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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.928 OF 2022

1. Ravsaheb s/o Baburao Kadam PETITIONERS
Since deceased Through LRs
- 1-A. Laxmibai w/o Raosaheb Kadam
Age – 64 years, Occ – Household
R/o Tapowan, Taluka – Aundha
District – Hingoli
- 1-B. Smt. Ranjana Ravsaheb Kadam
@ Ranjana Dilip Londhe
Age – Major, Occ – Household
R/o Metha, Taluka – Aundha
District – Hingoli
- 1-C. Vishranti Ravsaheb Kadam
@ Vishranti Dnyanoba Dhage
Age – Major, Occ – Household
R/o Shendra Taluka and District – Parbhani
- 1-D. Smt. Jayashri Ravsaheb Kadam
Age – Major, Occ – Household
R/o Tapowan, Taluka – Aundha
District – Hingoli
- 1-E. Dnyanoba Raosaheb Kadam
Age – Major, Occ – Agri
R/o Murum, Taluka – Omerga,
District – Osmanabad
2. Dadarao Bapurao Kadam,
Died Through LRs
- 2-A. Kasturabai Dadarao Kadam
Age – Major, Occ – Household
R/o Tapowan, Taluka – Aundha
District – Hingoli

2-B. Shivaji Dadarao Kadam
Age – Major, Occ – Agri
R/o Tapowan, Taluka – Aundha
District - Hingoli

VERSUS

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| 1. Maruti Jairam Kadam
Age – 76 years, Occ – Agri
R/o Tapowan, Taluka – Aundha,
District – Hingoli | RESPONDENTS |
| 2. The Deputy Collector,
(Land Reform), Parbhani | |
| 3. The Additional Commissioner,
Aurangabad Division, Aurangabad | |
| 4. The State Minister (Revenue)
Maharashtra State, Mantralaya,
Mumbai - 32 | |

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Mr. R. J. Nirmal, Advocate for the petitioners
Mr. P. R. Katneshwarkar, Advocate for respondent No.1
Mr. P. N. Kutti, AGP for respondents No. 2 to 4 - State
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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 1st APRIL, 2022

PRONOUNCED ON : 25th APRIL, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.
2. This petition takes exception to the order passed by Additional Collector, Land Reforms, Parbhani – respondent No.2

in Case No. 1993/H/Inam/CR/34 dated 21st December, 1993 and the order passed by the the Additional Commissioner, Aurangabad – Respondent No. 3 in Proceedings No. 2020/ROR/REV/CR-190 dated 4th January, 2022.

3. The case of the petitioners is that - Ajimoddin Gausoddin was the original owner of the land bearing survey No. 31, Now Gut No. 76, admeasuring 10 Acre, 39 Guntha, situated at village Tapowan, Taluka – Vasmat, District – Parbhani (hereinafter for short "land in question"). On 9th August, 1985, said Ajimoddin sold the land in question to Sopan Marotrao Savandkar. Name of Sopan was entered in the revenue record on the basis of the said sale deed. The petitioners purchased the land in question from Sopan by way of a registered sale deed, in the year 1988. Accordingly, their names were entered in the revenue record of the land in question. The petitioners were put in actual possession of the land in question on 14th June, 1988 and since then they are owners and possessors of the land in question.

4. Respondent No. 2 – Deputy Collector, Land Reforms, Parbhani, started *sou motu* inquiry and passed an order dated 18th May, 1993 in proceedings No.1986/Inam/47 and directed the petitioners to hand over possession of the land in question to respondent No.1.

It is the contention of the petitioners that respondent No.1 is not Inamdar nor he is occupant of the land and he was not in possession of the land in question at any point of time. According to the petitioners, they have purchased the land from Sopan, who had purchased it from the original Inamdar through a registered sale deed and since the said sale deed executed by the original Inamdar in favour of Sopan has not been declared as invalid, the order passed by respondent No.2 is erroneous. The petitioners, therefore, preferred appeal No.1993/WTN/A/18 before respondent No.3. Previously, the petitioners had preferred a representation, which was treated as Appeal No. 19 of 1993.

