that the learned Judge committed serious error in setting aside the show-cause notice issued by the Collector dated

19.3.2002. The allegations in the show-cause notice were serious. The petitioners had mortgaged the leased land without prior permission of the government and thereby breached the condition of lease. The learned Single Judge erred in entertaining the Writ Petition directly against the show-cause notice.

15. On the other hand, the learned Counsel for the petitioners opposed the appeal contending that the evidence on record suggests that the land reclamation had been completed within time. The condition of the lease required that the land must be maintained in cultivable state and not that continuously the land must be cultivated by the lessee during the entire period of lease. He pointed out that the material on record would suggest that substantial portion of the land was put to agricultural use. The Counsel submitted that the learned Single Judge having examined all aspects of the mater and having come to factual conclusions, his findings would not be open to challenge in an intra-court appeal unless such findings are shown to be perverse, which in the present case, is not demonstrated. The Counsel submitted that only a small portion of the land was used for construction of the farmhouse, servant quarters and godown to store agricultural

implements and for stay of the persons managing the property. The construction was carried out with all necessary permissions from the local authorities. There was thus, no breach of diversion of the land use as alleged. In any case, according to the learned Counsel, the lease deed did not prohibit the use of the land for any purpose other than agriculture. The Counsel further submitted that the show-cause notice issued by the Collector on 19.3.2002 was malafide, in order to overreach the process of the Court. Even when the present litigation was pending, the Collector raked up an old document of the year 1988 alleging mortgage of the land in favour of the bank. He submitted that the government was all along aware about the said transaction. The issue was raised belatedly only on account of the fact that the petitioner had approached the High Court.

16. The Counsel relied on the following decisions:

(i) In an unreported judgment in case of **Daya Rani & anr. vs. Shabbir Ahmed**¹ of the Supreme Court dated 22.8.2019 in which, in the context of revisional powers under Haryana Urban (Control of Rent and Eviction) Act, 1973, it was observed that in

¹ Civil Appeal No.6594 of 2019 with Civil Appeal No.6595 of 2019

exercise of revisional powers, the High Court cannot reappreciate the evidence on record. The jurisdiction is confined to finding whether the findings of facts rendered by the Court or authority below were according to law and did not suffer from an error of law.

17. In the case of **M/s.Sri Raja Lakshmi Dyeing Works and others vs. Rangaswamy Chettiar**², in which the Supreme Court in the context of difference between appellate and revisional powers of the Court, made the following observations:

“2. ‘Appeal’ and ‘revision’ are expressions of common usage in Indian statute and the distinction between ‘appellate jurisdiction’ and ‘revisional jurisdiction’ is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeal under the Code of Civil Procedure, and under some Rent Acts in some States. Ordinarily, again, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law and according to well defined principles of justice. Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate

2 (1980) 4 SCC 259

jurisdiction but not vice versa. These are general observations. The question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute.”

18. In the case of **Management of Narendra & Company Private Limited vs. Workmen of Narendra & Company**³, in which in the context of intra-court appeal before the High Court, it was observed that unless appellate bench concludes that findings of Single Judge were perverse, it would not disturb the same merely because another view is possible.

19. Reliance was placed on the decision in the case of **Santoshkumar Shivgonda Patil & others vs. Balasaheb Tukaram Shevale and others**⁴ to contend that revisional powers under section 257 of the Maharashtra Land Revenue Code should be exercised within a reasonable period. In the said decision, it was observed that ordinarily, the same should be exercised within a period of three years.

20. Reliance was placed on the decision in the case of **Siemens Ltd. vs. State of Maharashtra and Others**⁵ to contend that when a show-cause notice is issued with pre-determination, the Writ

3 (2016) 3 SCC 340

4 (2009) 9 SCC 352

5 (2006) 12 SCC 33

Petition against such a show-cause notice should be entertained. Reference was also made to the decision of the Supreme Court in the case of **Assistant Commissioner (CT) LTU and another vs. Amara Raja Batteries Limited**⁶ in support of the contention that when the adjudication of the show-cause notice is an empty formality, the petitioner should not be relegated before the authority.

21. The Collector by his order dated 26.4.1993 while holding that there was a breach of condition of lease, observed that the petitioners had not established that the land was fully reclaimed. Thus, he cast the burden entirely on the petitioners. He also stressed on the requirement of maintaining the land fit for cultivation. In this context, he had relied on, besides other documents, on the inspection reports carried out which led to issuance of notices in the years 1968, 1970 and 1974. Significantly, the Collector had not relied on the alleged conversion of the land for non-agricultural use. In fact, there was no such allegation in the show-cause notice. While reversing this order, the Additional Commissioner held that the record would suggest reclamation of the land. He was of the opinion that the land had to

⁶ (2009) 8 SCC 209

be brought under cultivable state. The lease did not further require that it must be cultivated. Regarding the non-agricultural use of the land, he was of the opinion that once the reclamation was over, the lease did not prevent lessee from putting it to any use other than the agricultural use. This order was reversed by the Minister by an order which can at best be described as vague. He put considerable stress on not putting the entire land to agricultural use as also the alleged non-agricultural use of the land by the petitioners. He did not hold that the reclamation was not complete. His fundamental ground for interfering was that the company had not used the land granted by the government for the purpose for which it was sanctioned and thereby violated the terms of the lease. The learned Single Judge by elaborate judgment set aside this order of the Minister. By referring to the documents and materials on record, he confirmed the view of the Additional Commissioner that reclamation task was over. He recorded the contention of the petitioners that only a small portion of the leased land was put to non-agricultural use. It was pointed out that two structures of farmhouses occupying 2000 sq.ft. each were constructed in addition to two staff quarters and a godown. The learned Judge recorded that there is nothing on record to suggest

that the respondents had put the entire land to non-agricultural use.

