

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

WRIT PETITION NO. 12606 OF 2017

1. Kashinath Shankarappa Tambve
Died Through his Legal Heirs,
A) Vasant Kashinath Tambve
2. Vishwaprakash Narayan Gaikwad
3. Vishwambhar Narayan Gaikwad
4. Vijaykumar Narayan Gaikwad
5. Bhimsing Bajrangsing Saddiwal
6. Amitsing Arjunsing Saddiwal .. Petitioners

Versus

1. The Secretary,
Revenue & Forest Department
Mantralaya, Mumbai.
2. The Collector, Beed.
3. The Tahsildar, Dharur
4. Kazi Pashamiya Ahmed Mohiyoddin
5. Kazi Yousufoddin Ahmed Mohiyoddin
6. Kazi Mohd. Sharifoddin Ahmed Mohiyoddin
7. Kazi Ekbal Ahmed Mohiyoddin .. Respondents

Mr. Sujeet D. Joshi, Advocate for the Petitioners.

Mr. K. N. Lokhande, AGP for Respondent Nos. 1 to 3.

Smt. M. A. Kulkarni, Advocate for Respondent Nos. 4 to 7.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 09th June, 2023.

Date on which order pronounced : 06th July, 2023.

ORDER :-

. The present petition is filed by the persons who claim to be possessors of land Gat Nos. 183, 184 and 135/A of village Kasbe, Kille Dharur, District Beed. The respondent Nos. 1 to 3 are the authorities of the Government. The respondent Nos. 4 to 7 are the persons who have objected to the possession and claim of the petitioners.

2. The petitioners have challenged the order passed by the Hon'ble Minister dated 19.09.2017 rejecting the revision application bearing No. Appeal-2016/pra.kra.156/J-7A against the order passed in revision dated 11.07.2013 and in review application dated 18.03.2016 by which the revision of respondent Nos. 4 to 7 was allowed. The Additional Collector had passed an order in the appeal filed by the petitioners against the order passed by Deputy Collector (Atiyat), Ambajogai. The original proceeding started with the application by Kazi Ahmed Mohiyoddin i.e. father of the present respondent Nos. 4 to 7 before the Sub Divisional Officer, Ambajogai bearing No. 85/ROR/A-120 in respect of mutation entry taken by Talathi, Dharur on the application filed by one Ganpati Jaywanta Shingare dated 01.07.1985 The Talathi

on the basis of sale certificate issued by the Collector, Beed had taken mutation entries in the ownership column showing names of Tukaram Parshuram Sutar and Gopal Gyanba Sawant. The said mutation also came to be finalized.

3. It is the case of the respondents that, the lands survey number in dispute were given for the service of Masjid as Khidmat Mash. The persons who are not concerned are in possession. The land in Khidmat Mash could have been transferred and prayed even for deletion of the entries in the name of the petitioners and others. The said appeal came to be rejected by order dated 17.10.1992. The proceeding was carried before the Additional Collector, Beed by the said Kazi Ahmed Mohiyoddin. His appeal came to be rejected thereafter by order dated 11.03.1996.

4. The deceased Kazi Ahmed Mohiyoddin thereafter approached the Tahsildar praying that he became owner of the land as there is Virasat in his name on the basis of application stating that the lands were given for Kazi Masjid towards Inam and the Ahmed Mohiyoddin happens to be Inamdar and cultivated the said land and as such the land became his Virasat. He claimed the said right on the basis of his entry in 7/12 extract showing in other rights column. His prayer was that the names of the persons who were not Inamdars also appeared in 7/12 extract.

The Tahsildar held that the lands as per the provisions of the Hyderabad Atiyat Inquiries Act were under the supervision of the Government. The Virasat is not sanctioned as per law. It is also held that the Inams of the petitioners were taken under the orders of the authorities and those orders are not challenged and rejected the application of Kazi Ahmed Mohiyoddin by order dated 04.01.1997. Since 1997 the order passed by the Tahsildar was not challenged by deceased Kazi Ahmed Mohiyoddin.

5. The respondent Nos. 4 to 7 thereafter approached the Deputy Collector (Atiyat), Ambajogai by filing application praying that the lands be taken in possession of the Government. The said claim came to be rejected by the Deputy Collector by order dated 25.06.2008. It is specifically held that there is a sale certificate in favour of these petitioners. Their mutations are finalized. The order on file No. 2007/inam/BD 6107 was again challenged in the Court of Additional Collector. However, in the later proceeding the Deputy Collector (Atiyat) on the same day on file No. 2007/inam/BD 3745 passed another order on the application of respondent Nos. 4 to 7 praying for taking the lands in possession of the Government and pass the order directing to take those lands in possession of the Government by holding that it was a land towards service Inam. The claim of the

respondents also came to be rejected holding that there is no Virasat in favour of the respondents.