5. Both these proceedings were heard together and respondent No.3, by judgment and order dated 29th August, 1993, set aside the order of respondent No. 2 and remanded the matter back for fresh inquiry, with a specific direction that respondent No.2 should find out documentary evidence as to who was in lawful possession of the land in question on the crucial date i.e. on 1st July, 1960.

6. After the remand, respondent No.2 held a fresh inquiry and decided the matter on 21st December, 1993, declaring respondent No. 1 as re-grantee of the land in question, however,

directed to take the land under supervision of the government.

7. The petitioners preferred review petition before respondent No. 2, which came to be allowed by order dated 5th January, 1994 and the order dated 21st December, 1993 was quashed and set aside and a further direction was given to deposit Nazrana amount equal to 20 times of land revenue, within a period of one month from the said order and the sale deed, in the name of the petitioners was regularized. Pursuant to the said order, the petitioners deposited the Nazrana amount in the treasury and the transaction in their favour was regularized.

8. Respondent No. 1 challenged the order dated 5th January, 1994, passed in review by respondent No. 2, by filing an appeal under section 2-A of the Hyderabad Abolition of Inam Cash Grants Act, 1954 (For short "Act of 1954") before respondent No. 3, which was allowed by the order dated 17th May, 1996, whereby the order dated 21st December, 1993, passed by respondent No.2 was restored.

9. The petitioners challenged said order passed by respondent No.3 in Appeal 1994/WTN/APP/1. The petitioners also filed writ petition No. 2992 of 1996 before this Court raising the issue of jurisdiction. By order dated 3rd September, 2009,

this Court quashed the order dated 17th May, 1996 passed by respondent No.3, with liberty to respondent No.1, to prefer appeal before the State Government. Accordingly, respondent No.1 preferred appeal before respondent No.4 challenging the order dated 5th January, 1994 passed by respondent No.2 in review. The appeal was allowed by the Hon'ble Minister respondent No.4 by order dated 19th September, 2017 and the order dated 21st December, 1993, passed by respondent No.2 was restored.

10. The petitioners challenged the order passed by respondent No.4 – the Hon'ble Minister by filing Writ Petition No. 14276 of 2017. This Court, by order dated 14th March, 2020, by setting aside the order passed by the Hon'ble Minister dated 19th September, 2017, restored the appeal before respondent No.3 i.e. appeal No. 1994/WTN/App/1 and directed to decide the same within a period of two months.

11. The petitioners claim that the High Court has restored proceedings No. 1994/WTN/App/1 and, therefore, the revision filed by respondent No.1 is not maintainable. On the objection of the petitioners, respondent No.3, called proceedings of Appeal No. 1994/WTN/App/1. The petitioners, thereafter, raised an objection that all the respondents are dead and their legal heirs

are required to be brought on record and they are required to be heard. The petitioners contended that unless legal heirs of the deceased respondents are brought on record, the petitioners cannot appear in the said proceedings. After the said objection was raised by the petitioners, respondent No.1, on 29th November, 2021, filed application seeking to bring on record legal heirs of the deceased respondents. Petitioner No.2-B, filed an application for intervention on the same day and has also filed his detail written arguments along with the intervention application. It is the grievance of the petitioners that without passing any order on the said application, by the impugned order dated 4th January, 2022, respondent No.3 allowed the appeal No. 1994/WTN/App/1. The petitioners are, therefore, aggrieved by the order passed by respondent No.2 dated 21st December, 1993 and the order passed by respondent No.3 dated 4th January, 2022.

12. Heard Mr. R. J. Nirmal, learned advocate for the petitioners, Mr. P. R. Katneshwarkar, learned advocate for respondent No.1 and Mr. P. N. Kutti, learned Assistant Government Pleader for respondents No.2 to 4.

