IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6763 OF 2021

1. Gangadhar Ramdas Kalamkar,
Age : 46 years, Occu. Agriculture

2. Ramdas Mahadu Kalamkar,
Age : 72 years, Occu. Agriculture

Both R/o Palve (Bk.), Tal. Parner,
District Ahmednagar

PETITIONERS
(Orig. Revn. Petitioners)

VERSUS

1. The State of Maharashtra,
through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32

2. The Sub Divisional Officer,
Shrigonda – Parner Division,
Ahmednagar

3. The Tahsildar and Agricultural
Land Revenue Tribunal, Parner,
Taluka Parner, Dist. Ahmednagar

4. Suresh Parshuram Palaaskar,
Age : 45 years, Occu. Agriculture

5. Santosh Dattatray More,
Age : 40 years, Occu. Agriculture

6. Vikas Sitaram Jadhav,
Age : 45 years, Occu. Agriculture

7. Balasaheb Abaji Kalamkar,

Age : 47 years, Occu. Agriculture

8. Sonyabapu Sarjerao Kalamkar,
Age : 42 years, Occu. Agriculture

Nos.4 to 8 are R/o Palve (Bk.),
Taluka Parner, District Ahmednagar

RESPONDENTS
(Nos.4 to 8 – Orig. Respondents)

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Mr. Amol K. Gawali, Advocate for the petitioners
Mr. K.B. Jadhavar, A.G.P. for respondent Nos.1 to 3
Mr. Nitin V. Gaware, Advocate for respondent Nos.4 to 8

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CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 31.08.2021
JUDGMENT PRONOUNCED ON : 07.09.2021

<u>JUDGMENT</u> :-

Heard.

2. Rule. The Rule is made returnable forthwith. The learned A.G.P. waives service for respondent Nos.1 to 3 and Mr. N.V. Gaware, learned Advocate waives for rest of the respondents. With the consent of both the sides the matter is heard finally at the stage of admission.

3. The petitioners, whose claim under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred

to as “Act”) was allowed by the Mamlatdar alias Agricultural Lands Tribunal (“ALT”, for short), are impugning the orders passed in an appeal preferred by respondent Nos.4 and 5 under Section 74 of the Act by the Deputy Collector and lateron confirmed by the Maharashtra Revenue Tribunal (“MRT”, for short) by rejecting their revision preferred under Section 76 of the Act.

4. The facts as are necessary to appreciate the matter in controversy may be summarized as under.

. The land bearing Gut No.466 (old survey No.180/1), admeasuring 7 Acres 29 gunthas at Village Palve (Bk.), Taluka Parner, District Ahmednagar was originally owned by one Gangubai Balu Somwanshi. On 27.12.1946, by a registered sale-deed, Shri Siddheshwar Devasthan through Sarpanch Govind Vishnu Kulkarni and 10 other panchas purchased it from her. Accordingly, by Mutation Entry No.1547, name of Shri Siddheshwar Devasthan through Govind Vishnu Kulkarni was mutated. Name of one Mahadu Kalamkar was recorded as a tenant in the land. He was survived by three sons namely Bhau Mahadu Kalamkar, Ramdas Mahadu Kalamkar and Bhima Mahadu Kalamkar. After demise of Mahadu, name of Bhau Mahadu appeared in the revenue record in the cultivation column as a tenant till 1955-56. The petitioners allege that Bhau Mahadu was holding the tenancy for and on behalf of the entire family and was in possession of the land right from

1956 to 1962, which covered the Tillers' Day i.e. the appointed date 01.04.1957. By Mutation Entry No.1968 dated 12.12.1962, it was mentioned that said Bhau Mahadu Kalamkar had surrendered the tenancy in the year 1955-56 and his name was, therefore, deleted. According to the petitioners, even this Mutation Entry No.1968 was incorrect and inspite of the petitioners having continued to be in possession, erroneously an entry of `khud' was recorded in the cultivation column of the land.

5. The petitioners asserting that in the family arrangement, the land was allotted to petitioner No.2, who happens to be the brother of Bhau, the original tenant, initiated a proceeding under Section 32G of the Act before the ALT by arraying only the legal representatives of Govind Vishnu Kulkarni as respondents. By the order dated 30.04.2013, the ALT allowed the application and fixed the price and accordingly, a certificate under Section 32M of the Act was directed to be issued.

