

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11039 OF 2019

Shree Kshatrajagadguru
Mouni Maharaj Sansthan Trust
Peeth, Patgaon

...Petitioner

V/s.

The State of Maharashtra and ors.

...Respondents.

Mr. P.S. Dani, Sr. Advocate a/w. Mr. Vaibhav Sugdare and Mr. S.P. Chavan for the Petitioner.

Mr. A.B. Kadam, AGP for Respondent No.1.

Mr. Milind Prabhune h/f. S.D. Paigude for Respondent Nos. 2 to 10.

CORAM : N.R. BORKAR, J.
DATE : 21.03.2022.

P.C. :

1. This petition takes an exception to the order dated 29.08.2019 passed by respondent No.1.

2. On 17.12.2019, this Court had passed the following order:

“Heard Mr. Dani, learned Senior Counsel for the petitioners; Mr. Kadam, learned AGP for respondent No.1-State; and Mr. Paigude, learned counsel for respondent Nos.2 to 10.

2. Petitioners have assailed legality and correctness of order dated 29.08.2019 passed by the Hon’ble Minister (Revenue), Maharashtra. By the said order, respondent Trust i.e., the petitioner has been directed not to create third party interest or to obstruct possession of the applicants i.e., respondent Nos.2 to 10 without prior permission of the State Government. That apart, petitioners have been injuncted from collecting any

compensation premium in respect of the aforesaid property.

3. *Mr. Dani, learned Senior Counsel submits that while the revision application of respondent Nos.2 to 10 is pending adjudication, the Hon'ble Minister has passed the aforesaid order which is virtually in the nature of an injunction order. He submits that a revisional authority cannot exercise power of injunction unless conferred by the Statute. There is no provision under the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 for grant of injunction.*

4. *On the other hand, Mr. Paigude, learned counsel for respondent Nos.2 to 10 submits that application filed by respondent Nos.2 to 10 before the State Government was not a revision application but an original application under Section 2(4) of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. He submits that under the aforesaid provision, the State Government is competent to decide the question as to-*

- (i) whether any land is an alienation,*
- (ii) whether any alienation is a grant of soil or an assignment of land revenue or both or is a grant of total or partial exemption from payment of land revenue,*
- (iii) whether any alienation is a community service inam or watan,*
- (iv) whether a commutation settlement in respect of any watan has or has not been effected,*
- (v) whether any land held under an alienation is or is not alienable without the permission of a competent authority,*
- (vi) whether any alienation is hereditary or for the life-time of the alienee, or*
- (vii) whether any person is an inferior holder or a permanent tenant.*

4.1. *Therefore, such power in the nature of grant of injunction would be inherent in the State Government.*

5. *Short point for consideration is whether the State Government acting through the Revenue Minister is competent to pass an order of injunction while deciding*

an application under the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955?

6. Since notice has already been issued in this case, there shall be stay of the impugned order dated 29.08.2019; besides there shall also be stay of further proceedings in RTS No.3819/10392/PR No.63/J-5A before the Hon'ble Minister (Revenue), Maharashtra until further orders.

7. Stand over to 07.02.2020."

3. By consent of the parties, following order is passed.

(i) The respondent No.1 shall endeavour to decide the revision/application i.e., RTS No. 3819/10392/PR No. 63/J-5A, as early as possible and in any case within three months from the date of receipt of copy of this order.

(ii) The interim order passed by this Court dated 17.12.2019 shall remain in operation till the decision of aforesaid proceedings.

(iii) Needless to mention that respondent No.1 shall decide the aforesaid proceedings on its own merits.

(iv) With aforesaid directions, petition stands disposed of.

[N.R.BORKAR, J.]