

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3974 OF 2020
ALONG WITH
WRIT PETITION NO. 3978 OF 2020

Vasant S/o Mahadeo Boravake
Age- Major, Occ- Agriculturist,
R/o. Ramurwadi, Tq. Rahata,
District- Ahmednagar
At present residing at M-6,
Manek Apartment of P.N.B.-94/25-A,
Prabhat Road, Pune-411 004.

PETITIONER

VERSUS

1. The Circle Officer
At Puntamba, Tq. Kopargaon,
District- Ahmednagar.
2. The Sub Divisional Officer,
At Shirdi, Tq. Rahata,
District- Ahmednagar.
3. The State of Maharashtra
Through Secretary, Revenue & Forest
Department, Mantralaya,
Mumbai-32.

RESPONDENTS

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Mr. Sudhir D. Kulkarni, Advocate for the petitioner
Mrs. V.S. Chaudhari AGP for respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 2nd MARCH, 2022
PRONOUNCED ON- 8th APRIL, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of the parties.

2. Since common question of law and facts is involved in both these petitions, they were heard together and are being decided by this common judgment.

3. Writ Petition No. 3974 of 2020 is filed for following reliefs-

B) Record and proceedings in Ceiling Case No. 29/1964 be called for;

C) By issuing appropriate writ, order or direction, Respondent Nos. 1 to 3 may be directed to cancel the remark 'Surplus Land' and 'Government Land' in M.E. Nos. 620 and 621 in connection with the lands which the petitioner is entitled to hold after the surplus lands are already been handed over to the landlords under their right to resume;

D) Appropriate action for contempt may be taken against respondent Nos. 1 to 3 for not complying the directions given by the Hon'ble High Court in Writ Petition No. 2152 of 1989.

E) The Judgment and Order at Exhibit-I, Exhibit-J and Exhibit-K passed by the Learned Sub Divisional Officer, Shirdi, Learned Additional Collector, Ahmednagar and the Learned Additional Commissioner, Nasik Division, Nasik, be quashed and set aside.

4. Writ Petition No. 3978 of 2020 is filed for following reliefs-

B) Record and proceedings in Ceiling Case No. 29/1964 be called for;

C) By issuing appropriate writ, order or direction, Respondent Nos. 1 to 3 may be directed to cancel the remark 'not transferable' in Mutation Entry No. 498 in connection with the lands which the petitioner is entitled to hold after the surplus lands are already been handed over to the landlords under their right to resume.

D) Appropriate action for contempt may be taken against respondent Nos. 1 to 3 for not complying the directions given by the Hon'ble High Court in Writ Petition No. 2152 of 1989.

E) The Judgment and Order at Exhibit-H dated 29.5.2017 passed by the Learned Sub Divisional Officer, Shirdi and order dated 04.07.2018 Learned Additional Collector at Exhibit-I and the Judgment and Order at Exhibit-J dated 10.01.2019 passed by the

Additional Commissioner be quashed and set aside.

5. The petitioner is the legal heir of original land holder Mahadev Boravake. The land holder had filed return under Section 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short 'said Act'), before the Collector, Ahmednagar on 14.07.1962, on the basis of which Inquiry No. Ceiling-KOP/29/1964 was held by the District Deputy Collector, Sangamner, who decided the application by judgment and order dated 30.06.1966 (for short 'order of 30.06.1966'), thereby holding that the land holder is holding about 301 acres 21 ½ Gunthas of dry crop land. Before the District Deputy Collector, Sangamner, the holder had exercised his choice and accordingly, the District Deputy Collector, Sangamner directed that the lands as per the choice of the holder should be retained with him.

6. The holder being aggrieved by the order passed by the District Deputy Collector, Sangamner so also other land holders whose lands were declared surplus filed different appeals before the Maharashtra Revenue Tribunal, Pune. The Tribunal by common

judgment confirmed the decision of the District Deputy Collector, Sangamner and directed that the arithmetical mistake committed in converting Baramati (Bagayati) land into dry crop land be corrected by correcting the respective notifications.

