IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8087 OF 2021

SHAIKH SATTAR SHAIKH BEGU AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THR ITS SECRETARY AND OTHERS
...
Advocate for Petitioners : Mr. V.D. Sapkal, Senior Advocate i/b. Mr. S.R. Sapkal
AGP for Respondents-State: Mr. Y.G. Gujarathi
....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JUNE, 2022

ORDER :

1. This petition filed under article 226 and 227 of the Constitution of India seeks following reliefs:

> *B] To quash and set aside the order dated 08.07.2021 passed by the Maharashtra Revenue Tribunal, Aurangabad in Case No. 08/A/2020/Aurangabad and order dated 19.11.2019 passed by the Additional Collector in case no. Ja. Kra. Bhusudhar /Inam/ M.Mash / dahihaon/Ni.Ku/Cr-04/2018 by issuing appropriate writ, order, direction as the case may be.*
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> *C] To quash and set aside order dated 09.07.2021 passed in Case No. 2019/Inam/Appeal/CR/19 by the Additional Commissioner no. 2, Aurangabad by issuing appropriate writ or order, direction as the case may be.*
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> *D] To direct the respondent no. 2 allow the*

application dated 28.11.2018 submitted by the petitioner for regularization of sale deed in respect of survey number 10(gut no 38) admeasuring 03 H 69 R situated at mauje Dahigaon, Tq. Sillod Dist. Aurangabad in view of amended section 6 of the Hyderabad Abolition of Inams and Cash Grants Act 1954 by issuing appropriate writ, order, direction as the case may be.

2. Land gut no. 38 (Survey No. 10), admeasuring 09 Acre and 39 Guntha, situated at village Dahegaon, Taluka-Sillod, District- Aurangabad was owned by Pandu Ramji Salve (for short 'said land'). Said land was inam land. On abolition of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (for short 'said Act'), said land was regranted in favour of Pandu Salve on payment of occupancy price of Rs. 151.68 paise. Said amount was paid by Pandu Salve on 31.12.1968. Accordingly, Tahsildar issued occupancy certificate in favour of Pandu Salve on 10.10.1969.

3. Pandu Salve sold said land to father of petitioners namely Shaikh Begu Shaikh Mannu by way of registered sale deed dated 24.03.1976. Accordingly, name of petitioner's father was entered into revenue record. Subsequently, said land was partitioned and divided amongst the petitioners and their names

were recorded to the respective portions held by them, in the revenue record.

4. Original owner Pandu Salve and his two brothers moved Tahsildar for restoration of their possession of said land contending that, the sale transaction was without permission from the Collector and therefore, same is void, hence, said land be restored to them. Tahsildar by order dated 29.11.1977 directed restoration of said land to Pandu Salve and his two brothers.

5. The order of Tahsildar was challenged before Maharashtra Revenue Tribunal, which allowed the appeal and remanded the matter back to Tahsildar for fresh inquiry.

6. After remand, Tahsildar again on 22.06.1981 passed an order of eviction of petitioner’s father and restoration of said land to Pandu Salve and his brothers. Tahsildar’s order was challenged before the Assistant Collector in an appeal. Same was dismissed on 31.07.1986. Second appeal challenging the order of Assistant Collector and Tahsildar was dismissed by the Additional Collector on 16.09.1992. The revision challenging

orders passed by the revenue authorities filed by the petitioners before Additional Commissioner was also dismissed. The petitioners thereafter approached the Hon'ble Minister by filing an revision. The Hon'ble Minister though held that said land was regranted in favour of Pandu Salve and in view of amended provisions of section 6(3) of the said Act, it is permissible to regularize transfers even if said lands are transferred without prior permission of the Collector, dismissed the revision holding that the petitioners have failed to prove that said land is madat mash inam land, hence, he held that, amendment would not be applicable to the petitioners case.

7. The petitioners then approached this Court by filing Writ Petition No. 382 of 2018. This Court (Coram: Ravindra V. Ghuge, J.) dismissed the writ petition by order dated 15.02.2018. The petitioners unsuccessfully challenged the order passed by this Court in writ petition before the Hon'ble Apex Court.

8. The petitioners thereafter by relying on the observations of this Court in Writ Petition No. 382/2018 approached the Collector and sought regularization of sale transaction in respect of said land.

9. Thereafter petitioners filed Review Application No. 176/2018 in Writ Petition No. 382/2018. This Court (Coram- Ravindra V. Ghuge, J.) rejected the review application by order dated 01.02.2019. Para 6 and 7 of the said order reads thus:-

> *"6. Nevertheless, since these applicants have made a representation dated 28/11/2018, the District Collector, Aurangabad is at liberty to consider the same within the framework of the law. It be noted that this Court has not expressed any opinion in favour of the said representation.*
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> *7. The District Collector, Aurangabad would give an opportunity of hearing before passing an order on the said representation, in view of the submission that the District Collector has already issued notices through paper publication and is considering the representation.".*

10. The Collector called report from Tahsildar as to whether said land is madat mash inam land. After holding inquiry, Tahsildar submitted report dated 13.12.2018 stating that, said land is madat mash inam land and the original owner Pandu Salve had deposited occupancy price of Rs. 151.68 paisa. Said madat mash inam land was regranted in favour of original owner Pandu Salve. Father of petitioners had purchased said land by way of registered sale deed dated 24.03.1976 and accordingly his name was mutated in 7/12 extract. After the

death of father, petitioners name were subsequently entered as legal heirs to the said land.

11. By the impugned order Collector rejected application of the petitioners seeking regularization of sale transaction of the said land.