13. Learned advocate for the petitioners vehemently submits that the petitioners are the *bona fide* purchasers of the land for

valuable consideration, which the petitioners purchased from Sopan, who had purchased it from the original Inamdar. The petitioners were put in possession of the land in question since 1988. He submits that respondent No.1, who claims to be tenant or re-grantee, was at no point of time in possession of the land in question. He further submits that no proper opportunity of hearing was given to the petitioners by respondent No.3. The contentions of the petitioners are not considered in the proper perspective. According to him, the original Inamdar was not heard by any revenue authority at any point of time. He submits that the impugned orders are contrary to the record and hence, the same are liable to be quashed and set aside.

14. Per contra, learned advocate for respondent No.1 has submitted that respondent No.2 has held in favour of respondent No.1 on the basis of the record that, the land in question is a Inam Madatmash land and was re-granted to the tenant – respondent No.1 and occupancy rights vest in him. By relying on the certificate issued in favour of respondent No.1 to the effect that he has purchased the land by depositing the occupancy price, he submits that respondent No.1 has become owner of the land in question. By relying on the Government Circular No. NAGAR HTR Distribution VI, he submits that respondent No.1

was held to be in possession of the land after the Inam was abolished. By pointing out the reply / written arguments filed on behalf of one of the legal heirs of petitioner No.2, he submits that the legal heirs were heard by respondent No.3 before passing the impugned order. He, therefore, supports the impugned orders passed by respondents No.2 and 3.

15. Learned Assistant Government Pleader has supported the impugned orders.

16. The record indicates that pursuant to the orders passed by this Court remanding appeal No. 1994/WTN/App/1, the same was renumbered as PK 2020/ROR/REV/CR-190. The same was treated as appeal all along. Even in the applications filed in the said proceedings by the parties, said proceeding is referred as appeal No.1994/WTN/App/1. In the reply-cum-written arguments filed by the petitioners, the proceeding is referred as appeal. Therefore, there is no merit in the arguments of the petitioners that respondent No.3, instead of deciding appeal, has decided revision, which was not maintainable.

17. There is no substance in the contention of the petitioners that the application for bringing legal heirs of deceased respondent on record, has not been considered. From the

Roznama maintained by respondent No.3, it is clear that learned advocate for petitioner appeared on behalf of legal heirs of respondent No.1 (petitioner No.1) and legal heirs of respondent No.2 (petitioners No.2-A and 2-B).

18. The record reveals that on the basis of the report submitted by Tahsildar, Vasmal on 13th July, 1986, respondent No.2 initiated an inquiry under section 6 (I) of the Act of 1954. In the said proceedings, notices were issued to all the concerned parties, which were served on them.

19. Respondent No.1 appeared in the said inquiry and produced copies of Appendix-A, Village Form No. 9, sale deeds, mutation entries, and seven twelve extracts in respect of the land in question. Respondent No.1 by filing written say, requested that names of the persons, who have already sold the land in question should be struck off from seven twelve extract and invalid mutation entries No. 160, 190, 229 and 230 so also sale deeds No.1480, 4805 and 4806 be cancelled and name of respondent No.1 be entered in the revenue record and possession of the land in question be given to respondent No.1.

20. The petitioners also appeared in the said inquiry, and claimed that the land in question is not a Inam land and the

Inam has been abolished and the petitioners have already became owners of the land in question and they are in possession of the same on the relevant date, so automatically, they, being the *bona fide* purchasers, are the owners of the land in question. They, therefore, prayed that proceedings of the inquiry may be dropped.

