

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10629 OF 2014
WITH
CIVIL APPLICATION NO.126 OF 2017
IN
WRIT PETITION NO.10629 OF 2014

1	Chidanand Ogyappa Yammi	]
	(since deceased) through his Lrs	]
1A]	Sidhlingappa Chidanand Yammi	]
	Age about adult, Occ: Agriculture	]
2	Jagdev Bhauravva Karajangi	]
	Age about adult, Occ: Agriculture	]
3	Smt. Annapurna Bhauraya Karajangi	]
	Age about adult, Occ: Agriculture	]
4	Maleshappa Rayappa Karajangi	]
	Age about adult, Occ: Agriculture	]
5	Sangappa Rayappa Karajangi	]
	(since deceased) through his Lrs.	]
5A]	Ms. Saraswati Sangappa Karajangi	]
	Age about adult, Occ: Household	]
5B]	Gurunigappa Sangappa Karajangi	]
	Age about adult, Occ: Agriculture	]
5C]	Mahadeo Sangappa Karajangi	]
	Age about adult, Occ: Agriculture	]
5D]	Mrs. Nillakka Gurunigappa Biradar	]
	Age about adult, Occ: Household	]
5E]	Mrs. Mangala Suresh Kannur	]
	Age about adult, Occ: Household	]
	Petitioner Nos. 1A to 5E are residing at	]
	Sonyal, Tal: Jat, District – Sangli.	]
6	Sou. Sidnigawwa w/o. Ramlingappa	]
	Lokanawar	]
	Age about adult, Occ: Household	]
7	Amogappa Hanmant Yammi	]
	Age about adult, Occ: Agriculture	]
8	Balgonda Hanmant Yammi	]
	Age about adult, Occ: Agriculture	]

9	Gopal Hanmant Yammi	]	
	Age about adult, Occ: Agriculture	]	
10	Shrimant Hanmant Yammi	]	
	Age about adult, Occ: Agriculture	]	
11	Amrut Hanmant Yammi	]	
	Age about adult, Occ: Agriculture	]	
12	Sidappa Hanmant Yammi	]	
	Age about adult, Occ: Agriculture	]	
	Petitioner Nos. 6 to 12 are residing at	]	
	Nigdi Budruk, Tal: Jat, Sangli	]	.. Petitioners.
			(Nos. 1 to 12 are Org. Opponents)
	v/s.		
1	Girish Sahakari Samudaik Krishi Sangh	]	
	Maryadit, Nigdi Budruk, Tal: Jat,	]	
	District Sangli (through its Chairman]		
	Shri Prabhu Laxman Birnale)	]	
2	Vijaysinghraje Ramraoraje Daphale	]	
	(since deceased) through his Lrs.	]	
2A]	Sou. Sunemaraje @ Priya Vijay Darekar	]	
	Age about adult, residing at Rajwada,	]	
	Jat, Tal: Jat, District- Sangli.	]	
3	Sidhgonda Basgonda Patil	]	
	Age about adult, Occ: Agriculture	]	
	residing at Belongdi, Tal: Jat,	]	
	District – Sangli.	]	
4	State of Maharashtra	]	.. Respondents.
			(No.1 is Org. Applicant and 2 & 3 are Org. Opponent Nos. 13 & 14)

Mr. S. G. Deshmukh with Mr. Ramdas Shelke, for the Petitioners.

Mr. N. J. Patil i/b. Mr. Amey N. Patil, for Respondent No.1.

Mr. S. D. Rayrikar, AGP for Respondent No.4-State.

CORAM: G.S. KULKARNI,J.

DATED : 17th FEBRUARY, 2023.

ORAL JUDGMENT:-

This Petition challenges an order dated 19th April, 2014 passed by the learned Member, Maharashtra Revenue Tribunal (for short “the MRT”) whereby Revenue Application No. TNC/REV/SS/46/B/2002

as filed by Respondent No.1 has been allowed. By virtue of the impugned order, the orders of the Sub-Divisional Officer, Miraj, Sub-Division, District Sangli, in Tenancy Appeal No. 21 of 2001 dated 5th March, 2002 and the orders of the Tahsildar in Tenancy Case No. Nigdi Bk-32G/227/2001 dated 29th September, 2001, are set aside, with a further order, that the case be remanded to the Tahsildar & A.L.T. Jat District Sangli, for a fresh enquiry and a decision thereon be taken in accordance with law, in the light of the observations as made in the impugned order.