12. The petitioners thereafter approached Maharashtra Revenue Tribunal by filing appeal No. 08/A/2020/Aurangabad wherein initially Tribunal granted stay to the order of Collector. However, on wrong advice the petitioners again challenged the said order by filing appeal before Additional Commissioner, Aurangabad. The Maharashtra Revenue Tribunal dismissed the proceedings filed by the petitioners on the ground that they have approached Additional Collector, who has heard the matter and closed it for orders. Said order is passed by the Maharashtra Revenue Tribunal on 08.07.2021. The Commissioner by order dated 09.07.2021 dismissed the appeal filed by the petitioners on the ground of maintainability. Hence, the present petition.

13. Heard Shri. V.D. Sapkal, the learned senior advocate for petitioners and learned Assistant Government Pleader for

respondents at length and perused the documents placed on record.

14. Pursuant to the application of the petitioners dated 28.11.2018, Collector directed Tahsildar to submit a report, as to whether said land is madat mash inam land. Tahsidlar submitted report dated 13.12.2018 that said land is madat mash inam land, which was regranted in favour of original owner Pandu Salve, on his depositing occupancy price of Rs. 151.68 paise. Petitioner's father purchased said land by way of registered sale deed dated 24.03.1976 and accordingly his name was entered in revenue record including 7/12 extract. Subsequently, on death of father, petitioners names were entered as legal heirs.

15. It is clear from the report of Tahsildar dated 29.11.2018 that said land is madat mash inam land and it was regranted in favour of Pandu Salve on his depositing occupancy price of Rs. 151.68 paisa. The report further reveals that petitioner's father purchased said land by registered sale deed dated 24.03.1976 and petitioners are cultivating said land. It is also stated in the report that said sale transaction is without prior permission of the Collector.

16. Amended provision of Section 6(3) (a) and (b) is as follows:

> *"(3) (a) On or after the commencement of the Hyderabad Abolition of Inams and Cash Grants (Amendment) Act, 2015 (hereinafter, in this sub-section, referred to as "the commencement date"), the occupancy of Madad Mash Inam lands held on the new and impartible tenure (Occupants-Class II) may be transferred by the occupant for agricultural purpose, and no previous sanction or no objection certificate from the Collector or any other competent authority shall be necessary for such transfer. After such transfer, occupancy of such land shall be continued to be held by such transferee occupant on new and impartible tenure (Occupants-Class II), in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 :*
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> *Provided that, any such occupancy held on new and impartible tenure (Occupants-Class II) may, on or after the commencement date, be converted into Occupants-Class I by the occupant, by making payment of fifty per cent. of the amount of the current market value of such land to the Government as Nazarana, and after such conversion, such land shall be held by the occupant as Occupants-Class I, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966:*
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> *Provided further that, on or after the commencement date, if any occupancy, held on new and impartible tenure (Occupants-Class II) has, without the prior sanction of the Collector or any other competent authority and without payment of the amount equal to fifty per cent.*

Of the current market value of such land, been transferred by the occupant for non-agricultural use, such transfer may be regularised on payment of an amount equal to fifty per cent. of the current market value of such land as Nazarana, and an amount equal to fifty per cent. of such sum as a penalty, and on such payment, the occupant shall hold the land as Occupants-Class I, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966.

(b) Before the commencement date, if any occupancy of Madad Mash Inam lands, held on new and impartible tenure (Occupants-Class II) has already, without previous sanction or no objection certificate from the Collector or any other competent authority, been transferred by the occupant, for agricultural purpose, such transfer may be regularised without payment of any sum as Nazarana, on the production of registered instruments such as sale deed, gift deed, etc., as a proof thereof, for such transfer. After such regularisation, the occupancy of such land shall be deemed to be held by such transferee occupant as an Occupants-Class II, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966."

Provided that, before the commencement date, if any such occupancy of Madad Mash Inam lands, held on new and impartible tenure (Occupants-Class II), has already, without prior sanction of the Collector or any other competent authority, been transferred by the occupant for non-agricultural use, such transfer may be regularised on payment of an amount equal to fifty per cent. of the market value of such land on the date of the order of regularisation as

> *Nazarana, and an amount equal to ten per cent. of such sum as a penalty, and on such payment, the land shall be deemed to be held by such transferee occupant as Occupants- Class I, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966, with effect from the date of such order."*

17. Plain reading of amended provision makes it clear that, if before commencement date if any occupant of madat mash inam land held on the new impartible tenure (Occupants-Class II) is transferred by occupant for agricultural purpose without previous sanction or no objection certificate, such transfer may be regularized without payment of any sum as Nazarana, on the production of registered instruments such as sale deed etc., as a proof thereof, for such transfer and after such regularization occupancy of such land shall be deemed to be held by such tranferee occupant as an Occupants-Class II, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966.

By applying above provision, the Collector on production of sale deed, ought to have regularized the transfer of the said land in favour of the petitioners without payment of any sum as Nazarana. The Collector has misread and misconstrued the said provision while passing the impugned order. Further finding of the Collector that regularization should not be allowed in favour of the petitioners, as all the proceedings are dismissed by the Hon'ble Minister and by this Court, also cannot be sustained in view of amended provision referred above and the directions given by this Court in the order passed in revision application, by which the Collector was called upon to consider representation of the petitioners dated 28.11.2018, within the framework of law. The Collector has also failed to consider report submitted by the Tahsildar while refusing regularization. The impugned order is therefore vitiated on the ground of non application of mind as the amended provision applicable to the case of the petitioners is ignored, so also, report of the Tahsildar. The impugned order therefore cannot be sustained.

18. In the result, writ petition is allowed in terms of prayer clause 'B', 'C' and 'D'. No costs.

[NITIN B. SURYAWANSHI]
JUDGE