6. The order directing the lands to be taken in possession of the Government came to be challenged by the petitioners in the Court of Additional Collector, Ambajogai. The Additional Collector, Ambajogai allowed the appeal and directed the parties to appear before the competent Court or revenue Court for getting the nature of land decided.

7. Thus, the order of the Additional Collector came to be challenged before the Deputy Divisional Commissioner, Aurangabad by the respondents. The Deputy Divisional Commissioner by judgment and order dated 11.07.2013 allowed the revision and set aside the order passed by the Additional Collector.

8. The petitioners therefore filed review application, however, the same also came to be rejected and thus, the matter was carried to the revenue Minister. It is the case of the petitioners that one Gayasoddin Kazi and Khairuddin Kazi were original Inamdars in land Survey Nos. 183, 184, 185, 186, 187, 135 and 135-A. One Ganpati Shingare was in possession of land Survey No. 183 to the extent of 19 Acre 30 Guntha. One Gayasoddin was in possession of land Survey No. 135 to the extent

of 19 Acre 20 Guntha. One Khairuddin was in possession of land Survey No. 184. The petitioner Nos. 2 to 4 were in possession over 1/3rd land in land Survey No. 183, 186 and 187. The lands were cultivated by Ganpati. Ganpati had filed an application to settlement Commissioner. The Settlement Commissioner allowed the application of Ganpati. Ganpati pursuant to the order deposited the cost and the sale deed also came to be executed in respect of Survey Nos. 186 and 187. Accordingly, sale certificate also came to be issued on 01.06.1985. It is the contention of the petitioners that the Inam came to be abolished. The Kaulnama is executed in the year 1960 in favour of the present petitioners by Gayasoddin who was original holder of land to the extent of four acres out of Survey No. 135-A dated 31.01.1975 that was executed by Khairuddin in favour of Bhimsing Bajrangsing. The respondent Nos. 4 to 7 are successors of original Inamdar. However, they had never sought Virasat in their favour under Section 3 of the Hyderabad Abolition of Inams and Cash Grants Act. The petitioners' contentions therefore is that in absence of any Virasat in favour of respondent Nos. 4 to 7 there is no question that they are getting any right and thus they have no locus standi. To show that they have locus standi it was necessary for respondents that they are successors of original owners and they have obtained Virasat. The petitioners further case is that they are in possession since 1959-60 till date and therefore,

they have every right over the lands.

9. Learned advocate for respondent Nos. 4 to 7 vehemently opposes the petition. She submits that total land was 117 acres from all the survey numbers. Land Survey No. 135 was service Inam land (madatmash). Some of the property was declared as evacuee property. The 7/12 extract clearly shows the Kazi Masjid as owner of the property. The land is shown as Masrul Khidmat. She further submits that Kaulnama is of the year 1962. The petitioners have come in possession in 1959-60, however, there is no occupancy proceedings taken place since then. She submits that on 01.07.1955 the decision and right over the property was vested with the Government. Thus, there is no question of petitioners getting any right over the land. It is further case that, there is no evidence to show that the property was evacuee property. Since there is no certificate in favour of the petitioners, they are not inducted lawfully. The Bombay Personal Inams Abolition Act came into force in 1952. The person has to show that he was in possession prior to 1955. Thus, she submits that in view of Sections 5, 6 and 7 of the Hyderabad Atiyat Inquiries Act, the land is succeeded by the successors of the land holders. She further relied upon Rules 3 and 6 of the Hyderabad Atiyat Inquiries Rules to submit that there is no application made by the petitioners within three

months **of getting any right** and therefore, the Government has to take land under its supervision. Though the respondents have initiated proceedings for Virasat in 2012 and it was not within time, still that will not give any right to the petitioners. She further submits that the Government even take suo motu action in such cases.

10. Learned A.G.P. supports the order passed by the Hon'ble Minister and submits that the order of the Hon'ble Minister is self speaking and no interference is required.

11. Learned advocate for the petitioners in rejoinder submits that, in fact, the respondent Nos. 4 to 7 have no locus standi in the proceedings. The possession of the petitioners over the land is long standing which shows that they have right over the land. His last submission is that the nature of the land needs to be considered before taking further decision.

12. Learned advocate for respondent Nos. 4 to 7 on this submission submits that, in view of Rule 11 of the Hyderabad Atiyat Inquiries Rules, if no claim is made, there is no question holding any enquiry and there is also no question to determine the nature of the land. In view of Section 102 of the Hyderabad Tenancy and Agricultural Lands Act, the petitioners cannot become tenant on the land.

