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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7200 OF 2018

1. Syed Husnuddin @ Syed Iqbal (Died) LRs PETITIONERS

    (i) Afsha Begum w/o Late Syed Husnuddin

    (ii) Syed Afsar s/o Late Syed Husnuddin

    (iii) Azeema Begum w/o Mhod. Farhath Khan

    (iv) Nasreen Begum w/o Mohd Husain

    (v) Naseem Begum w/o Mohd. Asif,

    (vi) Faheem Begum w/o Mohd. Hameed

    (vii) Naeem Begum w/o Mohd. Yousuf,

    (viii) Enayat Begum w/o Mohd Azeem Ahmed

    (ix) Sameena Begum w/o Syed Husnuddin

2. Syed Ameeruddin s/o Syed Basheeruddin

3. Smt. Tahera Begum d/o Syed Basheeruddin

4. Syed Ruknuddin s/o Syed Basheeruddin

    All Through GPA
    Shaikh Mehmood s/o Late Abdul Gani
    Age – 45 years, Occ – Business
    R/o At Present 9-12-101
    Beside Rahamaniya Masjid
    Amedhpura Colony, Nizamabad (T.S.)

    VERSUS

1. The State of Maharashtra RESPONDENTS
    Revenue & Forest Department,
    Mantralaya, Mumbai-32
    Through the Secretary,

2. The Dy. Commissioner (Rev.)
Taluka and District – Aurangabad

3. The Sub Divisional Officer,
Taluka – Partur, District – Jalna

4. The Sub Divisional Officer,
Taluka – Pathri, District – Parbhani

5. The Tahsildar
Taluka – Pathri, District – Parbhani

6. The Tahsildar,
Taluka – Partur, District – Jalna

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Mr. P. V. Mandlik, Senior Advocate i/b Mr. P. P. Mandlik, Advocate for the petitioners

Mr. K. S. Patil, AGP for respondents No. 1 to 6 - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 5th JANUARY, 2022

PRONOUNCED ON : 11th FEBRUARY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. This petition is directed against judgment and order dated 7th March, 2015 passed by Deputy Commissioner (Revenue), Aurangabad thereby rejecting the claim of the petitioners seeking the amount pending in Jagir Pension Account No. 461 at

Parbhani.

3. The petitioners claim to be legal heirs and successors of Syed Shah Gulam Ahmed Gilani – original Jagirdar of the "Dargah Syed Shah Gulam Ahmed Gilani" at Mustaid Pura, Hyderabad, which is also known as "Khan-Kha-E-Jilani" (for short the "said Dargah"). For service of said Dargah, Jagir of villages Niwali and Phularwadi in Parbhani district was granted to the predecessors of the petitioners.

4. The petitioners had applied for succession / Virasat before Sub Divisional Officer and Deputy Collector (Atiyat) Pathari by filing proceedings No. 1993/Atiyat/Kavi-22 on 12th March, 1993. After conducting an enquiry, succession / Virasat was granted in favour of the petitioners by Sub Divisional Officer and Deputy Collector (Atiyat), Pathari, vide order dated 25th August, 2014.

5. One Syed Shah Mohommad Kadri, through Syyed Noor Ul Hasan Kadri, who according to the petitioners has no concern with the said Jagir, challenged the order of succession / Virasat passed in favour of the petitioners, by filing an appeal before Additional Collector, Parbhani. By order dated 30th March, 2016, the Additional Collector, Parbhandi, dismissed the appeal and confirmed the order passed by the Sub Divisional Officer and

Deputy Collector (Atiyat) Pathari dated 25th August, 2014 granting succession / Virasat in favour of the petitioners.

