

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

WRIT PETITION NO.5888 OF 2016

1. Gangadhar s/o Laxman Bomble
Age 50 years, Occ- Agri
R/o village- Patoda (Thadi)
Post- Pimpalgaon (Ku)
Tq. Dharmabad, Dist. Nanded
2. Digambar s/o Laxman Bomble
Age 30 years, Occ- Agri
3. Datta s/o Laxman Bomble
Age 28 years, Occ- Agri
4. Maroti s/o Laxman Bomble
Age 25 years, Occ- Agri
5. Ansabai w/o Laxman Bomble
Age 68 years, Occ- Agri
6. Gayabai w/o Gangadhar Jagdambe
Age 48 years, Occ- Agri
7. Tulsabai w/o Rama Kadam
Age 41 years, Occ- Agri

Petitioner 1 to 3 R/o village- Patoda (Thadi)
Post- Pimpalgaon (Ku)
Tq. Dharmabad, Dist. Nanded

... Petitioners

Versus

1. The Addl. Collector
Nanded
2. Tahsildar, Dharmabad
Tq. Dharmabad, Dist. Nanded
3. Eknath Kondiba Hanwate
Age -60 yrs, Occ- Agri
4. Bhimabai Ananda Gajbhare
Age 40 yrs, Occ- Agri
5. Vitthal Shetiba Shivilad
Age- 33 yrs.

6. Maroti Rama Ambekar
Age 32 yrs,
7. Maroti Mariba Gaikwad
Age 28 yrs.,
8. Saybu Nagorao Ambekar
Age 38 yrs.,
9. Gangadhar Ramji Ambekar
Age 60 yrs.,
10. Baswaraj Nagyappa Swami
Age 45 yrs.,
11. Shaikh Karamat Shaik Abdulla
Age 55 yrs.,
12. Maroti Ramchandra Bomble
Age 38 yrs.,
13. Tulsabai w/o Shivaji Kadam
Age 40 years,
14. Madhav Nagoji Shenpuje
Age 38
15. Sumanbai w/o Raosaheb Didshere
Age 37 yrs.,
16. Maroti Ganpati Bomble
Age 45 yrs.,
17. Balaji Mahadrao Shenpunje
Age 28 yrs.,
18. Gangaram Bhinguram Dakore
Age 50 yrs.,
19. Chandrabai w/o Maroti Shenpunje
Age 55 yrs.,
20. Sumanbai Mahadrao Shenpunje
Age 40 yrs.,
21. Shamrao Tulshiram Ture
Age 45 yrs.,
22. Anandrao Ganpati Bomble
Age 38 yrs.

23. Maroti Ganpati Bomble
Age 52 yrs.,
24. Laxman Bhagwan Bomble
Age 23 yrs.,
25. Tulsabai w/o Maroti Yetale
Age 45 yrs.,
26. Prayagbai w/o Raosaheb Didshere
Age 38 yrs.,
27. Pawankumar Gangadhar Bomble
Age 39 yrs.,
28. Uma w/o Shankar Bomble
Age 45 yrs.,

Resp. No. 3 to 28

R/o village- Patoda (Thadi)

Post- Pimpalgaon (Ku)

Tq. Dharmabad, Dist. Nanded

29. Vitthal Nagorao Ambekar
Age 48 years, R/o Patoda (Thadi)
Post- Pimpalgaon (Ku), Tq. Dharmabad,
Dist. Nanded
30. Gangadhar Dhondiba Panchal
Age 40 years, R/o Karala
Post- Kundalawadi, Tq. Biloli,
Dist. Nanded.

... Respondents

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Advocate for Petitioners : Mr. Sunil V. Kurundkar

AGP for Respondents – State : Mr. A. A. Jagatkar

Advocate for Respondent Nos.12 to 28 : Mr. M. D. Narwadkar

Advocate for Respondent Nos. 3 to 6, 8 to 10 : Mr. H. I. Pathan

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 14th DECEMBER, 2021

PRONOUNCED ON : 04th JANUARY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with

the consent of the parties.

2. This petition challenges order dated 19-12-2015, passed by the Additional Collector, Nanded, thereby rejecting the application filed by the petitioners.