2 The dispute between the parties has a chequered history. Respondent No.1 who was the applicant before the Maharashtra Revenue Tribunal (MRT) in the Revision proceedings, is a Co-operative Society, formed with an object of joint cultivation *inter alia*, of sugarcane, fruits or flowers, etc. The Appellants who are the opponents in the said revision, are the owners of the suit land.

3 Respondent No.1 had taken the suit lands on lease from the Petitioner under a registered lease deed dated 2nd December, 1950 and 5th December, 1950 for a period of 50 years. These leases expired in the year 2000. The case of Respondent No.1 and much prior to the expiry of

the leases was to the effect that it was entitled to purchase of the lands in question as Respondent No.1 had become a deemed tenant under the provisions of Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short “**the BT & AL Act**”). In making such claim, Respondent No.1 contended that the bar under Section 43-A of the BT & AL Act is not applicable to Respondent No.1, as an exemption was granted to Respondent No.1 from the applicability of the provisions of Section 43A of the BT & AL Act by virtue of a Certificate of Exemption, issued in its favour by the District Deputy Registrar Co-operative Societies, Sangli.

4 Respondent No.1 asserted that in the year 1968, Respondent No.1-Society had made an application under Section 32-G of the Act to the A.L.T. Jat, District Sangli for fixing the purchase price of the land in question. It appears that such application of Respondent No.1 was dismissed on the ground that Respondent No.1, had not produced an exemption certificate, as contemplated under Section 43A of the said Act. Assailing the decision on the said application, Respondent No.1-Society preferred an appeal before the Collector, Sangli being Tenancy Appeal Nos. 1/1968 and 2/1968. By an order dated 24th May, 1969, the Collector dismissed the said Appeal for want of a Tenancy Certificate, granting exemption to Respondent No.1 under the provisions of sub-section (2) of

Section 43A of the Tenancy Act. Being aggrieved by the said decision, Respondent No.1-Society preferred a Revision Application before the MRT. The Revision was adjudicated by the MRT by an order dated 15th June, 1970 by which the MRT remanded the case to the Tahsildar -Jat, (District Sangli) for a further enquiry, on the claim of the Respondent No.1-Society, that it had obtained an exemption certificate, subsequent to the decision of the Collector dated 24th May, 1969. It appears that between the period 1970 till the year 2001, the proceedings were dormant.

5 However, the record reveals that on remand, the Tahsildar, Jat, District Sangli, initiated an inquiry under Tenancy Case No. Nigdi Bk-32G/227/2001 and passed an order dated 29th September, 2001, *inter alia* holding that the provisions of Section 32G of the said Act were not applicable to the land in question in view of the applicability of Section 43A. Against the said order, Respondent No.1-Society preferred Tenancy Appeal No. 21 of 2001 before the Sub Divisional Officer (SDO), Miraj. The Tenancy Appeal came to be adjudicated by an order dated 5th March, 2002, whereby Respondent No.1's appeal came to be dismissed, thereby confirming the order dated 29th September, 2001 passed by the Tahsildar. It is against the such order passed by the Sub Divisional Officer, the Revision in question came to be filed by the Respondent No.1-Society

before the MRT which has been allowed by the impugned order.

6 As seen from facts as noted above, the controversy as involved in the present proceedings is as to whether Respondent No.1- Society was at all exempted from the applicability of Section 43A(1) of the said Act, inasmuch as Respondent No.1 claimed to have an exemption from the applicability of the said provision, by virtue of an exemption certificate as issued in its favour. The MRT, proceeded in allowing Respondent No.1's Revision Application accepting, Respondent No.1's case that Respondent No.1 had obtained necessary Certificate of Exemption, immediately after the Collector passed an order on 12th December, 1969, as noted above. The relevant observations in that regard, reads as under:-

“ It is seen that the revision applicant society could not become deemed purchaser u/s. 32G of the Tenancy Act because they could not produce the necessary certificate issued by the competent authority specifying that provision of 32 to 32R were attracted as provided in section 43A (2) of the Tenancy Act.

