

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

918 WRIT PETITION NO. 11929 OF 2015

1. Baburao Sampat Baisane, **...PETITIONERS**
Age-80 years, Occu-Nil,

2. Bhaidas Nathu Baisane,
Age-60 years, Occu-Nil,

Both R/o. At /Post Ajande (Bk)
Tq. Shirpur, Dist. Dhule,

VERSUS

1. Smt. Sindhubai Shivilsing Pardeshi (Died)...**RESPONDENTS**

2. Smt. Shobhabai Ganeshsing Pardeshi,
Age-45 years, Occu-Household & Agri,

3. Shri. Somnath Keshav Bhawe,
Age-42 years, Occu-Labour,

4. Mahendra Bhagwan Pawar,
Age-40 years, Occu-Labour

5. Narendra Bhagwan Pawar,
Age-38 years, Occu-Labour

6. Smt. Sunandabai Atmaram Lohar,
Age-45 years, Occu-Household,

7. Ujwalabai Lalsing Pawar,
Age-43 years, Occu-Household,

8. Chotulal Bhawdu Kumbhar,
Age-39, Occ-Agril,
At Post Ajande Budruk, Tq. Shirpur,

Dist. Dhule.

9. Shri Puna Manik Patil,
Age-35 years, Occu-Labour,
10. Shri Bansilal Shankar Jain,
Age-41 years, Occu-Labour
11. Kamiroddin Sk. Chand Sk. Bhagwan,
Age-40 years, Occu-Labour
12. Meerabai Bhivsan Patil,
Age-47 years, Occu-Household,
13. Sahebrao Namdeo Marathe,
Age-44 years, Occu-Labour
14. Shri. Rahim Sk. Raheman Maniyar,
Age-45 years, Occu-Labour
15. Shri Asalam Sk. Raheman Momin,
Age-46 years, Occu-Labour
16. Shri. Bhagwan Gokul Patil,
Age-38 years, Occu-Labour
17. Smt. Jubedabi Abbas Pinjari,
Age-37 years, Occu-Household,
18. Shri. Bhimrao Gopichand Patil,
Age-39 years, Occu-Labour
19. Rajendra Sudam Ozarkar,
Age-52 years, Occu-Agri
At Post, Ganesh Nagar,
Ajande Budruk, Tq. Shirpur,
Dist. Dhule
20. Shri. Arif Sk. Mehboob Manyar,

Age-42 years, Occu-Labour

21. Smt. Pritibai Kishor Sonar,
Age-45 years, Occu-Labour

All R/o. at/Post Ajande (Bk)
Tq. Shirpur, Dist. Dhule

Mr. Santosh B. Bhosle, Advocate for the petitioners

Mr. A. A. Sabnis, Advocate for respondent Nos. 2 to 7, 9 to 17,18,20 and 21

CORAM : N. J. JAMADAR, J.

DATE : 11-03-2021

ORAL JUDGMENT

. Rule. Rule made returnable forthwith and with the consent of the learned counsel for the parties heard finally at the stage of admission.

2. The petitioners assail the legality and correctness of order passed by the learned Member, MRT, Aurangabad dated 30-09-2015 in the case No.94/A/2013, whereby the tribunal recorded a finding that the appeal preferred by the petitioners herein against the judgment and order passed by Learned Tahasildar, Shirpur in proceeding No.315 of 2012 for restoration of Inam land under Section 59 of the Maharashtra Land Revenue Code, 1966, was not maintainable.

3. The petitioners claimed that the land bearing Survey

No.5/1, admeasuring 4-hectare 35-Are and Survey No.5/2+3/1, admeasuring 1-Acre 1-Are (renumbered as Gut No.6), situated at village Ajande (Bk), Tq. Shirpur, Dist. Dhule was Mahar Watan Inam land, which was resumed infavour of the predecessor of respondents. The husband of respondent No.1 allegedly got mutated said land in his name vide mutation entry No.1022 and 1023. Thus, the petitioners claimed to have been dispossessed and sought restoration of land under Section 9 of the Bombay Inferior Village Watans Abolition Act, 1958 read with Section 59 of the Maharashtra Land Revenue Code, 1966. The application came to be dismissed by the Tahasildar vide judgment and order dated 29-08-2013. The appeal preferred before the tribunal there-against came to be dismissed opining that the petitioners were not entitled to invoke the remedy under Section 9 of the said Act and, thus, the tribunal had no jurisdiction to entertain the appeal.