3. In the year 1976, Laxman Abaji Bomble – father of the petitioners was declared as ‘surplus land holder’ to the extent of 32 Acre 14 Gunthas land, vide order dated 13-01-1976, passed by the Surplus Land Determination Tribunal, Biloli (for short “SLDT”). The said order in respect of the surplus holder to the extent of 32 Acre 14 Gunthas, was confirmed by this Court. The SLDT after the decision of the High Court erroneously reconsidered the matter and by order dated 22-10-1984 held that Laxman Abaji Bomble – father of the petitioners is non surplus land holder. The said order was revised by the Additional Commissioner, Aurangabad, on 02-02-1986, thereby setting aside the order dated 22-10-1984 passed by the SLDT. The order of Additional Commissioner was challenged by Laxman Abaji Bomble – father of the petitioners in Writ Petition No.161/1986. This Court upheld the order passed by the Commissioner, vide order dated 19-03-1990, holding that after the decision of the High Court declaring that Laxman Abaji Bomble – father of the petitioners is surplus land holder to the extent of 32 Acre 14

Gunthas, the SLDT had no power nor any authority to hold inquiry afresh and pass order holding that the petitioner (Laxman Abaji Bomble – father of the petitioners) does not hold any surplus land.

4. The Government issued notice dated 12-02-1986, calling upon the petitioners to give their choice for the land, which according to the petitioners could be declared as surplus land and could be delimited. Since the petitioners failed to give their choice, the delimitation order was passed by the Government on 19-02-1986. The petitioners challenged the said delimitation order before Maharashtra Revenue Tribunal, Aurangabad, which remanded the matter for fresh inquiry.

5. It appears from the record that the same order dated 02-02-1986, passed by the Additional Commissioner in Suo Moto Revision, was again challenged by Laxman Abaji Bomble – father of the petitioners, as well as by petitioner No.1 by filing W.P. No.827/1997. It appears that W.P. No.161/1986 filed at the instance of Laxman Abaji Bomble – father of the petitioners was not brought to the notice of this Court, though it was filed by the same advocate. In that petition, the arguments limited to the extent of choice to be exercised by the petitioners were advanced. This Court directed to give fresh choice to the petitioners. However, according to the petitioners, the same was not

done. According the petitioners, since there was no surplus land the order passed by this Court was incapable of execution. The petitioners, thereafter, filed W.P. No.1836/1998. Even in this petition, it appears that the order passed by this Court in W.P. No.161/1986 dated 19-03-1990 was not pointed out. This Court while disposing off the said petition held that “the lis between the present petitioner and the State in so far as the declaration of surplus land is concerned, has reached finality by way of an order passed by this Court dated 11th April 1997 in W.P. No.827/1997.” This Court extended period granted to the petitioners to exercise choice, by the notice dated 06-05-1997, by eight weeks, vide order dated 23-10-2008.”

6. The petitioners, thereafter filed Appeal No.1318/2013 before the Additional Collector, Nanded, thereby seeking to cancel the order dated 02-07-1997 passed by the Tahsildar, Dharmabad, thereby declaring the petitioner’s father as surplus land holder. The respondent No.1 – Additional Collector, dismissed the said appeal without registering the same, holding that the High Court, the Maharashtra Revenue Tribunal and the Collector, Nanded, have already passed orders regarding the surplus land under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short ‘the Ceiling Act’). This order is challenged by the petitioners in the present petition.

7. Heard the learned advocate Mr. S. V. Kurundkar for petitioners, learned advocate Mr. M. D. Narwadkar for respondent Nos. 12 to 28, learned advocate Mr. H. I. Pathan for respondent Nos. 3 to 6, 8 to 10 and the learned Assistant Government Pleader Mr. A. A. Jagatkar for respondents – State.

8. The learned advocate for petitioners by relying on the report of the Tahsildar, Dharmabad submitted that there was no surplus land available with Laxman Abaji Bomble – father of the petitioners. No choice was given to the petitioners in terms of order passed by this Court in W.P. No.827/1997 in terms of Section 16(2) of the Ceiling Act. According to him, it is for the State to come forward and give choice to the petitioners as per the orders of this Court. By relying on the list of persons holding excess land than ceiling area, he submits that in the said list petitioners' village is not mentioned, which supports the contention of the petitioners that they do not hold any excess land. He, further assailed the impugned order stating that the Collector could not have dismissed the appeal without registering it. He, therefore, submits that the impugned order is liable to be quashed and set aside and the matter be relegated to the Collector for decision on merits. In support of his submissions, he relied in **Julikhabi w/o A. T. Suphy and Another Vs. State of Maharashtra and Others**, reported in 1996(2) Mh.L.J. 345. He

also placed on record copy of the order passed in Civil Application No.8474/2016 in revision application filed in Writ Petition No.1836/1998.