The claim of the society u/s 32G was rejected by A.L.T and Collector, Sangli only because they failed to produce the said certificate. It is seen that the society obtained the necessary certificate on 12/12/1969 i.e. immediately after order of Collector dt. 24/5/1969. This certificate was available when the dispute was taken up with MRT, Kolhapur. MRT Kolhapur remanded the cases to ALT Jat for fresh enquiry and decision in the light of the certificate issued by District Deputy Registrar on 12/12/1969.

However, it is noticed that both Tahasildar and S.D.O. did not take cognizance of observation of MRT in its decision dt. 15/6/1070 and went on to pass the impugned orders ignoring the said certificate which exempted the society from section 43A(1) of the Tenancy

Act. In other words, it was alleged that section 32 to 32R became applicable to society and disputed property by virtue of this certificate and society could become deemed purchaser u/s 32G of the Act. It is observed that both Tahsildar and SDO did not even make any observations of comments on this certificate in their impugned orders.”

7 Mr. Deshmukh, learned Counsel for the Petitioner has contended that the entire basis for the MRT to remand the proceedings to the Tahsildar, ALT, Jat, by setting aside the orders of the authorities below in favour of Respondent No.1, is on the presumption that Respondent No.1-Society had obtained the Certificate of Exemption on 12th December, 1969 under the provisions of Section 43-A(1) of the said Act. Mr. Deshmukh submits that in fact the record reveals that no such certificate was issued as per the requirements of the said provision, hence, there was no justification for the learned Member of the MRT to come to such conclusion of a valid exemption on being possessed by Respondent No.1. Mr. Deshmukh's contention is that almost for more than 50 years, the controversy has been successfully kept alive by Respondent No.1-Society, under the garb of an exemption certificate being obtained, and on such basis, the proceedings have travelled to and fro between different authorities including two rounds before the MRT in the span of last about 50 years. Mr. Deshmukh in supporting such contention, has drawn the Court's attention to the various observations made in the impugned order.

8 Considering the nature of controversy as noted above, on 13th January, 2023 , this Court had passed the following order:-

“ I have heard Mr. Deshmukh, learned Counsel for the Petitioners, Mr. Patil, learned Counsel for Respondent No.1 and Ms. Shrivastav, learned AGP for Respondent No.4.

2 The impugned order dated 19th April, 2014 passed by the Maharashtra Revenue Tribunal, Pune is on the sole basis that there was an exemption certificate as granted in favour of private Respondent. It is stated to be certificate dated 12 December, 1969 issued by the District Deputy Registrar Co-operative Societies, Sangli under Section 43(1)(c) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short “the Act”).

3 The question is whether the District Deputy Registrar Co-operative Societies, Sangli would at all have a jurisdiction under the Bombay Tenancy and Agricultural Lands Act, 1948 along with Rules made thereunder to issue an exemption under Section 43A(1) of the said Act. In any event, before the Court proceeds to pass further appropriate orders on the present proceedings, Respondent No.4/State through its appropriate department in Kolhapur Division is directed to place on record an affidavit within one week from today as to whether under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 along with rules, any exemption certificate in favour of Respondent No.1 could be issued and if it was issued, a copy of the same be placed on record. This, more particularly, as none of the proceedings have referred to such certificate issued by the Competent Authority under the Act.

4 Accordingly, stand over to 20 January, 2023 (HOB).”

9 When the proceedings were listed before the Court on 20th January, 2023, this Court had passed the following order:-

“ Stand over to 03 February, 2023 to enable the learned AGP to comply with the directions as contained in paragraph 3 of the order dated 13 January, 2023. There shall not be further extension.

The learned AGP intends to place on record a compilation of documents. Let the documents form part of reply affidavit which would be filed. The documents are accordingly returned to the learned AGP”

10 Accordingly, Respondent No.4 through its appropriate department at Sangli was directed to place on record, an affidavit as to whether under the provisions of BT & AL Act along with allied Rules, Respondent No.1 was issued any exemption certificate exempting Respondent No.1 from the bar as created under Section 43A of the BT & AL Act. It was directed that if such certificate was issued, a copy of the same be placed on record.

