

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

WRIT PETITION NO.4831 OF 2023

M/s. Sanjay V. Deshmukh,
Partnership Firm,
Through its Managing Partner,
Sanjay s/o Vithalrao Deshmukh,
Age: 45 Years, Occ. Business,
R/o: Near Maruti Temple,
At Post: Kadegaon, Tq. Kadegaon,
District: Sangli.

... Petitioner

Versus

1) The Maharashtra State Farming
Corporation Ltd., having its office
At 270, Sheti Mahamandal Bhavan,
Senapati Bapat Marg, Pune – 411 016
Through its Managing Director,
U.K. Agrawal,
Age: Major, Occ: Service.

2) The Estate Manager,
The Maharashtra State Farming
Corporation Ltd. at Gangapur,
Tq. Gangapur, District: Aurangabad.

... Respondents

...
Mr. Shyam C. Arora, Advocate for Petitioner
Mr. P. V. Barde, Advocate For Respondent Nos.1 and 2
...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 16th JUNE, 2023

PRONOUNCED ON : 11th JULY, 2023

ORDER :

1. This petition is filed under Articles 226 and 227 of the
Constitution of India, seeking following reliefs:-

"B) The Judgment and order dated 22/02/2023 passed by

the Ld. Adhoc District Judge-1, Vaijapur, Dist. Aurangabad, in Misc. Civil Appeal No.09/2023 and the order dated 25/01/2023 passed by the Ld. IInd Joint Civil Judge, Senior Division, Vaijapur, Aurangabad, below Exhibit-112, in Special Civil Suit No.31/2015 may kindly be quashed and set aside and it may further be held that the order dated 22/06/2022 passed by the Respondent No.1 wherein the allotment has been cancelled is illegal and setting aside by the same, the application filed by the petitioner below Exhibit-112 in Special Civil Suit No.31/2015 may kindly order to be allowed as prayed therein.

- C) *By issuance of directions in like nature the allotment of the suit land dated 02/11/2013 may kindly order to be reinstated and in the alternate the respondent No.1 Corporation may kindly be directed to refund the amounts paid to the respondent corporation till date and the investments made in the suit land, the electricity dues paid, the water charges paid by the petitioner along with 18% interest from the date of such payments to the petitioner."*

2. Facts which are not in dispute are as follows:

Petitioner/plaintiff filed Special Civil Suit No.31/2015 against respondents/defendants for declaration against the illegal demand notice dated 07/07/2015 and for mandatory injunction. Plaintiff is a partnership firm. Defendant No.1 invited tenders for putting it's agricultural land situated at Gangapur, Tq. Gangapur, Dist. Aurangabad, to the extent of 835.050 Acres, for farming under joint cultivation scheme, for a period of 10 years, commencing from 05/11/2013 to 30/06/2023. Plaintiff being highest bidder having quoted amount of Rs.9,000/- per acre per year was allotted the land on certain terms and conditions, on 02/11/2013. Accordingly,

agreement was executed between petitioner/plaintiff and defendant/respondent No.1 on 27/12/2013, for lease under joint cultivation scheme. On failure of plaintiff to pay amount of Rs.82,67,050/- towards share in the income amount, demand notice dated 07/07/2015 was issued by the respondent.

3. Along with the suit, plaintiff filed application Exhibit-5 for temporary injunction of restraining defendants from taking any coercive action in respect of demand notice dated 07/07/2015. The said application was allowed with condition of payment of share in income amount of Rs.82,67,050/- which was due for the period from 01/07/2014 to 30/06/2015 and also the share in income amount that may become due in future, by plaintiff to defendant No.1 until final disposal of the suit.

4. Plaintiff thereafter filed Misc. Civil Appeal No.04/2016 challenging the order passed by Trial Court below Exhibit-5, which was partly allowed, thereby modifying the injunction order below Exhibit-5, but maintaining the condition of amount.

5. Plaintiff challenged both these orders by filing Writ Petition No.9928/2016. This Court allowed the said writ petition and the condition of payment of amount was set aside.

6. Trial in the suit commenced and when the suit was at

the stage of recording of evidence of plaintiff, defendant No.1 issued notice dated 22/06/2022, cancelling the allotment of suit land on the ground that plaintiff has not paid the amount as per the agreement.

7. Thereafter, plaintiff filed application Exhibit-112, under Order 39, Rule 1 and 2 of the Code of Civil Procedure, for temporary mandatory injunction to stay notice dated 22/06/2022 till the decision of suit and restraining defendants from creating third party interest or by issuing E-Tenders with respect to the suit lands till decision of the suit. After hearing the parties the said application is rejected. Hence, the present petition.

8. Heard learned advocate for petitioner and learned advocate for respondents. Perused the writ petition memo, annexures thereto, the impugned order and affidavit-in-reply filed on behalf of respondent Nos.1 and 2.

9. Learned advocate for petitioner strenuously urged that since the application Exhibit-5 was allowed, the trial Court and the appellate Court have erred in rejecting application Exhibit-112. He states that his substantial suit is pending and is at the stage of recording of evidence, therefore, respondent No.1 could not have cancelled the agreement during pendency of the suit and create third party interest in the suit property. Respondent No.1 at that

stage had no occasion to terminate petitioner's contract. He submits that since application Exhibit-5 was allowed and temporary injunction, not to take coercive action is granted by the trial Court, cancellation of agreement and issuing of E-Tender for allotment of suit property amounts to taking of coercive action. He further submits that respondent No.1 has admitted the encroachment on suit land and also that, the petitioner could not cultivate 835.050 Acre land given to him for joint cultivation, due to failure on the part of respondent No.1 to clear the dues of electricity bills and water tax. He, therefore, states that both the impugned orders are unsustainable and the same be quashed and set aside and application Exhibit-112 deserves to be allowed.