4. Learned counsel for the petitioners submitted that the aforesaid view of the tribunal is not in consonance with the provisions of law. The tribunal lost sight of provisions contained in Section 315 of the Code and the notification issued by the State Government clarifying the jurisdiction of the tribunal.

5. In support of the aforesaid submissions, the learned counsel for the petitioners placed reliance on a judgment of this court in the case of ***Supdu Kashinath Thorat Vs The State of Maharashtra and others in writ petition No.8036 of 2013,***

decided on 29-08-2017. In the said case, in the backdrop identical challenge, this court had considered the aspect of the tenability of the appeal against the order passed under Section 59 of the Code and held that the tribunal has jurisdiction to entertain the appeal. The observations in paragraph Nos. 5 to 9 are material. They read as under:-

“5. I have considered the submissions. Even if the land is Maharhadola land, still the eviction of unauthorized holder and re-grant of vatan land is as per section 9 of the said Act and summary eviction of persons unauthorizedly occupying the land is under the provisions of the Maharashtra Land Revenue Code, 1966 and more particularly under Section 59. Even Section 9 of the Bombay Inferior Village Watan Abolition Act, 1958 states that the unauthorized holder shall be summarily evicted by the Collector in accordance with the provisions of the code i.e. the Maharashtra Land Revenue Code, 1966.

6. Section 315 of the Code prescribes the appellate jurisdiction of the Tribunal. Sub-Section-1 and 3 of Section 315 would be relevant:

“315. Jurisdiction of Tribunal.

(1) Notwithstanding anything contained in Chapter XIII of this Code or any other law for time being in force, but subject to the provisions of this

Section, in cases arising under the provisions of the enactments specified in the Schedule-J-

(a) an appeal shall lie to the Tribunal from original orders or decisions made or passed by the Collector; and

(b) an application for revision shall lie to the Tribunal from an order or decision made or passed by the Collector in appeal, against an order or decision made or passed by any subordinate officer or authority.

(3) Save as expressly provided in any enactment for the time being in force, the State Government may, by notification in the Official Gazette, direct that the Tribunal shall also have jurisdiction to entertain and decide the appeals, from and revise decisions and orders, of, such persons, officers and authority in such other cases as the State Government may determine; and for that purpose the State Government may, by notification in the Official Gazette, add to, amend or omit, any of the entries in Schedule-J; and thereupon, the Tribunal shall have jurisdiction in such matter, and jurisdiction of any other person, officer or authority

therein shall cease.”

7. *In Schedule J, as appearing in the code for the appeals before the Tribunal, the sections under which the order passed are made appellable to the Tribunal have been specified and the order passed under Section 59 except clause ‘B’ is specified in Schedule J.*

8. *The affidavit is filed by the Principal Secretary of the State to the effect that in 1979 notification in the Official Gazette has been published stating that appeal to the Tribunal would lie under clause ‘A’ and clause ‘B’ of Section 59 of the Code. The copy of the notification is also placed on record. However, Schedule J even as appearing in the Government publication does not give effect to the amendment.*

9. *Sub-Section 3 of Section 315 specifically and explicitly provides that the State Government may, by notification in the Official Gazette direct that the Tribunal shall also have jurisdiction to entertain and decide the appeals from and revise decisions and orders of such persons, officers and authority in such other cases as as the State Government may determine; and for that purpose the State Government may, by notification in the Official Gazette add to, amend or omit, any of the entries in the Schedule J; and thereupon the Tribunal shall have jurisdiction in such matters.”*

6. Holding thus, the tribunal was directed to re-consider the aspect of the maintainability of the appeal before it in the light of Schedule-J and notification of the Government published in the official gazette dated 05-03-1979. The aforesaid pronouncement is on all four with the facts of the case at hand.

7. The issue of tenability of the appeal is required to be determined afresh by the tribunal in the light of aforesaid pronouncement. The petition, therefore, deserves to be allowed. Hence, the following order:

ORDER

- i. The petition stands allowed.
- ii. The impugned order passed by the tribunal dated 30-09-2015 in the case No.94/A/2013 stands quashed and set aside.
- iii. The tribunal is requested to re-consider the question of maintainability of the appeal in the light of Schedule-J read with notification of the Government dated 05-03-1979.
- iv. The tribunal shall decide the issue after providing an opportunity of hearing to both the parties.

- v. The parties are thus directed to appear before the tribunal on 19-04-2021.
- vi. Having regard to the pendency of the proceeding, the tribunal is requested to make an endeavour to hear and decide the appeal as expeditiously as possible.
- vii. Rule made absolute in above terms.

[N. J. JAMADAR, J.]