11 In pursuance of such directions of this Court, the learned AGP has placed on record affidavit of Shri Mangesh B. Surwase, District Deputy Registrar, Co-operative Societies, Sangli who has stated that, the District Deputy Registrar has no jurisdiction under the BT & AL Act along with Rules made thereunder to issue any exemption certificate under Section 43A(2) of the said Act. It is stated that only the designated Authority has jurisdiction under the said Act to issue such exemption after an adequate enquiry being made as per the provisions of section 43A(2) of the BT & AL act, in consultation of the District Deputy Registrar Co-operative Societies, Sangli. It is stated that, however, the opinion of the District Deputy Registrar Co-operative Societies, is not a final decision on

any exemption, to be granted under Section 43A(2) of the BT & AL Act as the final decision is of the State Government as provided under Section 43A(2). In paragraph 5 of the affidavit, it is stated that there is no record of any exemption being issued as claimed by Respondent No.1 and that the official Respondents also cannot produce any such certificate or its copy.

12 Thus, the controversy in the proceedings being limited as to whether any exemption was granted to Respondent No.1 under the provisions of Section 43A(2) of the BT & AL Act, as also as to whether the District Deputy Registrar Co-operative Societies, Sangli at all had jurisdiction under the BT & AL Act to issue an exemption certificate under Section 43-A(1) of the said Act as claimed by Respondent No.1, attains a quietus in view of the affidavit filed on behalf of the State Government. It appears that, successive authorities have proceeded on a misconception not only in appreciating the clear consequences as brought about by Section 43A(1) read with Section 43A (2) of the said BT & AL Act, in granting benefit to Respondent No.1, under the said provisions, whereunder such benefit could be granted only by a notification issued by the State Government as prescribed under Section 41A(2) of the BT & AL Act.

13 To address the question as involved in this Petition, it would be necessary to note the provisions of Section 43A of the said Act. Section 43A was incorporated under the BT & AL Act by an amendment to the BT & AL Act which was brought about by Bombay Act No. 13 of 1956, by virtue of which, Chapter III-A was inserted, incorporating special provisions for lands held on lease by industrial or commercial undertaking and by certain persons for the cultivation of sugarcane and other notified agricultural products. Section 43A of the Act stipulates that some of the provisions as specified therein shall not apply to leases of land, obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers. Section 43A(1) of the Act needs to be extracted which reads thus:-

“Section 43A – Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers :-

(1) The provision of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive) [33A, 33B, 33C], 43, 63, 63A, 64 and 65, shall not apply to -

(a) land leased to or held by any industrial or commercial undertaking (other than a Co-operative Society) which in the opinion of the State Government bona fide carried on any industrial or commercial operations and which is approved by the State Government;

(b) leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of live stock;

(c) to lands held or leased by such co-operative societies as are approved in the prescribed manner, by the State Government which have for their objects the improvement of the economic and social

conditions of peasants or ensuring the full and efficient use of land for agriculture and allied pursuits.

(2) The State Government may by notification in the Official Gazette, in this behalf direct that the provisions of the said sections shall not apply to a lease of land obtained by any person for growing any ether class of agricultural produce to which it is satisfied that it will not be expedient in the public interest to apply the said provisions. Before the issue of such notification, the State Government shall direct an inquiry to be made by an officer authorised in this behalf by the State Government and shall give all persons who are likely to be affected by such notification, an opportunity to submit their objections.

(3) Notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette, that the leases [or lands, as the case may be] to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of-

- (a) the duration of the lease;*
- (b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies;*
- (c) the payment of land revenue, irrigation cess, local fund cess and any other charges payable to the State Government or any local authority; or*
- (d) any other matter referred to in sections mentioned in sub-section (1).*

14 From a plain reading of Section 43A(1) of the said Act, it is seen that provisions of Sections 4B, 8, 9, 9A, 9B,9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive) [33A, 33B, 33C], 43, 63, 63A, 64 and 65, are not applicable to the three categories of lands – firstly; in respect of lands leased to or held by any Industrial or Commercial undertaking (other than a Co-operative Society) which in the opinion of the State Government bona fide carried on any Industrial or Commercial operations and which is approved by the State

Government; secondly; in regard to lease of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock as set out in sub-clause (c) of sub-section (1).