9. Per contra, the learned advocate for respondents submitted that after following due procedure of law, the land was declared as surplus land. By relying on the decision in W.P. No.161/1986, he submits that this order is not brought to the notice of the High Court while arguing in W.P. No.827/1997 and W.P. No.1836/1998. He, therefore, submits that there is no merit in the writ petition and the same may be dismissed.

10. The learned Assistant Government Pleader supported the impugned order and submitted that since this Court has already decided the matter against the petitioners, the appeal filed by the petitioners before the Additional Collector was not maintainable and the same is rightly dismissed by the Collector.

11. It is a matter of record that Laxman Abaji Bomble – father of the petitioners was declared as surplus holder in the year 1976, holding land to the extent of 32 Acres 14 Gunthas and that order was confirmed by this Court. In spite of the order passed by this Court, the SLDT by order dated 22-10-1984, erroneously held that Laxman Abaji

Bomble – father of the petitioners was not surplus land holder at all. The Additional Commissioner by exercising suo moto revisional powers, set aside the order passed by SLDT vide order dated 02-02-1986. Laxman Abaji Bomble – father of the petitioners challenged the said order of the Additional Commissioner by filing W.P. No.161/1986. This Court dismissed the said writ petition by upholding the order passed by the Additional Commissioner.

12. Thereafter, the petitioners appear to have made another attempt to challenge the order of the Additional Commissioner by filing W.P. No.827/1997, wherein the order passed in W.P. No.161/1986 was not brought to the notice of this Court. This Court directed the Government to give choice to the petitioners about the delimitation of the land.

13. The petitioners, thereafter filed W.P. No.1836/1998 challenging the order of the Additional Commissioner dated 22-07-1997, thereby dismissing the appeal filed by the petitioners challenging the notice issued by the Tahsildar calling upon the petitioners to exercise their choice as to which land the petitioners are desirous of giving as surplus land. In this petition also, it appears that the order passed in W.P. No.161/1986 was not brought to the notice of this Court. This

Court, therefore, observed that declaration of surplus land has reached finality by way of order passed by this Court dated 11-04-1997 in W.P. No. 827/1997. This Court, therefore, extended the time period of the notice dated 06-05-1997 by eight weeks to enable the petitioners to exercise the choice.

14. Thereafter the petitioners have again approached the Collector for seeking to set aside the declaration of surplus land holder by filing appeal before the Additional Collector. In view of the above stated facts, the Collector was justified in dismissing the appeal without registering the same, holding that this Court, Maharashtra Revenue Tribunal and the Collector have already declared that the petitioners are surplus land holders. No error, illegality or perversity is found with the order passed by the Collector. It appears that the petitioners are trying to revive the issue of declaration of surplus land again by filing proceeding before the Additional Collector, which was not maintainable in view of the earlier decision of this Court in W.P. No.161/1986.

15. The petitioners have also made unsuccessful attempt by filing review application in W.P. No.1836/1998. The delay condonation application filed in the review application is rejected by this Court vide order dated 08-12-2017.

16. In **Julikhabi w/o A. T. Suphy and Another** (supra) the learned Single Judge of this Court held that ‘the surplus holder was entitled to delimit land held by him as tenant’. The said ruling is rendered in different facts and the ratio in the same is not applicable to the facts of the present case.

17. There is no merit in the challenge raised in the present petition. The petition is, therefore, dismissed with no order as to costs.

18. Pending civil application, if any, is disposed off.

19. At this stage, the learned advocate for petitioners submitted that the stay granted earlier may be continued so as to enable him to approach the Hon’ble Apex Court. The stay granted in favour of the petitioners vide order dated 13-06-2016, is continued for a period of four weeks from today.

(NITIN B. SURYAWANSHI, J.)