13. Considering all these aspects and argument this Court is required to find out as to whether the petitioners have any right and locus standi to claim the right over the land. Before proceeding further the main argument of the respondents needs to be considered in respect of Section 102 of the Hyderabad Tenancy and Agricultural Lands Act.

Section 102 is reproduced as under :

“**102.** (1) Save as provided in this section, nothing in Chapters IV-A and IV-B shall apply to lands taken under management -

- (ii) of the Courts of Wards,
- (iii) of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890, or
- (iv) temporarily by civil, revenue or criminal court by themselves or through receivers appointed by them till the decision of the title of the rightful holders;

And nothing in this Act shall affect the power vested in the Court of Wards, such Government Officer or court to receiver as respects the recovery of dues under any law including the law under which such land is taken under management and the manner of recovery provided in such law.

- (2) If on the date of the release of any land from such management any tenancy subsist in respect of such land, [and if the management had been assumed before the landholder could exercise the right to terminate the tenancy under section 44 then] the landholder shall be entitled to terminate such tenancy under section 44 by giving three months notice

within one year from such date; and the tenant shall have the right to purchase the land under section 38 within one year from the expiry of the period during which the landholder was entitled to terminate the tenancy as aforesaid.”

14. Here it is seen that, the petitioners are claiming that they came in possession in 1959-60. In view of the submission and legal position that even as per the story they are indicted in the land after 01.07.1955. Thus on the date they were not in possession and they cannot have any right. As observed by the Commissioner they could not produce any document to show that there is Kaulnama in the affidavit. The possession of the petitioners thus cannot be recognized as lawful possession on the land. The Additional Collector rightly held that the disputed lands were allotted to Kazi Masjid for rendering its service by the then Nijam Government as the same is proved from Muntkhab No. 1675. He has considered the village namuna number 9 for the year 1969-70 which also shows that the suit land is Khidmatmash. The respondents could not prove that the suit land was put under Khalsa under the Hyderabad Abolition of Inams and Cash Grants Act, 1954. The conclusion is thus rightly drawn that the tenancy is not created over the suit land being in the Inam land.

15. In view of Section 102 of the Hyderabad Tenancy and Agricultural Lands Act which is already reproduced this Court finds that, the observation and finding recorded by the Additional Collector is totally as per law. While considering the case the Additional Commissioner has considered the report submitted by the Tahsildar. There is no material to show that the entry taken into 7/12 extract in the name of Kazi Masjid is not challenged by the respondents. They also could not produce any evidence to show that the land is evacuee property. He thus held that the order by the S.D.O. was rightly passed directing to take the suit land in possession of Government. Looking to the material produced by the Government along with affidavit in reply it is clearly seen that, the lands were Khidmatmash given to the Masjid. The affidavit of respondent Nos. 4 to 7 also does not show that even they have any right over the land as there is no Virasat in their name and so they also failed to establish their right over the property.

16. In additional affidavit of respondent Nos. 4 to 7 though have filed Virasat application, however that was beyond intention and only after starting of the dispute.

17. The petitioners relied upon the judgment of the High Court of Andhra Pradesh in the case of Appinedi Pothuraju Vs. Tahsildar reported in 2022 SCC Online AP 70. The High Court held that the

petitioners are in settled possession and enjoyment of the property. They cannot be dispossessed without following due process of law. In view of the judgment of the Hon'ble Apex Court in the case of **Rame Gowda (dead) by L.Rs. Vs. M. Varadappa Naidu (Dead) by L.Rs.** reported in **(2004) 1 SCC 769** there cannot be any dispute about the said proposition. In this case, however, there is the question of the petitioners to establish their right which they have failed to prove. The petitioners have also relied upon the judgment in the case of **Rame Gowda (dead) by L.Rs.** (supra) as already discussed. Further judgment relied upon by the petitioners is the judgment of this Court delivered in Writ Petition No. 984/1988 dated 06.05.2010 wherein, this Court had held that once the tenant fails to file claim for grant of succession within a period of three (03) months after death of Inamdar the claim of succession ought to be put forth. If this is not done the persons cannot establish that they were tenants indicted by the Inamdar.

18. The respondents relied upon the judgment of this Court in the case of **Thakur Niranjansingh Vs. Bhagatrai and another** reported in **AIR 1967 Bombay 136** wherein, this Court held that after 01.07.1955 no lease by Inamdar can be executed in view of the Hyderabad Abolition of Inams and Cash Grants Act. There is no dispute about the position. This Court finds some force in the submission. It is further

held that in such cases the State Government gets right to resume the Atiyat grant by following provisions of Section 5 of the Act.

19. Considering the above position, this Court finds that, no case is made out by the petitioners to cause interference in the impugned order passed by the Hon'ble Minister.

20. Thus, the writ petition fails and is disposed off accordingly.

(KISHORE C. SANT, J.)

RS.B.