

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

WRIT PETITION NO. 10690 OF 2019

Balwant Bhimashankar Dehadry,
Age 75 years, Occ. Retired
R/o. Guridatta Colony, Kanda Market
Road, Shrirampur, Dist.
Ahmednagar.

... **Petitioner.**

VERSUS

- 1) State of Maharashtra through
Department of Revenue & Forest,
Mantralaya, Mumbai-32.
- 2) The Collector, Ahmednagar
District Ahmednagar.
- 3) The Sub Divisional Officer,
Shirdi, Tq. Rahata, Dist.
Ahmednagar.
- 4) The Tahsildar Rahata,
District Ahmednagar.

... **Respondents**

...

Advocate for the Petitioner : Mr. Sanket S. Kulkarni
Advocate for the Respondents/State : Mr. K. N. Lokhande

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 28.09.2022.

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P waives service for the respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By invoking the powers of this Court under article 226 of the

Constitution of India the petitioner is seeking quashment of the communication dated 16.04.2019 received by him from the Collector Ahmednagar rejecting his request for allotment of land from Survey No. 237 (Gat No. 309) of village Puntamba Tq. Rahata Dist. Ahmednagar thereby refusing to allot a portion from that land wherein a well situates, in terms of provisions of Section 28-1AA of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter 'the Act'). The petitioner is also seeking mandamus against the respondents for implementation of the directions issued by the then Collector in the communication dated 01.11.2013 whereby initially, the Collector had directed allotment of the well to him.

3. The facts leading to the filing of the petition as are relevant for the present may be summarized as under :

(i) The petitioner's father had leased out his land to an industrial undertaking to the extent of 22 Acres 15 Are from land Survey No. 237 (Gat No. 309).

(ii) The State Government took possession of that land being above the ceiling limit prescribed by the Act.

(iii) The State Government granted these lands to the State Corporations. Apart from the petitioner's land several other lands were given to the Maharashtra State Agriculture Corporation.

(iv) In view of Section 28-1AA of the Act and the scheme framed there under the committee recommended return of 15 Acres 10 Gunthas portion from Survey No. 237(Gat No. 309) to the petitioner.

4. The petitioner avers that there is a well in that land and the Collector by the communication dated 01.11.2013 had directed his subordinates to allot the land to the petitioner in such manner as would cover the well

situated therein.

5. By the impugned communication, the Collector has refuted the petitioner's claim for carving out the portion so that it would cover the well while allotting the 15 Acres 10 Gunthas portion to him.

6. Main thrust of the arguments of the learned advocate Mr. Kulkarni for the petitioner is that pursuant to the provisions of the Act once the Collector by the communication dated 01.11.2013 had already decided to hand over even the well while returning 15 Acres 10 Gunthas portion to the petitioner, the Collector had no power to undertake a review at some later point of time. He had no jurisdiction either to undertake a review or sit in appeal over his own order. Mr. Kulkarni would further submit that even this decision under challenge was taken by the Collector without extending any opportunity to the petitioner of being heard. If at all the earlier order of the Collector is erroneous, the only remedy to correct it was in the form of an appeal to the Maharashtra Revenue Tribunal under Section 33 of the Act. He would therefore submit that the Collector has committed error and had no jurisdiction to supersede his earlier order.

7. The learned A.G.P would submit that the decision to return 15 Acres 10 Gunthas portion to the petitioner as recommended by the committee was duly put to execution. It was actually handed over to the petitioner who had even executed a possession receipt (Exh. 'R-3') under his own signature on 12.05.2016. This receipt specifically mentioned that no construction or well was in existence in this portion admeasuring 15 Acres 10 Gunthas. Having once received the possession without any demur, the petitioner is estopped from putting up a new case or claim. The remedy that was available to him, if he was disgruntled by the non allotment of the portion covered by the well, was in the form of a challenge to the order of the Collector by preferring an appeal under Section 33 of the Act. He would submit that the communication dated 01.11.2013, is not an order of the

Collector. It was only a communication which cannot be said to be a decision by the Collector under the scheme formulated under Section 28-1AA. The learned A.G.P. would submit that having noticed all such happenings the Collector by the impugned communication rightly declared the petitioner to be not entitled to the portion covered by the well.

8. The learned A.G.P. would further point out that while delivering possession the T.I.L.R. had prepared a map which is annexed to the reply and would indicate that the portion allotted to the petitioner falls to the North of the land Gat No. 309. A water channel passes by its Southern side and it is thereafter to the further South lies the remaining portion of the land wherein the well situate. He would, therefore, submit that the well has no proximity with the land that has been already allotted and taken over by the petitioner.

9. We have carefully considered the rival submissions. Admittedly, by virtue of the Maharashtra Agricultural Lands Ceiling on Holdings (Amendment) Rules 2011, modalities have been prescribed to work out *inter alia* return of the lands to the original holder, in the light of the provisions of Section 28-1AA(3) of the Act. By virtue of such Rules, a committee has to take a decision for recommending return of the lands and Collector is supposed to take a decision which shall be final and would be susceptible to a challenge by way of an appeal under Section 33 of the Act.

10. In the light of such rules we requested Mr. Kulkarni to point out as to which is the order passed in accordance with these rules by the Collector on the report of the committee recommending allotment of/return of this 15 Acres 10 Gunthas portion to be carved out so that the well would fall to his share. Mr. Kulkarni would boldly state that the communication dated 01.11.2013 is that order. We are afraid, when the law requires the Collector to pass an order for the reasons to be recorded, and when this document is *ex facie* a communication issued by the Collector to the T.I.L.R. this cannot

be termed as an order passed by the Collector which could have been challenged under Section 33 of the Act. Therefore, the submission of Mr. Kulkarni that in the absence of any such appeal under Section 33 of the Act, the Collector could not have reconsidered his earlier decision is not sustainable. Unless it is pointed out that by some earlier order in tune with the report submitted by the committee or even otherwise the Collector had expressly directed by way of some order to carve out the portion to be allotted to the petitioner covering the well, the impugned communication, in our considered view, merely explains the fact situation and is not demonstrative of the learned Collector having reconsidered the issue and has taken some inconsistent view. The impugned communication merely indicates that while carving out the 15 acres 10 Gunthas portion to be allotted to the petitioner, the well was not forming part of the portion.

11. Apart from the above state of affairs, as has been rightly pointed out by the learned A.G.P., possession of 15 Acres 10 Gunthas portion was delivered to the petitioner and he had acknowledged it under a possession receipt dated 12.05.2016 (Exh. R-3) without any demur. Pertinently, the description of the property in this possession receipt clearly mentions that no well or other construction was in existence over that 15 Acres 10 Gunthas portion, possession of which was being delivered. Consequently, the petitioner is now estopped from taking a stand claiming reallotment of the land including the well.

12. It is also important to note that this possession receipt which has not been controverted by the petitioner by filing any rejoinder is dated 12.05.2016. Meaning thereby that since that day he has been aware that the well does not form part of the land returned to him. He has filed the petition on 19.08.2019 that is after more than three years of receiving the possession.

13. Therefore, apart from the fact that the petitioner has miserably failed

to demonstrate about the Collector having passed any order pursuant to the Rules directing return of the land covering the well, the petitioner's claim also suffers from delay and latches.

14. The Writ Petition is dismissed.

15. The Rule is discharged.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-