7. The decision of the Tribunal was challenged by some of the landlords before this Court. The Division Bench of this Court upheld the order of District Deputy Collector and some of the petitions were directed to be decided by the learned Single Judge.

8. One of the landlord Smt. Sushilabai Nagesh Chandwadkar filed Civil Appeal No. 1410/1974 before the Hon'ble Supreme Court. The Supreme Court confirmed the decision of the High Court that landlords are entitled to resume only $\frac{1}{2}$ of the land. Thus, it is clear that the order passed by the District Deputy Collector, Sangamner dated 30.06.1966 is confirmed by the Hon'ble Supreme Court.

9. Thereafter, the Sub Divisional Officer issued fresh notices to the interested parties and directed them to exercise a choice.

According to the petitioner, when a choice was already exercised by the petitioner's father in the proceedings before the District Deputy Collector, Sangamner, whose order was confirmed up to the Hon'ble Supreme Court, the action of the Sub Divisional Officer of issuing notices by ignoring the said decision was not proper and the Sub Divisional Officer has given direction to take possession of different lands than those mentioned in the judgment of the District Deputy Collector, Sangamner. Therefore, according to the petitioner the order passed by the Sub Divisional Officer dated 05.08.1989 is illegal and same is contrary to the earlier judgment of the District Deputy Collector, Sangamner.

10. On the basis of judgment and order dated 05.08.1989 passed by the Sub Divisional Officer, the Circle Officer issued notices of execution dated 11.08.1989. The same are served on the petitioner on 16.08.1989. According to the notices, all the heirs are directed to hand over the possession on 19.08.1989. The petitioner therefore, filed revision application before the Maharashtra Revenue Tribunal. Since, the member of the Tribunal was not available, the petitioner filed Writ Petition No. 2152/1989.

11. In the meanwhile, Mutation Entry No. 620 was effected in respect of Survey No. 162 and Survey No. 152 i.e. old Survey No. 438/1, wherein it is stated that the said lands are surplus lands in inquiry under Section 8 of the said Act and the restriction is put on the transfer of said lands.

12. On 19.08.1989, Mutation Entry No. 621 was effected in respect of Survey No. 413 and 152 thereby deleting the name of the owner and entering the name of Government.

13. Writ Petition No. 2152/1989 was decided by this Court vide order dated 12.04.2005 thereby directing the authorities to take appropriate steps to complete the formalities of taking possession from the landlords, who have created encumbrances during the pendency of proceedings and as per the original order dated 30.06.1966. This Court further directed that copy of the judgment be forwarded to the Principal Secretary, Revenue and Forest Department, Mantralaya, Mumbai and Principal Secretary, Law and Judiciary Department, Mantralaya, Mumbai, for necessary action.

14. According to the petitioner, in spite of judgment of this Court dated 12.04.2005, the authorities have failed to take necessary action in the matter i.e. correcting the mutation entries, which was statutory duty of the respondents. One of the landlords challenged the order of the High Court by filing Special Leave Petition before the Hon'ble Apex Court, which came to be summarily dismissed on 18.02.2008.

15. The Petitioner filed R.T.S. Appeal No. 243/2016 before the Sub Divisional Officer. According to the petitioner, without going through the record of Ceiling Case No. 29/1964, the Sub Divisional Officer dismissed the appeal. The petitioner challenged the order passed by the Sub Divisional Officer by filing R.T.S. Appeal No. 352/2018, before the Additional Collector, Ahmednagar, which is dismissed. The petitioner thereafter approached the Additional Commissioner, Nashik who confirmed the orders passed by the Sub Divisional Officer and Collector.

