

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10611 OF 2019

Ramji Jadhav Tank .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

**WITH
WRIT PETITION ST. NO.26123 OF 2019**

Ramji Jadhav Tank .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

Mr. G.S. Godbole a/w Mr. Anil Mishra, Mr. Mukesh Pandey, Mr. Sunil Lungare, Mr. Kunal Zalte I/b. Manas & Co. for the Petitioners.
Mr. P.P. Kakade, GP a/w Mr. P.V. Nelson Rajan, AGP for the State.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 25, 2021

P.C.

Heard Mr. Godbole, learned counsel for the Petitioners and Mr. Kakade appearing on behalf of the State Government.

2. As the controversy involved in these Petitions is interlinked, the Petitions are dealt with by this common order.

3. Without going into the factual details, suffice it to observe that it is the Petitioners' case that their lands in question are Khoti lands. They claimed that they are in possession of said lands through their predecessors. It was the case of the State

Government that the Petitioners are no longer entitled to continue their occupation and possession over the said lands and therefore proceedings were initiated under the provisions of the Bombay Government Premises (Eviction) Act, 1955 ('the said Act' for short). It is pointed out that the order of eviction was made under the said Act. Thereafter, the Petitioners challenged the order by way of an Appeal before the Hon'ble City Civil Court. The City Civil Court remanded the matter back to the Competent Authority to reconsider the issue. The Competent Authority then refused to grant the eviction. The said order came to be challenged by the Competent Authority before the Hon'ble City Civil Court. The Hon'ble City Civil Court after hearing the parties again remanded the matter back to the Competent Authority. The proceedings before the Competent Authority remained pending and hence it is the contention of Mr. Godbole that once having instituted the proceedings under the provisions of the said Act, it was not open for the State Government to have initiated parallel proceedings under the Code.

4. The State Government initiated proceedings for eviction of the Petitioners under the provisions of Maharashtra Land Revenue Code, 1966 ('the Code' for short) as according to them the Petitioners are in unauthorised occupation of the government land.

5. The Petitioners do not dispute that the land belong to the State Government. The contention of Mr. Godbole is that before the

Hon'ble Minister a specific plea was raised that parallel proceedings are initiated under the Code which is impermissible.

6. In these Petitions two orders passed in the Revisions are under challenge. One arises from the eviction proceedings and the order passed thereon under the provisions of the Code. Other proceeding relates to the application made by the Petitioner for regularisation of his unauthorised occupation on the basis of the various Government Resolutions more particularly dated 23.12.1978, 28.11.1991 and 09.03.2007.

7. The Hon'ble Minister dismissed the Revisions filed by the Petitioners preferred against the adjudication made by the Competent Authorities under the provisions of the Code and also in respect of the application claiming regularisation.

8. It is one of the contention of Mr. Godbole that the Petitioners were not heard. The order passed in the Revisions no doubt reflects that all the parties have been heard and even the written arguments tendered by the parties is considered. However, it is submitted on behalf of the Petitioners that the oral arguments were not permitted to be advanced. This contention is refuted by the learned AGP, as according to him the impugned order clearly reveals the hearing was given to the Petitioners.

9. I have gone through the impugned orders. There appears to be some substance in the submission of learned counsel for the

Petitioners that the Petitioners were not properly afforded an opportunity of oral hearing as the findings in the impugned order reflect. It was one of the contention of learned counsel for the Petitioners that once having initiated proceedings under the said Act, no parallel proceedings can be then instituted under the provisions of the Code. I find from the impugned order that the said issue which is specifically raised is not at all considered in the impugned order. The contention that the parallel proceedings cannot be instituted finds a mention in the submissions recorded on behalf of the Petitioners in the impugned order. It was the specific case on behalf of the Petitioners that the Petitioners are claiming the regularisation on the basis of Government Resolutions dated 23.12.1978, 28.11.1991 and 09.03.2007. The findings do not deal whether the Petitioner is entitled to claim regularisation by virtue of the said Government Resolutions or not.

10. The impugned order therefore deserves to be set aside. In this view of the matter, in my opinion, the Revisions need to be remitted back to the Hon'ble Minister for deciding the same afresh in accordance with law after hearing all concerned. The Petitioners to remain present before the Hon'ble Minister on 02.09.2021 at 3.00 p.m. The Hon'ble Minister to hear the Petitioners and decide the Revisions on its own merits and in accordance with law.

11. It is made clear that I may not be understood to have made any observations on the merits of the controversy.

12. The interim order granted by this Court during the pendency of the Petition to continue till the Revisions are decided.

13. All contentions are kept open.

14. The Writ Petitions are disposed of.

(M.S.KARNIK, J.)

Digitally
signed by
PRADNYA
MAKARAND
BHOGALE
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