21. Respondent No. 2, after taking into consideration the fact that Inam of the land in question in the name of Ajimoddin Fakir Saheb and Mohmed Hyder Saheb Hatib was abolished and entry of the same was taken in extract of Appendix-A register in column No.5 of village Tapowan in the year 1951, held that the Inam was abolished and after abolition of the Inam, land in question was re-granted in the name of respondent No. 1, in terms of sections 5 and 6 of the Act of 1954. As such, occupancy rights were confirmed in the name of respondent No.1. In column 11 of Appendix-A register of village Tapowan, ME No. 97 was taken in the name of re-grantee i.e. respondent No.1. By taking into consideration the cultivation entry of the year 1959-60, respondent No.2 recorded a finding that, on the crucial date i.e. on 1st July, 1960, land in question was being cultivated by respondent No.1. It is further held that re-grantee / respondent No.1 has not sold any portion of the land in question. Since sale

transactions were entered without permission by the then owners in contravention of section 6 (i) of the Act of 1954, he held that sale transactions are illegal. Respondent No.2, therefore, by order dated 18th May, 1993, directed that possession of the land in question be handed over to respondent No.1 by taking over the same from the petitioners.

22. This order was set aside by respondent No.3 and the matter was remanded back to respondent No.2 with a direction to hold a fresh inquiry to find out on the basis of the documentary evidence as to who was in lawful possession of the land in question on the crucial date i.e. on 1st July, 1960.

23. After remand, respondent No.2 reiterated that after the abolition of the Inam, respondent No.1 has been declared as re-grantee of the land in question. He further recorded a specific finding on the basis of the village form No. VII and XII for the year 1959-60 that on the crucial date i.e. 1st July, 1960, respondent No.1 was in possession of the land in question and he has been rightly declared as occupant of the land in question in terms of the re-grant. He deposited occupancy price through various challans, therefore, respondent No.2 came to a conclusion that the declaration of respondent No.1 as re-grantee of the land in question is valid one. He held that till the dispute

about ownership of the land in question is over, the land in question is liable to be taken in government supervision. Since respondent No.2 has passed order dated 18th May, 1993 on the basis of old record of the land in question, maintained at the village level, said order is liable to be sustained, there is no illegality or perversity in the said order.

24. The petitioners sought review of this order dated 21st December, 1993 by filing review petition before respondent No.2. Respondent No.2 allowed the review petition filed by the petitioners and directed the petitioners to deposit Nazrana amount and regularized the sale deed of the petitioners. Pursuant to the said order, the petitioners deposited the Nazrana amount and the sale transaction executed in their favour was regularized. The respondent No.2 has no power of review under the said Act. This order, passed by respondent No.2, in review application, is therefore without jurisdiction.

25. By the impugned order dated 4th January, 2022, respondent No.3 has rightly held that respondent No.2 erred in passing the order dated 5th January, 1994 in the review and the same is without jurisdiction as there is no provision of review in the said Act.

26. Respondent No.3, after considering old registers and record maintained by village panchayat, came to a conclusion that respondent No.1 was declared as re-grantee under section 6 (1) (3) of the said Act. He deposited the occupancy price of Rs.154.52 and was declared as owner of the land in question under section 6 (4) of the said Act. Accordingly, entry was taken to that effect on 12th June, 1961 and occupancy certificate (Exhibit-31) was issued in favour of respondent No.1. He further held that in the re-enquiry, it is held that the land in question was in possession of the first respondent, as he deposited the occupancy price. Therefore, he has rightly observed that original Inamdar Ajimoddin or his heirs have no right to deal with the land in question. He is further justified in holding that original Inamdar has no authority to sale the land in question to Sopan, on 9th August, 1985. He is also right in coming to the conclusion that since the petitioners purchased land in question from Sopan without any authority, said transactions cannot be said to be legal.

27. Both the impugned orders are passed on the basis of old village record and by rightly applying the legal provisions. Respondents No.2 and 3 have recorded concurrent findings of facts on the basis of the record, which are not liable to be

interfered with in the extraordinary writ jurisdiction of this Court.

28. There is no merit in the challenge raised by the petitioners in the present writ petition. Writ petition is, therefore, dismissed. Rule discharged. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

drp/wp928-22