

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7938/2018

Manoharlal s/o Hundrajmal Gidwani
Vs.

Hon'ble Minister (Revenue), Maharashtra State, Mantralaya, Mumbai and others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Sahil Dewani, Advocate with Shri Shyam Dewani, Advocate for petitioner.
Shri A.V.Palshikar, Assistant Government Pleader for respondent nos.1 to 4.
Shri J.B.Kasat, Advocate for respondent no.5.

CORAM : A.S.CHANDURKAR, J.

DATED : September 11, 2019

The challenge raised in the present writ petition is to the order dated 12.04.2018 passed by the Hon'ble Minister of Revenue on the revision application preferred by the respondent no.5 herein under Section 257 of the Maharashtra Land Revenue Code, 1966 (for short, 'the Code'). By that order the said revision application has been allowed by setting aside the order dated 29.05.2017 that was passed by the Divisional Commissioner and the order passed by the Additional Collector directing resumption of the land in question has been restored.

The facts in brief are that it is the case of the petitioner that he had title in Plot No. 24/1 admeasuring 1125 square feet situated at Paratwada on the basis of a lease granted in his favour. The said land was initially leased out to one Rafiq Abdul Latif under the provisions of M.P.Land Revenue Code, 1954. On 11.05.1976 said Rafiq Abdul Latif executed an assignment deed in favour of the petitioner and transferred his interests in favour of the petitioner. According to the petitioner, on 21.03.1997 the Collector passed an order recognizing the interests of the

petitioner as a leaseholder. However on the ground that the petitioner had not renewed the lease deed and that he had not utilized that land for the purpose for which it was let out, the respondent no.5 had moved an application before the Sub-Divisional Officer for cancelling the lease. By order dated 29.06.2013 that application was allowed and the lease deed was cancelled. The said order was challenged before the Additional Collector who on 22.01.2014 dismissed the said appeal and directed that the land be forfeited in favour of the State Government. Being aggrieved by that order the petitioner approached the Divisional Commissioner who by his order dated 29.05.2017, allowed the said revision petition in view of the adjudication by the Civil Court and set aside the orders passed by the Sub-Divisional Officer and the Additional Collector. The respondent no.5 therefore approached the State Government and by the impugned order dated 13.04.2018 that revision application bearing No.REV 4617/P.K.211/J-9 has been allowed. Hence the present writ petition.

Shri S.S.Dewani, learned counsel for the petitioner submitted that in the light of the fact that on 21.03.1997 the name of the petitioner was directed to be entered in the lease register as per the directions issued by the Collector, it was clear that the said lease was validly granted to the petitioner. The Authorities were not justified in observing that there was no order of renewal of the said lease in favour of the petitioner. The fact that on 21.03.1997 the Collector had directed the petitioner's name to be so entered indicated that the said direction was issued in view of leasehold rights of the petitioner. He referred to the adjudication in R.C.S.No.207/1999 that was filed by the petitioner seeking a declaration as regards his title and his possession. The said suit was decreed on 12.09.2007 and the application made by the respondent no.5 for setting aside the ex-parte order had been rejected. The Revenue Authorities were bound by the adjudication of the Civil Court and it was not permissible to ignore that adjudication. He further referred to the document dated 11.05.1976 that was executed by the original lessee in favour of the

petitioner to indicate that the petitioner's entry on the suit property was valid and legal. It was also pointed out that the petitioner had deposited lease amount of Rs.32,160/- during the pendency of the civil suit which also substantiated the right of the petitioner. He referred to written notes of arguments that were placed on record before the Sub Divisional Officer to substantiate his contentions. According to him, all these relevant aspects had not been considered in the proper perspective by the Hon'ble Minister. He referred to written notes of arguments that were placed on record before the Sub Divisional Officer to substantiate his contentions. He also referred to the provisions of Sections 44 and 45 of the Code and thereafter by relying upon the decisions in *Gangabai Ramrao Patil Vs. State of Maharashtra through the Minister for State (Revenue) and others*, 2019 SCC Online Bom 1078, *Raoji Hambarde Charitable Trust, Amravati Vs. State of Maharashtra and others*, 2018 (5) Mh. L.J. 289, *Anant Vishnu Muley and others Vs. State of Maharashtra and others* (2007) 3 Bom CR 690, *India Farmers Private Ltd. Vs. State of Maharashtra and anr.*, 2004 (3) Mh.L.J. 112, *Chaganlal Tarachand Rai Vs. State of Maharashtra and another*, 2004 (4) Bom.C.R.294 and *Bhima Nana Savekar Vs. The Collector of Kolhapur and Ors.*, (1999) 2 All MR 126, it was submitted that the impugned order passed by the Hon'ble Minister was unsustainable.

Shri J.B.Kasat, learned counsel for the respondent no.5 and Shri A.V.Palshikar, learned Assistant Government Pleader for respondent nos. 1 to 4 supported the impugned order. According to them, the initial agreement dated 11.05.1976 on which the petitioner was relying was itself illegal and it did not have any legal force. It was not permissible for the original lessee to further create interest in the said land which was owned by the State Government. The communication dated 21.03.1997 was not signed by the Collector himself but was shown to have been signed on behalf of the Collector. It was found by the Sub Divisional Officer as well as the Additional Collector that there was no other records to indicate grant of any lease in favour of the petitioner. The said lease was rightly

cancelled as it was never renewed nor were the terms and conditions on which it was granted complied with. Referring to the observations as made in the order passed by the Divisional Commissioner, it was submitted that there was no basis for recording the finding that after following the due procedure, the land in question was allotted to the petitioner on lease. That perverse finding was set aside by the Hon'ble Minister. The adjudication in the civil suit would not be of much assistance as the owner of the land in question was the State Government and the State Government was not a party in the civil suit. In any event, it was submitted that the said adjudication would not be binding upon the State Government. It was thus submitted that in absence of any lease deed being executed in favour of the petitioner, the impugned order did not call for any interference.