6. Thereafter, said Sayyed Shah Mohammad Kadari filed an application before the Deputy Commissioner (Revenue) Divisional Commissioner Office, Aurangabad on 22nd August, 2013 under the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli, seeking the amount pending in Jagir Pension Account No. 461 of Parbhani district. The petitioners filed an objection in the said proceedings and claimed the said amount. By the impugned order dated 7th March, 2015, the Deputy Commissioner (Revenue), Aurangabad rejected the claim of the applicant Syyed Shah Mohd Kadari as well as of the objectors - present petitioners, on the ground that all the pension grants have been cancelled under the said Regulation of 1358 Fasli and under the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (for short "the Act of 1954") by observing that there is no provision in law for grant of an amount of Jagir pension or Mahel-E-Shirth either to the applicant or to the objector – petitioners. It is this order, which is challenged in the present writ petition.

7. Heard Mr. P. V. Mandlik, learned Senior Advocate for the petitioners and Mr. K. S. Patil, learned Assistant Government Pleader for the respondents – State.

8. Before entering into the merits of the matter, it is necessary to consider relevant provisions i.e. Section 2 (1) (b) (i) of the Hyderabad Atiyat Inquiries Act, 1952 (For short "the Act of 1952") and Sections 2 (a1) (i) and (v), 3 (1) and 4 of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (for short "the Act of 1954), which read thus-

Section 2 of the Act of 1952

*"**2. Definitions***

(1) In this Act, unless there is anything repugnant in the subject or context :

(b) "Atiyat grants" means:

(i) in the case of jagirs abolished under the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli (LXIX of 1358 F) the commutation sums payable in respect thereof under the Hyderabad Jagirs (Commutation) Regulation, 1359 Fasli (XXV of 1359 F)."

Sections 2 (a1) (i) and (v), 3 (1) and 4 of the Act of 1954

*"**2. Definitions :***

(a1) 'cash grant' means a grant of money or assignment of land revenue on the part of Government whether for the performance of certain duties, past or present, or for any reason whatever, but does not include :

(i) a cash grant held by or for the benefit of a charitable or religious institution.

(v) commutation sum payable to a Jagirdar under the Hyderabad Jagirs (Commutation) Regulation, 1359 Fasli.

3. Abolition and vesting of Inam and the consequences thereof:

(1) Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant sanad, order or other instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil, Revenue or Atiyat Court, and with effect from the date of vesting, all inams to which this Act is made applicable under sub-section (2) or sub section (2-A) of section 1 of this Act shall be deemed to have been abolished and shall vest in the State:

4. Abolition of cash grants and consequences therefore:

With effect on and from the date of the commencement of the Hyderabad Abolition of Inams (Amendment) Act, 1959 :

(1) All cash grants shall be discontinued and shall cease to have effect, and

(2) the holder of a cash grant shall stand released of the liability to render service, if any, attached to the cash grant.

(3) in the case of a cash grant consisting of assignment of land revenue, all the rights of the holder thereof (including the right to recovery or appropriate land revenue under such grant in respect of any land) shall be extinguished and the land revenue in respect of such land shall be payable to the State Government in accordance with the provisions of the Land Revenue Act, 1317 Fasli."

9. Section 2 (1) (b) (i) of the Act of 1952 defines that *"Atiyat grants"* means, in the case of Jagirs abolished under the Hyderabad (Abolition of Jagirs) Regulation 1358 Fasli, the commutation sums payable in respect thereof under the Hyderabad Jagirs (commutation) Regulation, 1359 Fasli.

10. As per the definition of *'cash grant'* given in the Act of 1954, it does not include a cash grant held by or for the benefit of charitable and religious institutions and commutation sum payable to a Jagirdar under the Hyderabad Jagirs (Commutation) Regulation, 1359 Fasli.

11. The commutation sum is payable to Jagirdar for abolition of the Jagir in terms of Hyderabad Jagirs (Commutation) Regulation (25 of 1359 Fasli). All the Jagirs were extinguished and the compensation of the abolition of the Jagirs became payable to the Jagirdar as defined in Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli, who is held to be entitled to receive compensation. The Abolition of Jagirs Regulation makes it clear that Jagirs were taken over by the Government on the appointed day and in lieu thereof Jagirdars were to be paid commutation sum.