16. According to the petitioner, the lands delimited are mentioned in the judgment of District Deputy Collector in order dated 30.06.1966. In the light of the judgment in Writ Petition No. 2152/1989, it was the duty of the respondents/revenue officers to correct the mutation entries and the authorities ought to have completed the formalities of taking possession of the lands of the landlords who have created encumbrances after the notified date. Though, the High Court forwarded a copy of judgment to the Principal Secretary, Revenue and Forest Department and Law and Judiciary Department for necessary action, no action whatsoever was taken by the authorities. Therefore, the respondents have failed to perform their statutory duty in modifying and/or correcting the Mutation Entry Nos. 620 and 621.

17. Heard the learned advocate for the petitioner and learned Assistant Government Pleader at length.

18. In support of his petitions, the learned advocate for the petitioner placed reliance on **Maharashtra Chess Association Vs. Union of India (UOI) and Ors.** (2020) 13 SCC 285.

19. The learned Assistant Government Pleader contended that the petitioner has alternate remedy of seeking correction in the ceiling by approaching the appropriate forum. The petitioner has alternate efficacious remedy of challenging the mutation entries before the appropriate revenue authorities. She supported the impugned orders stating that the respondents have rightly rejected the claim of the petitioner on the ground of limitation. According to her the possession of the lands in question is with the State Government and not with the petitioner. She further submitted that in case this Court is inclined to accept the petitioner's submission, then the matter may be remanded back by directing the respondents to consider the issue afresh by taking into consideration the order dated 30.06.1966 in ceiling proceedings.

20. The learned advocate for the petitioner in reply submitted that the petitioner is 80 years old and mere availability of alternate remedy is not a bar to entertain the writ petition. He submits that taking into consideration the fact that this Court had directed the respondents to take necessary action pursuant to its judgment, since

the respondents have failed to implement the said order, this Court in these peculiar facts may entertain the petition by exercising its writ jurisdiction.

21. Admittedly, the order of District Deputy Collector, Sangamner dated 30.06.1966 is confirmed up to the Hon'ble Supreme Court. In the said judgment it is held that the petitioner is entitled to hold the following lands.

Village	Survey No.	Actual Area	Equivalent Dry Crop Area
Puntamba, Dist. Ahmednagar	438	23 A 26 G	91 A-09 G
-”-	414/3	6A-35G	6-A-35G
-”-	413	8-A 8 ½ G	8 A- 8 ½ G
Baramati Dist. Pune	141	1 A-20G	1A 27G
	TOTAL	40 A 12 G	108 Acres

22. It is not in dispute that the old Survey No. 413 is converted into new Gut No. 162 and Survey No. 438/1 is converted in new Gut No. 152/1.

23. In Writ Petition No. 2152/1989 filed by the Petitioner, the co-ordinate bench of this Court has held as under:-

25. Reverting back to the provision of the section 21 (supra) and in particularly considering the proviso to Section 21(4) which permit the Collector after the proceedings are finally decided to take possession suo moto only of the land which the holder of surplus land in the proceedings finally held. Therefore, the Sub- Divisional Officer, in my judgment ignoring the statutory provisions and ignoring the fact that the order dated 30th June, 1966 has been confirmed in appeal by M.R.T. and by this court in Writ Petition and Apex court in Special Leave Petition. Therefore, it was not open for the Sub Divisional Officer to modify the order which was passed by the District Deputy Collector on 30th June, 1966. It is true that though the landholder has not exercised its Choice in a prescribed form but what is stated in the order dated 30th June, 1966 will have to be accepted as correct one wherein the landholder has desired to retain the lands at Puntamba and Baramati. Merely because choice is not furnished in prescribed form will not empower the Sub Divisional Officer to reject the same in view of the fact that undisputed the encumbrances were created by the landlords after they received the possession. Therefore, in my judgment that part of the order passed by the Sub

Divisional Officer modifying the order of choice will have to be interfered and accordingly that part of the order i.e. para 4 of the impugned order stands set aside.