I have heard the learned counsel for the parties and I have also gone through the records of the proceedings that were called for. It is undisputed that plot no.24/1 admeasuring 1125 square feet is Nazul land that is owned by the State Government. This land was initially allotted to Rafiq Abdul Latif. Said Latif on 11.05.1976 executed an assignment deed in favour of the petitioner. The petitioner claims right to the said land on the basis of that assignment deed. The petitioner has further relied upon the document dated 21.03.1997 to support his stand that the land was leased out to him and the lease amount was accepted from him. This document indicates that the same has been issued on behalf of the Collector and not by the Collector himself. It is on that basis that the name of the petitioner is shown to have been entered in the register pertaining to temporary lease holders. During the pendency of the proceedings before the Sub Divisional Officer, the Deputy Superintendent of Land Records on 29.09.2012 visited the said plot and found that there was no construction erected by the petitioner therein. A compound wall and a public temple was seen. It has also been found by the Sub-Divisional Officer that there were arrears of lease amount and the purpose for which the said plot was

given on lease remained unfulfilled. On that basis the Sub-Divisional Officer proceeded to cancel the lease deed that was stated to be standing in favour of the petitioner. The Additional Collector in exercise of appellate powers noticed that the communication dated 21.03.1997 was merely a photocopy and there was no order on record passed by the Collector granting any temporary lease to the petitioner. It was also noticed that in the communication dated 21.03.1997 there was a reference to an earlier order dated 30.07.1984 passed by the Sub-Divisional Officer. Even that order was not found on record. With these observations the Additional Collector maintained the order passed by the Sub-Divisional Officer cancelling the temporary lease. The Divisional Commissioner however reversed these orders by proceeding on the premise that the lease was granted to the petitioner by following due procedure established by law. For that purpose reference was made to the communication dated 21.03.1997. The Divisional Commissioner had then given importance to the order passed by the Civil Court in R.C.S.No. 207/1999. On these two counts, the revision application was allowed. The Hon'ble Minister however observed that the Divisional Commissioner had wrongly set aside the orders passed by the Sub-Divisional Officer and the Additional Collector. He noticed that the execution proceedings filed by the petitioner to execute the decree passed in R.C.S. No. 207/1999 had been withdrawn and no importance was liable to be given to that adjudication.

The material on record indicates that except for the communication dated 21.03.1997, there is no other basis or foundation with the petitioner to claim leasehold rights in the said plot. No procedure has been shown to have been followed to indicate allotment of the said plot in favour of the petitioner. The Additional Collector in fact found that no such record was available indicating allotment of that plot to the petitioner. Even the communication 21.03.1997 has not signed by the Collector but is shown to have been signed on his behalf. The Divisional Commissioner committed an error in observing that the lease was granted

to the petitioner after following the due procedure established by law. This finding is without any material on record and has been rightly set aside by the Hon'ble Minister being perverse.

As regards the adjudication of the civil suit filed by the petitioner is concerned, it is to be noted that the State Government was not a party to that suit. Despite it being pleaded that the land vested in the State Government that suit was filed against the respondent no.5 and some other trustees in view of the alleged obstruction being caused by them to the petitioner. Even in that suit, a copy of the lease on which the petitioner claims entitlement was not produced. As noted by the Hon'ble Minister the petitioner had withdrawn the execution proceedings that were filed by him. Hence the adjudication in the civil suit also does not assist the case of the petitioner in claiming any leasehold right in the suit property.

Insofar as the decisions relied upon by the learned counsel for the petitioner are concerned, it is seen that the ratio of these decisions cannot be made applicable to the case in hand. Since there is no material to indicate a valid entry on the property by the petitioner and there being no lease deed standing in favour of the petitioner, the same cannot be made applicable to the facts of the present case. Though reliance was placed on the decision in *India Farmers Private Ltd.* (supra) to indicate the limited scope available in the proceedings under Section 257 of the Code, I am satisfied on the basis of the material on record that the Hon'ble Minister has rightly allowed the revision application filed by the respondent no.5. The Divisional Commissioner as noted above arrived at a wrong conclusion in the absence of relevant documents and hence that order was rightly set aside. As noted above, the conclusion recorded by the Divisional Commissioner that the lease was granted by following the due procedure was incorrect and rightly set aside. The adjudication in the civil suit is also not relevant for considering the case of the petitioner. Said aspects had been wrongly considered by the Divisional Commissioner.

In that view of the matter, I find no reason to interfere in writ jurisdiction. There is no jurisdictional error committed while passing the impugned order. The writ petition is accordingly dismissed with no orders as to costs.

At this stage, the learned counsel for the petitioner prays for continuation of the interim relief that was operating pursuant to the order dated 05.02.2019. For a period of six weeks from today, the order dated 05.02.2019 shall continue to operate. It shall cease to operate automatically thereafter.

JUDGE

Andurkar.