

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4605 OF 2021**

Rambhau Mahadeo Tayade

... Petitioner

Versus

The State of Maharashtra,
Through Principal Secretary,
Revenue Department & Ors.

... Respondents

- Mr. Sandesh D. Patil i/by Prithviraj S. Gole, Advocate for the Petitioner.
- Ms. Shruti D. Vyas, 'B' Panel Counsel for the State.
- Mr. Karl Tamboly i/by G.D. Talreja & Associates for Respondent Nos. 4 & 5.

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**CORAM : S. J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : 25 AUGUST, 2021.

P.C.:

1. By the present Writ Petition, the Petitioner has prayed for the following reliefs:-

- "a) By an appropriate writ, direction, order of this Hon'ble Court, the order dated 27/07/2021 passed by the Learned Collector, Thane (which is annexed to the present petition at **Exh. "R"** to the present petition) be quashed and set aside;
- b) By an appropriate writ, direction, order of this Hon'ble Court, the order dated 14/02/2018 passed by the Learned Commissioner, Konkan Division, Mumbai (which is annexed to the present petition at **Exh. "B"** to the present petition) be quashed and set aside;
- c) By an appropriate writ, direction, order of this Hon'ble Court the land bearing Survey No. 99/2 admeasuring at about 19589.67 sq.mtr situated at village Kolshet, Tal & Dist Thane be forthwith forfeited by the Respondent no.3 and order be passed accordingly;
- d) By an appropriate writ, direction, order of this Hon'ble Court the Divisional Commissioner Konkan Division, Learned District Collector Thane and the respondent no. 4 and 5 be directed to forthwith allot the land

to the petitioner and his institution for the purpose of the building BudhaVihar on the said property;

- e) By an appropriate writ, direction, order of this Hon'ble Court the Respondent State be directed to forthwith decide the applications / representations dated 27/11/2020, 04/12/2020 and 09/12/2020 made by the petitioner (which are annexed at Exhibit "M" (Colly) to the present petition) afresh and exercise his power under section 257 of the Maharashtra Land Revenue Code for setting aside the order dated 14/02/2018 passed by the Additional Commissioner Konkan Division, Mumbai (which is annexed to the present petition at Exhibit "B" to the present petition);
- f) By an appropriate writ, direction, order of this Hon'ble Court the order dated 28/03/2019 passed by the Respondent no.2 (which is annexed at Exhibit "E" to the present petition) thereby directing the private respondent to pay an amount of Rs.13,90,86,647 be quashed and set aside;"

2. It will be apposite to briefly state the relevant facts which are as under:-

2.1. The Petitioner claims to be a social worker residing in Thane. The subject land involved in the present petition is a portion of survey No.99/2, situated at village Kolshet, Dist. Thane (for short "**the said land**"). The total area of survey No.99/2 is 105550 sq. mtrs. Respondent No.5 purchased survey No.99/2 by a registered conveyance dated 14.07.1972 from M/s. Blenden Evomite Company Limited. The District Collector granted permission dated 06.07.1992 for the sale of the said land. Thereafter, Mutation entry No. 2716 was effected in the name of Respondent No.5 in the revenue record for survey No.99/2.

2.2 In 2017 Respondent No.5 Company transferred a total of 19589.67 sq. mtrs in Survey No.99/2 to Respondent No.4 by sale. The Sub Divisional Officer, Thane (for short "**SDO**") on the direction of Respondent No.2 Collector initiated the proceedings after calling for the report from the

Circle Inspector as well as the Tahsildar in respect of transfer of the said land and after conducting inquiry by order dated 05.10.2017 concluded that Respondent No.5 had not obtained prior permission from the State Government and thus there was a breach of the terms and conditions and therefore the said land was to be returned back to the State Government.

2.3 Both Respondent Nos.4 and 5 filed a statutory appeal before the Additional Commissioner, Konkan Division Mumbai under the provisions of Section 247 of the Maharashtra Land Revenue Code, 1966 (for short “**MLRC, 1966**”) and challenged the order dated 05.10.2017.

2.4 By a detailed speaking order dated 14.02.2018 the Additional Commissioner, Konkan Division allowed the appeal filed by Respondent Nos.4 and 5 and quashed and set aside the order dated 05.10.2017 passed by the SDO with consequential direction that the name of Respondent No.4 be mutated in the revenue record pertaining to the said land.

2.5 The Petitioner filed Civil Writ Petition (St.) No.99223 of 2020 in this Court and challenged the order dated 14.02.2018 passed by the Additional Commissioner, Konkan Division Mumbai and sought allotment of the said land to the Petitioner for the purpose of constructing Budha Vihar. In the alternative to this prayer, the Petitioner sought a direction to the Respondent – State to decide his applications/representations dated 27.11.2020, 04.12.2020 and 09.12.2020 seeking allotment of the said land to the Petitioner for constructing Budha Vihar (Samaj Mandir). The Petitioner

claimed to be the Chairman of the Lord Budha Pratisthan and the District President of the Republican Party of India and an ex-corporator in Thane district.

