

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

**CIVIL APPLICATION NO.1297 OF 2020
IN
WRIT PETITION NO.5377 OF 2019**

- 1] Syed Habib Zainul Abedin S/o. Haji Nizamoddin
(Died through L.Rs.)
- 1A] Mujeebunnisa w/o Syed Zainulabiddin,
Age:68 yrs, Occ. Household
- 1B] Syed Sirajularfeen s/o Syed Zainulabiddin,
Age: 43 yrs, Occ: Agri.
- 1C] Syed Minhajul Arfeen S/o Syed Zainulabiddin,
Age: 38 yrs, Occ: Agri.
Applicant No. 1A to 1C are
R/o Kazipura, Kinwat,
Tq. Kinwat, Dist. Nanded.
- 1D) Najeebunnisa w/o Syed Taufeeq Ahmed
Age 46 yrs. Occ. Household
R/o House No.9-425, Rajiv Nagar,
Teacher's Colony, Adilabad Pin Code-504 001.
Tq. and Dist. Adilabad (Telangana).
2. Syed Naimoddin S/o. Syed Ahemad Mohiuddin,
Age: 70 years, Occu. Agril.
3. Syed Mujiboddin S/o Syed Ahemad Mohiuddin,
Age: 66 years, Occu. Agril.
4. Syed Alimoddin s/o. Syed Ahemad Mohiuddin,
Age : 61 years, Occu: Agril.
Nos.2 to 4 are R/o. Kazipura Kinwat,
Tq. Kinwat, Dist. Nanded.

APPLICANTS
(Orig. Petitioners)

VERSUS

- 1] Yusuf Khatoon w/o. Mujiboddin,
Age : 62 years, Occu. Agril,
- 2] Sara Anjum W/o. M.A. Subhani,
Age : 59 yrs, Occu- Agril.,
- 3] Hajra Anjum W/o Abdul Mannan,
Age : 56 years, Occu. Agril.,
- 4] Aisha Anujm w/o Abdul Gaffar,
Age : 49 years, Occu. Agril.
- 5] Asma Anjum W/o. Ashfaq Hussain,
Age : 79 years, Occu. Agril.

- 6] Samina Tanvir D/o. Abdul Gaffar,
Age : 36 years, Occu. Agril.
Respondent No.1 to 6 all R/o. Kinwat,
Tq. Kinwat, Dist. Nanded
All through G.P.A.
Mohd. Mujiboddin S/o. Mohd. Azizoddin,
Age : 66 years, Occu. Agril.,
R/o. House No. 1-2-327, Shanti Nagar,
Adilabad, Tq. & Dist. Adilabad (Telangana).
- 7] Rahimunnisa W/o. Abdul Gaffar (died)
(her L.R's No.1 to 6 are already on record)
- 8] The Additional Commissioner,
Aurangabad Division, Aurangabad.
- 9] The Additional Collector, Nanded,
Tq. & Dist. Nanded.
- 10] The Sub Divisional Officer,
Kinwat, Dist. Nanded.
- 11] The Tahsildar, Kinwat,
Tq. Kinwat, Dist. Nanded.
- 12] The State of Maharashtra,
through Secretary,
Revenue Department, Mantralaya,
Mumbai.

...RESPONDENTS
(Orig. Respondents)

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Advocate for Applicants : Mr. R.R. Shaikh
Advocate for Respondent Nos.1 to 6 : Mr. P.R. Katneshwarkar h/f. Mr. D.M.
Shinde
AGP for respondent/State: Mr. S.N. Morampalle

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CORAM : MANGESH S. PATIL, J.
Reserved on 19.10.2020
Pronounced on : 23.10.2020

ORDER :

Heard both the sides. The applicants who are the original petitioners have filed this application praying for restraining the respondent Nos. 1 to 6 from alienating and/or creating third party interest in the property in dispute being Gut No.222 admeasuring 19 Acres and 30 Gunthas of Village Kinwat District Nanded.

2. As can be gathered from the submissions and the Writ Petition, the petitioners are questioning the legality and correctness of the order passed by the Tahsildar, Kinwat dated 28.09.2012 in a proceeding filed by the respondent Nos. 1 to 7 herein against the petitioners under Section 8 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (herein after 'the Tenancy Act') read with Section 2A of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (hereinafter 'the Abolition of Inams Act'). He was called upon to decide the nature of the Inam and devolution of occupancy rights. By the impugned judgment, the Tahsildar found that one Immamoddin was the original Inamdar of the lands survey Nos.125 and 126. After his demise, these lands devolved on his two sons Habiboddin and Hafizoddin. Survey No.125/A and Survey No.126/A fell to the share of Habiboddin and Survey No.125/AA and Survey No.126/AA fell to the share of Hafizoddin. The Tahsildar after extending opportunity of being heard to both the sides concluded that after abolition of Inams the lands occupied by Habiboddin were regranted to him. The petitioners are his heirs. As far as the lands which had fallen to the share of Hafizoddin, one Habibur Raheman, the predecessor of the respondent Nos. 1 to 7 claimed to be his tenant. It was held that he was a tenant and lands which had fallen to the share of Hafizoddin were regranted to him. The occupancy price was also paid by him and it was held that it was a Madatmash Inam. After demise of Habibur Raheman name of his wife Karimmunisa Begum and daughter Rahimunisa Begum were mutated by Mutation Entry No.1602 to these

lands. During the course of implementation of Consolidation Scheme it was allotted Gut No.222. The petitioners objected to such mutation and after holding the Inquiry, the learned Tahsidlar refuted the objection raised by the petitioners.

3. The petitioners challenged the order of Tahsildar in an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 before the Sub-Divisional Officer, Kinwat who dismissed the Appeal and the order was confirmed by the Additional Collector, Nanded and subsequently by Divisional Commissioner, Aurangabad when the petitioner.