26. This aspect has to be considered now from the another angle that so far as the retaining of the land by the landholder in terms of Section 19 of the Act has been accepted by both the authorities and the orders have been confirmed by this court in several writ petitions and by the apex court in special leave petitions filed by the landlords. Now if the landlords are permitted to retain the encumbered area that will be indirectly modifying the original order passed by the District Deputy Collector, which is confirmed by the Maharashtra Revenue Tribunal by common judgment dated 17th April 1967 and by the orders of this court in several writ petitions decided on 27th April 1974 and they i.e. landlords will get more land than that is permitted under Section 19 of the Act. On this count also the order required to be interfered with.

27. Therefore, in my opinion the petition required to be allowed and by making rule absolute in terms of prayer clause (B) and (C) the Deputy Collector and Sub Divisional Officer i.e. Respondent No. 2, is now directed to take appropriate steps to complete the formality of taking possession of the lands from the possession of the landlords who have created encumbrances after the

notified date, and as per the original order dated 30/6/1966.

28. Rule absolute. No order as to costs. Copy of this judgment be forwarded to Principal Secretary Revenue and Forest Department, and Principal Secretary Law and J.D. Mantralaya, Mumbai for necessary action.

This order is confirmed by the Apex Court by summarily dismissing the special leave petition vide order dated 18.02.2008.

24. In Writ Petition No. 2152/1989, this Court set aside the order dated 05.08.1989 passed by the Sub Divisional Officer by which he had indirectly modified the original order dated 30.06.1966. Thus, the order dated 30.06.1966 was confirmed by this Court. Challenge to the order passed by this Court is rejected by the Apex Court. Therefore, the order dated 30.06.1966 stood confirmed up to the Apex Court. Admittedly, this Court forwarded a copy of the order in Writ Petition No. 2152/1989 to the Principal Secretary Revenue and Forest Department and Principal Secretary, Law and Judiciary Department. The respondents were therefore duty bound to implement the order passed by this Court and ought to have cancelled the mutation entries

No. 620 and 621 and ought to have deleted the name of the Government from the revenue record of lands in question. Since continuation of the mutation entries No. 620 and 621 is contrary to the decision of this Court, the same cannot be permitted to be continued.

25. The Sub Divisional Officer has committed an error in holding that the petitioner has approached belatedly after 27 years challenging the mutation entries No. 620 and 621 which were taken in the year 1989. The reasons for delay given by the petitioner are not appreciated in the proper perspective. It is ignored that this Court has passed an order in Writ Petition No. 2152/1989 on 12.04.2005 which the revenue authorities failed to implement. On this ground also the impugned orders cannot be sustained.

26. The respondents failed to take into consideration the decision of this Court confirmed by the Hon'ble Apex Court on the basis of which the authorities ought to have deleted the entry of Government from the revenue record of lands in questions. Since the

impugned entries are continued contrary to the decision of this Court, they cannot be sustained. The impugned orders on the face of it are arbitrary, irrational and the same are unsustainable in law and facts of the case, therefore, are liable to be quashed and set aside.

27. In *Maharashtra Chess Association* (supra), the Hon'ble Supreme Court has held that "*mere existence of alternate remedy does not create legal bar on the High Court to exercise its writ jurisdiction.*" Taking into consideration the chequered history of the present proceeding and considering the fact that the father of the petitioner was prosecuting this matter since 1966 and after him the petitioner is prosecuting the same and the petitioner is now 80 years old and petitioner is fighting for the justice since long, in my view since the respondents have failed to perform their statutory duty in spite of clear cut directions given by this Court in Writ Petition No. 2152/1989, the petitioner is required to knock the doors of this Court again. In that view of the matter, the arguments of the learned Assistant Government Pleader that since the petitioner has alternate remedy this petition may not be entertained is liable to be rejected.

28. For the aforestated reasons, both the petitions are allowed in terms of prayer clause 'C', 'D' and 'E'.

29. Rule is made absolute in the above terms. No costs.

[NITIN B. SURYAWANSHI]
JUDGE