12. In this context, it may be useful to refer the observations

of the Full Bench of Andhra Pradesh High Court, in ***"Lalta Prasad and Others V/s Late Moin Yar Khan"*** reported in ***AIR 1964 AP 7***, reading thus -

> *"7. For the reasons given above it follows that the commutation sum due to a jagirdar is not paid to him in his continued former capacity as a jagirdar and in any case where such a sum is due to a jagirdar who had died after the Abolition of Jagirs Regulation came into force, it would become payable to his heirs in accordance with the personal law, that is to say ordinary law of inheritance. There is no provision in any one of the enactments referred above indicating a contrary intention...... Commutation is, in a way, compensation of the jagir taken over by the Government"*

13. In the light of the above provisions and the decision of the Full Bench of the Andhra Pradesh High Court in ***"Lalta Prasad"*** (*supra*), it is clear that the commutation is by way of compensation of the Jagirs taken over by the government and it does not come within the definition of cash grant.

14. Admittedly, forefathers of the petitioners were given Jagir of Newli and Fularwadi villages in Parbhani district. Predecessors of the petitioners' Abdul Hasan Kadri was Sajjada and Mutawalli of Darah Hajrat Gulam Ahmed Gilani (For short "the said

Dargah") and was getting pension up to his death till 1990 and after his death, his brother Nurool Hasan Kadri was declared Sajjada and Mutwalli of the said Dargah.

15. It is also a matter of record that the petitioners filed proceedings before the Deputy Collector (Atiyat), Pathri seeking succession of the said Jagir in their favour. Though objections were raised in the said proceedings, the same were turned down by the Deputy Collector (Atiyat) by a speaking order and succession / Virasat was granted in favour of the petitioners by order dated 25th August, 2014.

16. The appeal filed challenging succession / Virasat in favour of the petitioners by the objectors was dismissed by the Deputy Collector, Parbhani by order dated 13th March, 2016. Thus, the order granting succession / Virasat in favour of the petitioners in respect of the said Jagir has become final.

17. It is also an admitted position on record that one S. S. Kadri / Shuttari who according to the petitioners, has no concern with the said Jagir, Virasat, Pension in respect of Account No. 461, had filed an application before the Deputy Commissioner (Revenue), Aurangabad, claiming pension in respect of said Account No. 461. Said application was rejected by the Deputy

Commissioner, Aurangabad.

18. As per the documents placed on record, quarterly installments of the commutation amounts were deposited in pension account No.461 from the years 1950-51, 1951-52, 1952-53 and 1953-54. These amounts are required to be given to the successors / virasat holders of the erstwhile Jagirdar.

19. In the light of the definition of section 2 of the Act of 1952 and sections 2 (a1) (i) & (v), 3 (1) and 4 of the Act of 1954 and the ratio in ***"Lalta Prasad"*** (*supra*), it is clear that respondent No.2 has misinterpreted these provisions and has passed the impugned order. Respondent No.2 has erred in coming to the conclusion that all the cash grants are cancelled by the Act of 1954 and, therefore, the commutation amount in pension account cannot be claimed. The impugned order, therefore, cannot sustain and the same is liable to be quashed and set aside. For the aforestated reasons, the matter needs to be remanded back to respondent No.2, who shall decide the entitlement of the said amount in pension account No.461 of Parbhani district, keeping in mind the observations in this order and after giving opportunity of hearing to the parties. In the facts of the present case, it is necessary to remand the matter back to respondent No.2 who shall consider the rival claims of

the applicant and objectors / petitioners before him for pension pending in Account No. 461 of Parbhani district. Hence, the writ petition is allowed in the following terms:

ORDER

I. Impugned order dated 7th March, 2015 passed by respondent No. 2 / Deputy Commissioner (Revenue), Aurangabad (Exhibit-L) is hereby quashed and set aside and the matter is remanded back to respondent No.2, who shall pass appropriate orders on merits by taking into consideration the observations in this order and after hearing the parties concerned.

II. Respondent No.2 shall decide the matter within a period of three months from the date of receipt of writ of this order.

III. Rule is made absolute in aforesaid terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE

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