6. Respondent Nos.4 and 5 preferred an appeal under Section 247 of the Maharashtra Land Revenue Code before the Deputy Collector. By the judgment and order dated 31.12.2014, the appeal was partly allowed and the matter was remanded to the ALT by directing to take a decision afresh by extending an opportunity to respondent Nos.4 and 5. The petitioners

challenged that order in revision. The MRT by the judgment and order dated 20.04.2016, allowed the revision and quashed and set aside the order in the appeal but granted an opportunity to respondent Nos.4 and 5 to prefer an appeal under Section 74 of the Act and directed the learned Deputy Collector to decide the application for condonation of delay and thereafter, to decide the appeal. Accordingly, respondent Nos. 4 to 8 preferred an appeal under Section 74 before the learned Deputy Collector alongwith an application for condonation of delay. The Deputy Collector, after hearing the parties, condoned the delay. The petitioners challenged that order in revision under Section 76, but the MRT dismissed the revision. The petitioners approached this Court in Writ Petition No.1333/2018, but this Court dismissed it.

7. Accordingly, the learned Deputy Collector heard the appeal under Section 74 of the Act. He allowed the appeal and quashed and set aside the order of the ALT that was passed in favour of the petitioners. The petitioners preferred revision under Section 76 of the Act, but it has been dismissed by the impugned judgment and order.

8. Mr. A.K. Gawali, learned Advocate for the petitioners would submit that the learned Deputy Collector and the MRT have miserably failed to appreciate the facts and circumstances obtaining in the matter in hand. He

would submit that though the land was purchased by Shri Siddheshwar Devasthan, it was purchased through Sarpanch Govind Vishnu Kulkarni. Though by virtue of Mutation Entry No.1547, name of Devasthan was mutated, it was shown as represented through Govind Vishnu Kulkarni himself. He would, therefore, submit that by virtue of the definition of the `landlord' contained in Section 7 (3) of the Act and `tenant' contained in Section 2(18) of the Act, since Govind Vishnu Kulkarni, during his lifetime and his family members after his demise, were regularly receiving the rent of the land from the tenant Mahadu, there was no illegality in the legal representatives of Govind Vishnu Kulkarni alone being made the respondents in the proceeding under Section 32G of the Act. Not arraying Shri Siddheshwar Devasthan was inconsequential. The learned Advocate would then submit that when the landlord as defined under Section 7(3) i.e. heirs of Govind Vishnu Kulkarni, who were actually receiving the rent, had specifically admitted the tenancy of the petitioners' predecessor, no error was committed by the ALT in allowing their application under Section 32G and issuing certificate under Section 32M by accepting the purchase price.

9. The learned Advocate would submit that in fact, it was obligatory on the part of the ALT to have initiated an enquiry under Section 32G of the Act *suo moto.* Since no such enquiry was initiated, the petitioners had to file

this proceeding in the year 2013 and the aspect of delay ought not to have taken aid of for drawing any inference.

10. Mr. A.K. Gawali, learned Advocate would then submit that respondent Nos.4 to 8 were not the parties to the proceeding before the ALT under Section 32G. Since Section 74 of the Act provides a remedy of appeal, which is a statutory remedy, in the absence of being a party, they could not have preferred any such appeal without the leave of the Appellate Authority i.e the Deputy Collector. This aspect was clearly overlooked by the learned Deputy Collector, who decided the appeal and the fact was not considered, which goes to the root of the jurisdiction. As a corollary, the learned Advocate would further submit that when admittedly Shri Siddheshwar Devasthan is the owner of the land, even it was not made a party in the appeal. Respondent Nos.4 to 8 had no locus standi to prefer the appeal more so when it was not being preferred for and on behalf of Shri Siddheshwar Devasthan. Therefore, the appeal under Section 74 of the Act itself was not maintainable. The MRT has also overlooked all these vital aspects and illegally dismissed the revision.

11. Mr. N.V. Gaware, learned Advocate for respondent Nos.4 to 8 would submit that though there is some error in styling the appeal under Section 74 of the Act inasmuch as Shri Siddheshwar Devasthan is not

specifically shown as a party nor respondent Nos.4 to 8 had styled themselves to be acting for and on behalf of Shri Siddheshwar Devasthan, the fact was clearly borne in mind by the learned Deputy Collector, who had rightly considered that these respondent Nos.4 to 8 were, in fact, representing Shri Siddheshwar Devasthan as trustees, which was by then registered as a Public Trust under the Maharashtra Public Trusts Act in the year 2016 and that its certificate was issued by the Charity Commissioner in the name of respondent No.7. The learned Advocate would further point out that the question of right to prefer an appeal and the locus was also specifically considered and decided by the learned Deputy Collector.

12. Learned Advocate Mr. Gaware would submit that in fact, the original proceeding before the ALT itself was defective inasmuch as Shri Siddheshwar Devasthan, which was the owner of the land, was itself not made a party or shown as such in the title of the application preferred by the petitioners before the ALT under Section 32G of the Act. When admittedly it was the owner of the land, that proceeding could not have been allowed to be conducted behind its back.

