

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

**WRIT PETITION NO.151 OF 2012 WITH
CIVIL APPLICATION NO.2579 OF 2012**

Radhakishan s/o Babulal Bassaye,
Died, through L.Rs.
Sanjay s/o Radhakishan Bassaye
and others

... PETITIONERS

VERSUS

Sandu s/o Dadamiya,
Died through L.Rs.
Shaikh Ali s/o Shaikh Sandu
and others

... RESPONDENTS

.....
Shri V.D. Salunke, Advocate for petitioners
Shri A.M. Gaikwad, Advocate for respondents No.2(i) to 2(iii)
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 16th February, 2021

Date of pronouncing order : 21st April, 2021

ORDER :

The challenge in this Writ Petition is to the judgment and order dated 20/10/2011, passed by the Maharashtra Revenue Tribunal (M.R.T.), Aurangabad in Case No.60-B-2004-A, upholding the judgment and order dated 31/5/1990, passed by the Mamlatdar in Case No.1989/Tenancy/CR/36 as also the judgment and order dated 3/9/2004, passed by the Deputy Collector (Land

Reforms), Aurangabad.

2. The petitioners claim through Babulal Bassaye, owners of the writ land. It is the case of the petitioners that, the writ lands old Survey Nos.45, 49, 50 and 51 i.e. New Survey Nos.12361, 12362, 12363 and 12366, situated at Baijipura, Aurangabad originally belonged to Salarjang. Those lands came to one Ranchhoddas as Pattedar. The father of the petitioners i.e. Radhakishan had purchased those lands from Ranchhoddas. The respondents – Sandu and Baksu claimed to be tenants in the said lands. They obtained possession of the writ lands from the father of the petitioners under the panchanamas dated 21/1/1975 and 28/1/1975. The respondents thereafter sold the writ lands without prior permission under Section 50-B of the Hyderabad Tenancy and Agricultural lands At, 1950 (for short the Act) to various persons. Radhakishan (original applicant), therefore, filed application before the Mamlatdar under Section 98-C of the Act for forfeiting the writ lands to the Government on account of having been sold in breach of provisions of Section 50-B of the Act. The Mamlatdar, vide his judgment and order dated 31/5/1990, rejected the application holding the original applicant to have failed to prove his title to the writ lands. The order passed by the Mamlatdar came to be upheld vide judgment and order dated 3/9/2004, passed by the Deputy

Collector (L.R.), Aurangabad. The petitioners have been unsuccessful before the Maharashtra Revenue Tribunal as well. The petitioners are, therefore, before this Court in this Writ Petition.

3. Shri V.D. Salunke, learned counsel for the petitioners would submit that, the writ lands originally belonged to the predecessors-in-title of the petitioners. The respondents obtained the possession of the writ lands claiming to have been tenants therein. After obtaining possession of the writ lands, the respondents sold it to various persons without obtaining prior permission of the Collector. The sale transactions, thus, became invalid and the writ lands became liable to be forfeited to the Government. The learned counsel took me through the copies of the sale deed, possession receipt and the relevant papers in File No.RB-WA/17/74, dated 31/3/1975 and submitted that all the authorities below have ignored these documents and passed the impugned orders. The learned counsel, therefore, urged for allowing the Writ Petition.

4. Shri A.M. Gaikwad, learned counsel for respondents No.2(i) to 2(iii) would, on the other hand, submit that all the three authorities below have concurrently recorded finding of fact that the petitioners have failed to establish

their title to the writ lands. He would further submit that, the writ lands are situated within the limits of Municipal Corporation, Aurangahad. Those have been declared slum area. Hundreds of tenements have come up on the writ lands. The writ lands have changed many a hands. The occupants of the writ lands are not the parties to this Writ Petition. If the petition is allowed, they would be affected persons. The petition is, therefore, liable to be dismissed.

5. I have considered the rival submissions and perused the documents relied on by the learned counsel for the petitioners. Both, the Mamlatdar and the Deputy Collector (L.R.) have given a finding of fact holding the petitioners to have failed to establish their title to the writ lands. The petitioners unequivocally admit in the petition that the writ lands belong to Sajarjang Estate. One Ranchhoddas was a Pattedar of the writ lands. Radhakishan, predecessor-in-title of the petitioners purchased the writ lands from Ranchhoddas. The papers in Case No.RB-WS-III/AR/17/74 indicate that Sandu, the original respondent No.1 and other had moved an application seeking possession of the writ land from Radhakishan and others. It was their claim that Radhakishan was the landlord, Sandu and others were tenants in the said land. According to learned counsel for the petitioners, these documents go a long way to establish that the writ lands were

held by the father of the petitioners as owner thereof and the original respondent No.1 was a tenant thereunder under the possession receipts, the writ lands came to be delivered into possession of Sandu and Baksu.

6. It is true that in the first blush, these documents make out a case propounded by the petitioners herein. It has, however, to be considered that the writ lands originally belonged to Salarjang Estate. Ranchhoddas was a Pattedar. Status of the Pattedar cannot be equated with a landlord. There is nothing to indicate that Ranchhoddas – Pattedar was, however, authorised by Salarjang to sell the writ lands. The Mamlatdar has observed that, in view of the decision of the High Court dated 26/4/1960, the writ lands belonged to Salarjang. The original applicant Radhakishan did not have any concern with the writ lands. Furthermore, the writ lands have now been situated within the limits of Municipal Corporation. The area has been declared as a slum. The writ lands have been sub-divided into hundreds of plots, those have been purchased by number of persons. Tenements have come up on the writ lands. None of the occupiers of the tenements standing on the writ lands are before this Court. If any adverse order is likely to be passed in this Writ Petition, those occupants need to be before this Court. In spite of having been aware of this position, none of them have been

impleaded as party respondents.

7. Since all the three authorities below have concurrently negated the claim of the petitioners and admittedly the writ lands originally belonged to Salarjang Estate, and Ranchhoddas, through whom the petitioners claim, was a Pattedar and not the owner of the lands, it, therefore, cannot be observed that the relationship between Ranchhoddas and the original respondent No.1 was that of a landlord and tenant. It is reiterated that, writ lands have changed many a hands. Lands have been sub-divided into plots. Hundreds of tenements have come up on the writ lands. The tenement-holders are are not parties to this Writ Petition. In exercise of discretionary jurisdiction under Article 227 of the Constitution of India, no interference is, therefore, warranted with the impugned orders. In view of the aforesaid factual backdrop, the writ petition fails. It is dismissed.

In view of dismissal of the Writ Petition, Civil Application No.2579/2012 stands disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-