22. In relation to the cancellation of the lease, we do not find any reason to interfere with the view of the learned Single Judge. As noted, the Collector had mainly proceeded on the basis that the land reclamation task was not over and at any rate, the reclaimed land was not maintained in a cultivable state. The Collector had not relied on the allegation of putting the land to non-agricultural use which was not permissible as per the lease deed. The Additional Commissioner had referred to the documents on record and inspection reports to reverse this finding. The Minister did not upset these conclusions of the Additional Commissioner. He instead proceeded on an entirely different direction, namely, of not putting the entire land to agricultural use and converting a part of the land to non-agricultural purpose. The learned Single Judge, therefore, rightly interfered with the order of the Minister. The Minister himself not having reversed the findings of the Additional Commissioner on the question of reclamation of the land, any further enquiry was not necessary. In the context of conversion of the land to non-agricultural use, the learned Judge correctly

observed that there is nothing on record suggesting that the entire land was converted to non-agricultural use. May be, if substantial portion if not the entire land was put to non-agricultural use, we would have enquired further. However, the government authorities have not refuted the contention of the petitioners that only a small portion of the land was put to non-agricultural use for construction of two farmhouses, servants' quarters and godown. In fact, in the communication dated 23.3.1981 which was treated as a show-cause notice, there is not even an allegation of unauthorised conversion of the land to non-agricultural use which would amount to breach of the condition of the lease. That is why the Collector had not relied on this ground to cancel the lease. We may also recall that previously, three show-cause notices were issued in the years 1968, 1970 and 1974 upon similar grounds. However, after the petitioners filed replies to such show-cause notices, no further steps were taken by the Collector. There was no further adjudication on these show-cause notices. An inference therefore can be drawn that the Collector was satisfied with the replies of the petitioners. This would undoubtedly be an additional factor in favour of the petitioners, though not a ground of *res judicata* as argued by the petitioners before the Additional Commissioner or in

the nature of promissory estoppel as held by him. We are also not in agreement with the view of the Additional Commissioner that the lease deed itself envisaged non-agricultural use once the land was reclaimed. His reference to a portion of the lease deed which refers to collection of revenue on the basis of non-agricultural assessment in future, is misplaced. The said portion of the lease deed must be read in conjunction with the entire lease document and merely provides that for the time being, the land would be used for agricultural purposes but subsequently, if any portion of the land is put to non-agricultural use, the land revenue assessment would be suitably altered. This by itself does not permit the lessee to put the land to non-agricultural use without permission from the government. However, in the present case, ignoring all other aspects, the construction of farmhouses, servants' quarters and godown in a small portion of a vast area of 114 acres of land, cannot be seen as a breach of condition of lease.

23. In the context of setting aside the show-cause notice dated 19.3.2002, however, in our opinion, the learned Single Judge had committed serious error. In the said show-cause notice, as noted,

the allegations were that the petitioners had mortgaged the leased land to a bank for borrowing money. This, according to the authorities, was in breach of the condition of lease. This show-cause notice ought to have been allowed to be adjudicated. It is well settled that the High Court should not entertain a Writ Petition directly against the show-cause notice and should ordinarily relegate the parties before the competent authority. It is not the case of the petitioners that the show-cause notice was issued without jurisdiction. The petitioners, therefore, should have been asked to file response to such show-cause notice leaving it to the Collector to adjudicate on the same after allowing reasonable opportunity of being heard to the petitioners. The learned Single Judge entertained the Writ Petition directed against the said show-cause notice and quashed the same primarily on the ground that the same was issued to overreach the process of the Court. In our opinion, the order passed by the Minister restoring the order of the Collector terminating the lease was based on entirely different set of facts. The show-cause notice dated 19.3.2002 was premised on unconnected and independent allegations of breach of conditions of the lease. The petitioners' defence that notice was issued after much delay, is based entirely on unascertained averments.

Whether the government was aware of this transaction and whether authorities had acquiesced in it are issues which can be decided only upon completion of full enquiry and adjudication of said show-cause notice during which the petitioners would have sufficient opportunity to bring necessary material on record. We must, therefore, allow the authorities to proceed further in connection with the said show-cause notice.

24. Under the circumstances, the Appeal is disposed of with the following directions:

(i) The judgment of the learned Single Judge insofar as it sets aside the order of the Minister dated 18.5.1998 and restores that of the Additional Commissioner dated 30.3.1994, is confirmed. The Appeal of the Government to this extent is dismissed.

(ii) The decision of the learned Single Judge quashing and setting aside the impugned show-cause notice dated 19.3.2002 is reversed. The appeal of the Government is allowed to this extent. The Petition of the petitioners would stand dismissed to this extent.

(iii) It would be open for the petitioners to file reply to the said show-cause notice within a period of eight weeks from today and thereafter, the Collector shall take a decision in connection with the said show-cause notice in accordance with law after granting a reasonable opportunity of hearing to the petitioners.

25. At this stage, the learned Counsel for the original petitioner requested for stay of the portion of the judgment which is adverse to the petitioner. In the order portion, we have granted time of six weeks to the petitioner to file a reply to the show cause notice, hence, no need to stay the order arises. The request is refused.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)