IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5038 OF 2019

Aziz s/o Hasambhai Barde,
Aged about 59 years,
Occupation – Agriculturist/Business,
R/o. Garden Society, Wanjari Fail,
Yavatmal, Tq. and District Yavatmal.

..... **PETITIONER**
(Ori. Non-applicant No.7)

// VERSUS //

1. State of Maharashtra, through the Secretary, Revenue and Forests Department, Mantralaya, Mumbai.

2. Hon'ble Minister of State, Revenue Department, Mantralaya, Mumbai-32.

3. The Collector, Yavatmal.

4. Shri Ashok Shankarrao Ambadare, Aged about major, Occupation: Not known,

5. Shri Maroti Vithobha Ambadare, Aged about major, Occupation : Not known,

6. Smt. Rukmini Bai Vithobha, Ambadare, Aged about major, Occupation: Not known,

7. Smt. Parvati Shankar Ambadare, Aged about major, Occupation: Not known, Respondent nos.4 to 7 are R/o Wadgaon Road, Tahsil and District Yavatmal.

8. Ghanshyam Shankar Ambadare, Aged about major, Occupation: Not known, R/o Wadgaon Road, Tahsil and District Yavatmal.

(Added respondent no.8 as party vide Courts order dated 30/03/2022)

.... **RESPONDENTS**
(Ori. applicants)

Mr. Shashank Manohar, Advocate with Mr. Adwait S. Manohar Advocate for petitioner.
Mrs. M. A. Barabde, AGP for respondent nos.1 to 3.
Mr. C. S. Kaptan, Senior Advocate assisted by Mr. P. A. Kadu, Advocate for respondent nos.4 to 7.

CORAM : AVINASH G. GHAROTE, J.
DATED : 26/07/2022

ORAL JUDGMENT :

1. Heard Mr. Manohar, learned counsel for the petitioner and Mr. Kaptan, learned Senior counsel for the respondent nos.4 to 7 and Mrs. Barabde, learned AGP for respondent nos.1 to 3.

2. Rule. Rule returnable forthwith. Counsels for respondents waive service on merits.

3. The factual position giving rise to the present litigation is as under:

(a) One Kisan Ambadare was granted the land admeasuring 4.05 Hectare of Survey No.50/2 situated at Wadgaon Road, Yavatmal, under the 'grow more scheme' by the State, in the year 1961-62.

(b) After the demise of the said Kisan Ambadare, as his legal heirs were not in a position to cultivate the land in question, an agreement of sale came to be executed by them in the year 1998 in favour of the petitioner for a consideration of Rs.1,00,000/-.

(c) Since the land was allotted under the scheme, the requisite permission was necessary to complete the transfer, as a result of which, on 22.11.1993 the petitioner made an application to the Collector seeking permission to sale. In another case, on an application filed by another owner, the Collector had granted permission on 1.1.1997.

(d) In the instant matter, as the permission was not forthcoming, the sale deed came to be executed on 2.11.1999 in favour of the petitioner for a consideration of Rs.2,00,000/-.

(e) On 21.5.2007, the Commissioner granted post-facto permission for the transaction on the condition of payment of Rs.22,00,000/- as unearned income.

(f) This order was not communicated to the petitioner and the petitioner, in the interim was claiming to be liable to pay the unearned income of Rs.58,000/- as was directed under the order dated 1.1.1997 to the other co-owner.

(g) Since the unearned income was not paid, by an order dated 18.6.2008 (page 63) the order granting permission dated 21.5.2007 came to be cancelled.

(h) An appeal was carried thereafter, to the respondent no.2 by the petitioner.

(i) A separate appeal was also preferred by the legal heirs of the original allottee claiming that the land be handed over to them, as the order dated 21.5.2007 stood cancelled.

(j) Both the appeals were dismissed by the respondent no.2 by an order dated 21.8.2014 (page 75). There is no challenge to the dismissal by the legal heirs of the original allottee.

(k) The present petitioner challenged the order dated 18.6.2008 of the Commissioner as well as the order dated 21.8.2014 by the respondent no.2, in Writ Petition No.502 of 2015, which by the judgment dated 25.10.2016 (page 81) came to be allowed, whereby the order dated 18.6.2008 of the Commissioner and that of the respondent no.2 dated 21.8.2014 came to be quashed and set aside and it was held that the case of the petitioner would be governed by the order dated 21.5.2007 by which the transaction has been regularized subject to the conditions contained therein and the petitioner would be liable to pay the unearned income as per the ready reckoner prevailing on 21.5.2007.

(l) The unearned income calculated in pursuance to the order dated 21.5.2007, has been deposited by the petitioner on 15.1.2018.