13. Mr. Gaware, learned Advocate would then submit that the Deputy Collector as also the MRT have minutely perused the revenue record while

reaching the conclusions, which are clinching and based on correct appreciation of the facts, circumstances and the revenue record. The sale-deed was executed in favour of Sarpanch Govind Vishnu Kulkarni with ten other panchas. If that was so, no proceeding under Section 32G of the Act could have been initiated behind the back of the other panchas. He would further submit that there was no revenue record showing existence of any tenancy on the Tillers' Day and the ALT simply conceded to the request allowing that proceeding on the basis of admissions given by the legal heirs of Govind Vishnu Kulkarni. Ex facie, that decision was procured by collusion and has been rightly interfered with and reversed in the appeal.

14. I have carefully considered the rival submissions and perused the impugned orders. To repeat, there is no dispute that Gangubai Balu Somwanshi was the original owner from whom the land was purchased by Shri Siddheshwar Devasthan through Sarpanch Govind Vishnu Kulkarni and ten other panchas. Pursuant to such purchase, name of Shri Siddheshwar Devasthan was mutated by Mutation Entry No.1547. The revenue record is also clear and demonstrates that by Mutation Entry No.1968, was recorded showing that the tenant Bhau Mahadu Kalamkar had surrendered the tenancy in 1955-56 and the entry was never challenged. Even according to the petitioners, inspite of their predecessor being in possession for the period

1956 to 1962, it was merely erroneously mentioned that the cultivation column of the land read `khud' meaning thereby that it was the owner who was cultivating it. Fact remains that Bhau Mahadu Kalamkar was not shown to be in possession as a tenant in the land on the Tillers' Day i.e. 01.04.1957. It is in view of such state-of-affairs, the learned Deputy Collector has rightly concluded that the ALT had no reason and nothing was before it to jump to the conclusion that the petitioners' predecessor had become a deemed purchaser by virtue of Section 32G and the decision was rendered by it merely on the basis of the admissions given by the heirs of Govind Vishnu Kulkarni, who alone were the parties as respondents in that proceeding.

15. True it is that by virtue of definition of `landlord' and `tenant' contained in the Act, it is not necessary that it should be the owner of the land, who can confer a tenancy. However, the submissions of the learned Advocate for the petitioners and his reference to these definitions, is inconsequential for the simple reason that it is not the case of the petitioners that at any point of time, Govind Vishnu Kulkarni had, for and on behalf of Shri Siddheshwar Devasthan, inducted Mahadu Kalamkar as a tenant in the land and was receiving the rent from him. For that matter, even if he was a Sarpanch, there is absolutely no material to show that the body of Sarpanch had ever authorized him to induct any tenant in the land after it was

purchased. In the absence of any such specific stand of the petitioners, therefore, reference to the definition of `landlord' to mean a person entitled to receive rent for and on behalf of the owner, is of no help to the petitioners.

16. Again, Mutation Entry No.1968 mentioning that Bhau Mahadu Kalamkar had surrendered the tenancy in 1955-56 was also never challenged by anybody. This is also a vital circumstance, which has been referred to by the learned Deputy Collector while deciding the appeal.

17. Now coming to the locus standi of respondent Nos.4 to 8, the submission of the learned Advocate for the petitioners and their stand throughout, particularly before the MRT that the issue was not dealt with and considered by the Deputy Collector in the appeal, is fallacious. A careful perusal of the judgment in the appeal would clearly show that the learned Deputy Collector specifically observed that Shri Siddheshwar Devasthan was subsequently registered as a Public Trust on 19.03.2016, its certificate was issued in the name of respondent No.7, who was the appellant and all the panchas were aggrieved by the order passed by the ALT dated 30.04.2013 and that is the reason since they were related to the Devasthan as trustees that it was necessary that the appeal was decided on merits. It, therefore, cannot be said that the point of locus standi was not considered by the learned Deputy

Collector while deciding the appeal.

18. Besides, though it is a fact that the title of the appeal memo does not read name of Shri Siddheshwar Devasthan and the names of respondent Nos.4 to 8 also do not indicate that they were intending to represent Shri Siddheshwar Devasthan, the recitals in the appeal memo and the observations of the learned Deputy Collector clearly indicated that they were interested in prosecuting the appeal for and on behalf of Shri Siddheshwar Devasthan and not in their individual capacity. It is the interest of the Public Trust which they were intending to protect and consequently, when they were acting to secure interest of the Trust and to protect its property, there was no question of the proceeding being vitiated by any provision of the Maharashtra Public Trusts Act also.

19. The learned President of the MRT has considered all the aforementioned aspects and has objectively scrutinized not only the reasoning given by the learned Deputy Collector but has also independently undertaken the scrutiny of the revenue record while passing the impugned judgment and order in revision under Section 76 of the Act.

20. The upshot of the above discussion, the concurrent findings

arrived at in the orders passed in the appeal and in the revision, by no stretch of imagination, can be said to be either perverse or arbitrary so as to empower this Court to intervene in writ jurisdiction.

21. The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL]
JUDGE

npj/WP6763-2021