4. The learned advocate for the petitioners submits that the respondents are trying to dispose of the property in dispute i.e. Gut No.222 and have also applied for permission under Section 6(3) of the Abolition of Inams Act. The petitioners have been served with a notice of that inquiry. It is likely that permission for selling the property will be granted. He would submit that if the respondents succeed in disposing of the property in dispute, the purpose of filing the Petition would be lost.

5. The learned advocate Mr. R.R. Shaikh further submits that even before passing of the impugned judgments and orders, already the matters were decided by these authorities and the petitioners were required to file Writ petition No.5116/2009 before this Court. This Court had quashed and set aside the judgments and orders in the earlier round of litigation and had remanded the matter to the Tahsildar by the judgment and order dated 02.03.2012. He would submit that while remanding the matter to the

Tahsildar for decision afresh, this Court had granted protection in favour of the present petitioners who were the respondents therein from alienating the property in dispute. The learned advocate therefore submits that the respondent Nos. 1 to 7 may be restrained from alienating or creating third party interest in the land Gut No.222.

6. The learned advocate Mr. Katneshwarkar holding for Mr. D.M. Shinde for the respondent Nos. 1 to 6 submits that though it is a matter of record that the dispute between the parties is going on for years together and the matter is now before this Court in the form of the present Writ Petition, there are concurrent findings of facts recorded by as many as four authorities. Consequently, the scope to interfere with such concurrent findings in the Writ Petition is very limited.

7. He would submits that the right, title and interest of the predecessor of the respondent Nos. 1 to 6 by name Habibur Raheman as a tenant in the lands which had fallen to the share of Hafizoddin were concluded in the year 1964 itself during life time of Hafizoddin and the decision had reached finality as has been concluded by the authorities in the impugned orders. It was concluded that he was a tenant and the decision had become final. Accordingly the lands were regranted to Habibur Raheman and he had paid the occupancy price. After demise of Habibur Raheman by Mutation Entry No.1163, name of his wife and daughter were mutated. Later on after demise of Karimmunisa, the wife of Habibur Raheman Mutation Entry No.1441 was approved and neither of these

Mutation Entries were ever challenged by anybody. The learned advocate therefore submits that since decision of the Tahsildar, Kinwat dated 23.08.1964 refuting the objection of Hafizoddin and holding Habibur Raheman to be his tenant pursuant to the provisions of Section 61 of the Tenancy Act, the petitioners have no *locus standi* to question all these facts parallely in a different inquiry. The respondent Nos. 1 to 6 are the daughters of Rahimunnisa in whose favour the Mutation Entry No.1602 which is in dispute has been approved. The learned advocate therefore submits that the petitioners are bent upon to protract the litigation and create obstructions to the respondents in exercising their right, title and interest in the property. He would further pointed out that though the matter was remanded by this Court in the Writ petition No.5116/2009, the interim relief that was granted in favour of the present petitioners was for a limited period i.e. only up to 26.03.2012. He therefore prays to reject the application.

8. I have carefully considered the rival submissions and the papers. Considering the checkered history of the litigation, it would have been appropriate to had the Writ Petition been decided finally, but could not be since Mr. R.R. Shaikh learned advocate for the petitioners seeks time to argue the matter at some latter point of time and prays for deciding the present application.

9. Obviously it is a matter in dispute as to what is the nature of the Inam but the fact remains that *prima facie*, it has been decided by the then

Tahsildar in File No.AR 18/61 by the judgment dated 23.08.1964 that it was a Madatmash. Pertinently, that dispute was between Hafizoddin who was the son of original Inamdar Immamoddin and the predecessor of the respondent Nos. 1 to 6 Habibur Raheman. The latter was claiming to be the tenant. The decision had gone in favour of the latter and had reached finality.

10. It also appears that the petitioners are claiming through Habiboddin who is the other son of Immamoddin. Both these sons Habiboddin and Hafizoddin had succeed Immamoddin and were allotted separate lands. If such is the state of affairs, the decision in the earlier litigation between Hafizoddin and tenant Habibur Raheman having reached finality it would operate as *res judicata*. All the authorities in the impugned judgments and orders have taken such a view and the issue will have to be gone into while deciding the Petition. However, for the time being it does appear that that decision had reached finality and the circumstance *prima facie* stands in favour of the respondent Nos. 1 to 6.

11. As far as the immediate problem being faced by the petitioners is concerned, it is apparent that the respondent Nos.1 to 6 seem to have entered into some agreement to sell the property in dispute and have also submitted an application seeking permission under Section 6(3) of the Abolition of Inams Act. However, it is also a matter of record that even the petitioners have been served with a notice by the office of the Collector, wherein, the application is pending, calling upon the petitioners to attend

the hearing. If such is the state of affairs, when the parties are before the Authority which is competent to grant or refuse permission to sell the property pursuant to the provisions of Section 6(3) of the Abolition of Inams Act, it would be premature to say that the respondents would be able to sell the property.

12. The petitioners have filed the present Writ Petition in March 2018 and does not seem to have ever made any attempt even to solicit any direction muchless of issuing even notices to the respondents. For whatever reasons, the Petition has not come before the Court for consideration of its admission. Only a Civil Application No.1296/2020 on account of death of petitioner No.1 to bring on record his legal representatives that the matter was moved before this Court. Even the petitioners were served with the notice by the Collector inviting them to the Inquiry in November 2019. Be that as it may, no final order permitting the respondent Nos. 1 to 6 to alienate the property in dispute has been passed. I therefore do not intend to cause any interference.

13. The application is rejected. Hearing of the Writ Petition is expedited.

(MANGESH S. PATIL, J.)