(m) The Collector by the order dated 12.3.2018 (page 87) confirmed the permission on terms and conditions as contained therein. In his order, he recorded the holdings of the family of the present petitioner (page 97).

(n) The legal heirs of Ambadare the original allottee filed an appeal before the respondent no.2 (page 110) who by the order dated 23.10.2018 (page 132), went into an enquiry, as to the holding of the family of the petitioner and set aside the order dated 21.5.2007 on the ground that the holding of the family of the petitioner, was beyond the ceiling limit permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (herein after referred as 'the Act of 1961').

4. It is in the above background, it is contended by Mr. Manohar, learned counsel for the petitioner that such a course of action was not permissible for the respondent no.2, as that amounted to subverting the order of this Court in which permission for the transaction stood confirmed. He submits that even otherwise, the task of determining whether a person holds land in excess of the ceiling limit was in the domain of the Surplus Land Determination Tribunal and the respondent no.2 could not have gone into that issue altogether and by doing so he has usurped the jurisdiction of the tribunal which was impermissible in law. It is therefore, submitted that the order dated 23.10.2018 by the respondent no.2, cannot be sustained and required to be quashed and set aside.

5. It is further contended that one of the lands in question namely Survey No.202, which is shown in the chart in para 8 (page 118) of the order of the respondent no.2, no longer stood in the name of the petitioner on account of the fact that the same was jointly purchased by

the petitioner and his brother by a sale deed dated 17.6.2000 and by a gift dated 19.5.2006 the same was gifted by the brother of the petitioner to the petitioner and thereafter, in the year 2007 the same was gifted by the petitioner to his wife, daughter and son in respect of which an entry has been taken in the concerned revenue record (page 143). It is further contended that the wife and son of the petitioner have in turn gifted the same to the daughter on 12.6.2018 (page 151) for which also an entry was taken in the revenue record (page 147). It is thus contended that insofar as the land of Survey No.202 is concerned, the same did not continue to be the holding of the petitioner. It is further contended that the lands of Survey Nos.7 and 8 in the chart at page 118 stand in the name of the son of the petitioner and so also the land at Survey No.4 bearing Gut No.123/2 is jointly owned by the petitioner and his son therefore, the petitioner has only 50 % share therein. It is therefore submitted relying upon the explanation to Section 4(1) of the Act of 1961, which defines what is meant by a 'family unit' was even impermissible even otherwise for the respondent no.2 to have considered the properties at Serial Nos.2, 4, 6, 7 and 8 to be the properties belonging to the petitioner so as to determine the holdings. It is therefore, contended that the impugned order dated 13.10.2018 cannot be sustained and is required to be quashed and set aside.

6. Mr. Kaptan, learned Senior counsel for the respondent nos.4 to 7, does not dispute the above factual position however it is his contention that in terms of the order dated 12.3.2018 and specifically clause 2 therein it was incumbent upon the learned Sub-Divisional Officer to have examined whether the provisions of the Ceiling Act, stood violated due to the holding of the petitioner. That having not been done, it is his contention that the order dated 12.3.2018, stands violated.

7. It is not in dispute by the learned counsel for the parties, that the respondent no.2, cannot be held be an authority under the Act of 1961, competent to determine the holdings of the petitioner. Under the provisions of the said Act, the jurisdiction is vested with the Surplus Land Determination Tribunal. It is thus apparent, that the respondent no.2 while passing the impugned order, has exceeded his jurisdiction. The impugned order therefore, on this ground alone cannot be sustained and is hereby quashed and set aside.

8. Insofar as the question of determination of the holdings of the petitioner is concerned, under the provisions of the Act of 1961, it is permissible for the Collector under Section 14(1) of the Act of 1961 to hold an enquiry in this regard to determine the holdings of every persons *suo motu*. Even otherwise, in every case, a person or the family unit as defined in explanation to Section 4(1) of the Act of 1961, who holds

land in excess of ceiling limit has an obligation to submit a return. The fact that such a return has not been submitted by the petitioner, would *prima facie* be indicative that he does not hold land in excess of ceiling limit. However, that by itself does not preclude the Collector from holding such an enquiry, if facts in that relation are brought to his notice. The obligation upon the learned Sub-Divisional Officer as spelt out from the terms and conditions of the order dated 12.3.2018, is only to examine that there is no violation of the provisions of the Act of 1961, which considering that there is no return filed by the petitioner, may be said to have been fulfilled. However, it would be open for the learned Sub-Divisional Officer to make an enquiry in this regard and in case, he finds any violation, report it to the Collector.

9. The petition is accordingly allowed. Rule is made absolute in the above terms. No costs.

(AVINASH G. GHAROTE, J)

Sarkate.