Sub-section (2) of Section 43A provides that State Government may by a notification in the official gazette, on this behalf direct that the provisions of the said Section shall not apply to a lease of land obtained by any person for growing any other class of agricultural produce, to which it is satisfied that it will not be expedient in the public interest to apply the said provisions. It is provided that before the issuance of such notification, the State Government shall direct an inquiry to be made by an officer authorized in this behalf by the State Government and shall give all persons who are likely to be affected by such notification, an opportunity to submit their objections. Sub-section (3) provides in relation to the conditions which may be lawful for the State Government to be incorporated in the notification being issued under sub-section (2).

15 Thus, the legal consequences as brought by the provisions of sub-section (1) of Section 43A is firstly that the provisions as referred in sub-section (1) shall not apply to category of leases specified in clauses (a), (b), (c) of sub-section (1) as noted above. However, sub-section (2) of

Section 43A provides for an exception in regard to applicability of the provisions of sub-section (1) by exempting certain categories of lessees in the manner as provided in sub-section (2) which can only be by the State Government by issuing a notification in the official gazette. In the light of the above interpretation, the facts of the present case are required to be examined.

16 As noted above, it is clear that at no point of time, Respondent No.1 had put up a case before any of the authority in the last 50 years that any such notification was issued by the State Government. This apart, the *sine-qua-non* for claiming such exemption could only be a notification issued by the State Government which is clear not only from the reading of sub-section (2) of Section 43 A(1) of the said Act but also from the procedure as prescribed while reading of Rule 27 of the Bombay Tenancy Rules, 1956.

Rule 27 reads thus:-

“Rule 27:- provides that application in that regard can be made by a Co-operative Society to the State Government, through the District Co-operative Officer by setting out all particulars as provided under Section 47. The District Co-operative Officer has to forward the application with his remarks to the Collector of the District Co-operative Societies who shall forward the same to the State Government, after offering remarks thereon, and it is ultimately for the State Government to decide to grant such approval and ultimately notify the same in the official

gazette. There is no material whatsoever that any such enquiry at different levels was undertaken for culminating into a notification issued by the State Government being notified in the official gazette.”

17 It is clear from the reading of Rule 27 that a co-operative society which seeks approval under Clause (c) of sub-section (1) of Section 43-A is required to apply the State Government through the District Co-operative Officer interalia stating in its application the object for which the society is founded and give all other particulars qualifying it for approval. The District Co-operative Officer is then required to forward the application with his remarks to the Collector of the district in which the lands held or leased by the Co-operative Society are situate. The Collector shall forward the application with his remarks to the Registrar of Co-operative Societies, who shall forward it to the State Government after offering his remarks thereon. If the State Government decides to grant the approval, such approval shall be notified in the Official Gazette.

18. In the present case, there is no material whatsoever that any such application was made by respondent No.1 as also that there is no material whatsoever to show that any enquiry was held at different levels as contemplated by Rule 27 culminating into a notification being issued by the State Government in the Official Gazette. It is thus clear that respondent No.1 for all these years was successful in misguiding the

authorities in regard to any exemption availed by it under the provisions of Section 43-A(2) and had dragged the petitioner into unwarranted litigation. There is no iota of evidence of any exemption being granted granted to respondent No.1 under Section 43-A(2) of the BT & AL Act. All these material requirements are totally missed by the MRT in passing the impugned order and ordering fresh enquiry.

19. In the light of the above discussion, it is clear that the MRT has not proceeded as per the provisions of law as discussed above as also there was no reason on the record for the MRT in remanding the matter for enquiry to be conducted by the Tahsildar. The impugned order passed by the Maharashtra Revenue Tribunal hence, cannot sustained and is required to be held to be illegal, quash and set aside.

20 The Petition is, accordingly, allowed in terms of prayer clause (b) which reads thus:-

“ to quash and set aside the judgment and order dated 19.04.2014 passed by Learned Member of Maharashtra Revenue Tribunal on 19.04.2014 in TNC/REV/SS/46/B/2002.”

21. No costs.

(G.S. KULKARNI,J.)