2.6 By order dated 05.02.2021 this Court disposed off Writ Petition (St.) No.99223 of 2020, *inter alia*, directing the concerned Collector to decide the applications / representations dated 27.11.2020, 04.12.2020 and 09.12.2020 made by the Petitioner and pass orders after giving a hearing to the Petitioner as well as Respondent Nos. 4 and 5.

2.7 Respondent No.2 Collector heard the parties on 25.02.2021, 05.03.2021 and 19.03.2021 and considered the report filed by the SDO.

2.8 By order dated 27.07.2021, Respondent No.2 confirmed that the Additional Commissioner vide an order dated 14.02.2018 has passed a detailed speaking order in respect of the status of the said land while quashing and setting aside the SDO's order and hence it would be inappropriate for the Collector to comment upon the same being junior in ranking and hierarchy to the Additional Commissioner while deciding the three applications filed by the Petitioner. The said order further stated that if the Petitioner was aggrieved by the order dated 14.02.2018, then the Petitioner can avail his right to file a statutory appeal before the second appellate authority i.e. the Minister (Revenue) of the Respondent No.1 State in accordance with law.

2.9 Both the above orders namely 14.02.2018 passed by the

Additional Commissioner, Konkan Division Mumbai and 27.07.2021 passed by the Respondent No.2 Collector, Thane are impugned in the present Petition.

3. Mr. Patil, learned counsel appearing for the Petitioner submitted that survey No.99/2 was originally acquired in the year 1961 under the provisions of the Land Acquisition Act, 1894 for M/s. Blendel Evomite Company Ltd. He submitted that there was a breach of the terms and conditions during transfer of the said land from Respondent No.5 to Respondent No.4 and thus the order dated 05.10.2017 passed by the SDO was correct. He has made submissions on commission of 'fraud' by Respondent Nos.4 and 5, but the same are disputed questions of fact and cannot be considered in the present Writ Petition.

4. Ms. Vyas, learned AGP and Mr. Karl Tamboly, Advocate for Respondent Nos.4 and 5 have supported the order dated 14.02.2018 passed by the Additional Commissioner, Konkan Division giving detailed reasons in paragraph Nos.5.1 to 5.10 and resultantly setting aside and quashing the order dated 05.10.2017 passed by the SDO.

5. We have considered the pleadings in the petition, the orders passed by the SDO, Collector Thane and the Exhibits annexed to the Petition.

6. At the outset, we may state that admittedly the said land belongs to and is in the legal and juridical ownership of Respondent No.5

Company. This fact is not disputed by the Petitioner. Hence the locus of the Petitioner to challenge any proceeding pertaining to the said land is in question. The Petitioner has not explained his locus save and except stating that the Petitioner desired that the said land should be allotted for the construction of Budha Vihar (Samaj Mandir) to the Petitioner's organization. The three applications namely dated 27.11.2020, 04.12.2020 and 09.12.2020 filed by the Petitioner before the Additional Commissioner, Konkan Division Mumbai and the Minister (Revenue), State of Maharashtra seek the allotment of the said land for the aforesaid purpose.

7. That the order dated 14.02.2018 passed by the Additional Commissioner, Konkan Division Mumbai is a *quasi judicial* statutory order passed under Section 247 of the MLRC, 1966. This is an appealable order. If any party is aggrieved by the said findings, the said party is free to approach the higher appellate forum as contemplated under the provisions of Section 247 read with Schedule "E" of the MLRC, 1966. Hence if the Petitioner is aggrieved it is open to the Petitioner to challenge the same before the second appellate authority if so desired or file appropriate proceedings in the civil court for redressal of his alleged grievance of 'fraud' if so advised.

8. The further challenge in prayer clause (f) of the Petition is in respect to the order dated 28.03.2019 passed by the Respondent No.2 Collector. By the said order Respondent No.5 has been directed to deposit a sum of Rs.13,90,86,657.00 being 40% of the market value of the said land

valued at Rs.34,77,16,642.00 with the government treasury pursuant to which further steps in terms of the applicable Government Resolutions would be taken for grant of conversion of the said land to the applicant (Respondent No.5) as per his application and in accordance with law. *Prima facie* this is an interim order for deposit of the appropriate statutory market value pursuant to the application made by Respondent No.5 for seeking change of user permission from the Collector. Respondent No.5 is the owner of the said land and is entitled to approach the statutory authority and consecutively the statutory authorities are to determine such application in accordance with law. The locus of the Petitioner to challenge this order is not established once again. However if the Petitioner is aggrieved, the Petitioner can always approach the higher appellate forum and file the statutory appeal to challenge this order. The Petition is devoid of any grounds whatsoever to establish challenge to this order.

9. In view of the aforesaid discussion and the orders dated 14.02.2018 and 27.07.2021 passed by the Additional Commissioner, Konkan Division and Collector, Thane, both of which are appealable orders under the provisions of Section 247 read with Schedule "E" of the MLRC, 1966, we do not find any merit in the reliefs claimed in the present Writ Petition.

10. The Writ Petition stands dismissed with the above observations. However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]