10. Per contra, learned advocate for respondents vehemently opposed the petition by relying on clauses of the agreement, particularly clause Nos.3, 4 and 5. He submits that in violation of terms of the agreement petitioner only paid first installment of joint share in the income amount. By pointing out demand notices issued from time to time, he submits that since petitioner failed to pay joint share in the income amount consistently for eight years, respondents are justified in terminating the contract. He further submits that in similar facts, learned Single Judge of this Court at Principal Seat, rejected the prayer for interim

relief of stay to the notice of termination issued to the petitioner in that matter. He, therefore, submits that there is no merit in the petition. Hence, the petition deserves to be dismissed.

11. In reply, learned advocate for petitioner submits that as per clause 16(b) of the said agreement, three months notice is required to be given, which is not done in the present case and on this ground also writ petition deserves to be allowed. According to him, order passed by the learned Single Judge of this Court at Principal Seat is passed in different set of facts.

12. Admittedly, the agreement dated 27/12/2013 executed between the parties was for the period from 05/11/2013 to 30/06/2023. The said period expired on 30/06/2023. It is a matter of record that except depositing Rs.75,15,500/- as a security deposit and an amount of Rs.42,89,700/- as first year's share in income amount, petitioner has failed to pay the share in income amount for subsequent years.

13. As per the agreement petitioner was required to pay share in the income amount before 30th June of every year. Clause 5(a) of the agreement stipulates that, if plaintiff fails to pay share in income amount upto 30th June of each year, then he should be liable to pay interest at the rate of 18%. Upon failure on the part of petitioner to pay the due amount along with interest till 31st July,

the agreement shall come to an end and respondent No.1 shall be the owner of crop standing in the field.

14. In view of the above facts, *prima facie*, respondent No.1 appears to be justified in issuing demand notice dated 07/07/2015. Plaintiff has filed Special Civil Suit No.31/2015 for declaration that the demand notice dated 07/07/2015 is illegal, null and void under Section 34 of the Specific Relief Act, and for mandatory injunction. It is further claimed in the suit that there were encroachment on the lands allotted to him and there were huge outstandings of electricity bills and water tax against defendant No.1, which defendant No.1 failed to pay.

15. While allowing Writ Petition No.9928/2016, challenging the order passed below Exhibit-5, this Court observed that:-

"13.Needless to mention, in case of breach by the petitioner to abide by the terms of the agreement, the MSFC Ltd. has every right to take action in terms of clause 5(a) of the agreement. It is not known as to why the MSFC Ltd. did not resort to the said clause beyond making a demand of Rs.82,64,050/-. Be that as it may, since both the courts below have put a condition directing the petitioner firm to pay every year MSFC Ltd. its share in the income in joint cultivation and the same being beyond the scope of subject matter of the suit, I am inclined to set aside the impugned condition."

16. By now, the petitioner has examined two witnesses and third witness of the petitioner is to be examined on 17/06/2023. The suit will be decided on merit after recording of evidence is

completed. The issue in the suit is limited to the challenge raised by petitioner to demand notice dated 07/07/2015. Considering the fact that petitioner has not deposited any amount towards share in income amount for more than 08 years, *prima facie*, respondent No.1 appears to be justified in initiating process of cancellation of agreement, as per clause 5(a). Therefore, there appears substance in the contention of learned advocate for respondents that petitioner never paid the said amount except in the first year and therefore, respondents are justified in terminating the contract in view of clause 5(a) and observations of this Court quoted supra. By clause 4 of the said agreement petitioner has agreed to pay share in income amount to respondent No.1 yearly as specified in clause 3, even if he could not cultivate the said agricultural land. Therefore, petitioner was duty bound to make the payment even if he could not cultivate the land. Trial Court, therefore, was right in applying principle of estoppel against petitioner and placing reliance on clause 5(a) of the said agreement.

17. Admittedly, there is default on the part of petitioner to pay the said amount, not for one or two years but consistently for eight years. Therefore, respondent No.1 is justified in cancelling the agreement and issuing E-tender dated 22/06/2022, over the suit land for joint cultivation.

18. It is a matter of record that respondent No.1 has issued demand notices to the petitioner on 18/12/2020, 22/09/2021 and 17/05/2022, wherein it is mentioned that on failure of petitioner to pay the arrears of share in income amount of Rs.8,88,04,020/- by 20/05/2022, the agreement shall be cancelled as per clause 5. Thereafter, since the petitioner failed to deposit the due of his share in income amount, by notice dated 22/06/2022 the agreement is cancelled with effect from 23/06/2022 and the security deposit of Rs.75,15,500/- was forfeited.

19. Trial Court as well as the appellate Court have passed reasoned orders and by considering failure on the part of petitioner to pay share in income amount and the fact that petitioner paid share in income amount only for the first year and never paid the amount for subsequent nine years, have rightly rejected the application Exhibit-112. Both the Courts have recorded concurrent findings of fact, which are not liable to be interfered with, in exercise of extraordinary writ jurisdiction. The writ petition being devoid of substance is dismissed with no order as to costs.

19. It is made clear that observations in this order are *prima facie* and the trial Court shall not be influenced by them while deciding the suit on merits.

(NITIN B. SURYAWANSHI, J.)