

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1353 OF 2022

- | | | |
|------------------------------------|---|-----------------|
| 1. Barku Govind Walve, |] | |
| Age – 65 years |] | |
| 2. Waman Gangadhar Walve, |] | |
| since deceased through heirs |] | |
| 2a. Anusayabai Waman Walve, |] | |
| 2b. Jijabai Ramdas Lone, |] | |
| 2c. Namdeo Waman Walve, |] | |
| 2d. Nandu Waman Walve, |] | |
| 2e. Anjanabai Bhushan Hire, |] | |
| 2f. Subhadra Dnyaneshwar Palkhede, |] | |
| 2g. Sarlabai Uttam Khandbale, |] | |
| 3. Haribhau Govind Walve, |] | |
| 4. Digambar Govind Walve, |] | |
| 5. Jairam Govind Walve, |] | |
| 6. Smt. Venubai Govind Walve, |] | |
| 7. Keshav Nathu Walve, |] | |
| 8. Eknath Sahadu Walve, |] | |
| All Adults, All Agriculturists, |] | |
| All Residing at Ganga Padali, |] | |
| Taluka and District Nashik. |] | ... Petitioners |

Versus

- | | | |
|---------------------------------------|---|--|
| 1. The State of Maharashtra |] | |
| 2. Vijay Baban Salve, |] | |
| Resident of Gangapadali, |] | |
| Taluka and District Nashik, AND |] | |
| H. M. Samartha Darshan C.H.S. Ltd., |] | |
| A Wing-301, Near Swami Samartha Math, |] | |
| Kopar Road, Dombivali (West), |] | |
| Taluka Kalyan, District Thane. |] | |

3. Madhukar Baban Salve,	]	
4. Yashwant Baban Salve,	]	
Nos.3 and 4 residing at Ganga Padalil,	]	
Taluka and District Nashik.	]	... Respondents

Mr. Saurabh M. Railkar for Petitioners.

Mr. P. P. Pujari , AGP for Respondent No.1.

Mr. Girish Agrawal a/w Mr. Shubham Jangam, for Respondent Nos.2 to 4.

CORAM :- SANDEEP V. MARNE, J.

DATE :- 05 DECEMBER, 2023

JUDGMENT :

1. ***Rule.*** With the consent of the learned Counsel for parties, Rule is made returnable forthwith.

2. By this Petition, Petitioners challenge the order dated 19 July 2021 passed by the State Government (Minister-Revenue) thereby allowing the Appeal filed by the Respondent Nos. 2 to 4 under the provisions of Section 9 of the Maharashtra Inferior Village Watans Abolition Act, 1959 (**'Act of 1959'**). While allowing the application filed by the Respondent Nos.2 to 4, the State Government (Minister-Revenue) has rejected the request of the Petitioners for regrant of the land under the provisions of Section 9 of the Act of 1959.

3. The case has chequered history. Land bearing Gat No.24/27 converted to Gat No.102 admeasuring 1 Hectare 72 Ares situated at Village Ganga Padali, Taluka and District Nashik, was formerly an inferior village watan land Class VI-B. After coming into force of the Act of 1959,

the land was resumed by the State Government under the provisions of Section 4 and came to be re-granted to the original Watandar Mr. Baban Salve under Section 6 of the Act. Said Watandar Mr. Baban Salve executed Agreement for Sale dated 26 January 1967 and sold the land to Smt. Renubai Walve, predecessor of Petitioners. The Sale-Deed was, however, not executed. Mr. Baban Salve filed Special Civil Suit No.8/1972 seeking recovery of possession from Smt. Renubai Walve whereas Smt. Renubai Walve filed Special Civil Suit No.92/1972 seeking specific performance of the Agreement for Sale dated 26 January 1967. By Judgment delivered by the Joint Civil Judge, Senior Division, Nashik on 30 January 1976, the possession by Smt. Renubai Walve was held to be lawful but she was denied the relief of specific performance.

4. Mr. Baban Salve filed application before the Deputy Collector, Nashik, under Section 84 of the Maharashtra Tenancy & Agricultural Lands Act for restoration of possession in his favour. The Assistant Collector, Nashik, directed restoration of possession by order dated 9 June 1977 which came to be challenged by Smt. Renubai Walve before the Maharashtra Revenue Tribunal (**‘Tribunal’**) by filing Revision Application No.239/1977. The Tribunal allowed the Revision by order dated 2 December 1977 holding that provisions of Section 84 of the Tenancy Act were not applicable to the case. Aggrieved by the decision of the Tribunal, Mr. Baban Salve filed Writ Petition No.2618/1979 in this Court, which set aside the Tribunal’s decision by its order dated 20 December 1983 and remanded the matter to the Assistant Collector, Nashik for conducting an inquiry under Section 9 of the Act of 1959. After remand, the proceedings were conducted by the Sub-Divisional Officer, Nashik (**‘SDO’**) who proceeded to dismiss the application of the Watandar by holding that possession of Smt. Renubai Walve was lawful and could not

be disturbed under Section 9 of the Act of 1959. The Watandar filed Tenancy Revision Application No.198/1988 before the Tribunal. On preliminary objection being raised about maintainability of the Revision Application, the Tribunal passed order dated 18 September 1990 holding that the Revision Application was not maintainable. The Tribunal, however, proceeded to set aside the order passed by the SDO by exercising inherent powers under Section 151 of the Code of Civil Procedure and remanded the matter to the SDO for fresh inquiry. The Tribunal's decision was challenged before this Court by filing Writ Petition No.2702/1991. By Judgment and Order dated 13 April 2005, this Court held that it was necessary to decide the nature of possession of Smt. Renubai Walve within the meaning of Act of 1959 and not on the basis of findings recorded by the Civil Court. The Petition was accordingly dismissed and the SDO was directed to conduct a fresh inquiry under Section 9 of the Act of 1959.

5. After conducting the inquiry, the SDO passed order dated 27 February 2006 holding that Smt. Renubai Walve was unauthorized holder and therefore her legal representatives were directed to be evicted summarily from the land with direction to hand over the same to Respondent Nos. 2 to 4. The SDO's order came to be challenged before the Tribunal by the Petitioners by filing Tenancy Appeal No.22/2006, which came to be dismissed by the Tribunal by its order dated 5 August 2008. Petitioners filed Writ Petition No.82/2009 before this Court challenging the Tribunal's decision. However, parties jointly agreed for setting aside the orders passed by the SDO and Tribunal and for remand of the proceedings before the SDO by filing minutes of order dated 21 January 2009. By consent of the parties, Writ Petition No.82/2009 was disposed of in terms of minutes of the order.

6. The SDO, Nashik, conducted inquiry under Section 9(1) of the Act of 1959 and submitted a report to the State Government on 14 July 2010 recommending handing over of possession of the land to the Respondent Nos.2 to 4. On the report submitted by the SDO, the Minister (Revenue) conducted hearing and proceeded to pass order dated 1 June 2014 holding that the possession of Petitioners was illegal and directing the Additional Collector, Nashik to pass necessary order on the basis of SDO's report dated 14 July 2010. The decision of the Minister-Revenue became subject-matter of the challenge in Writ Petition No.7507/2014, which came to be disposed of by order dated 4 August 2017 on the basis of Minutes of Order submitted with consent of the parties, in which it was agreed that the Additional Collector, Nashik, would consider afresh the report of the SDO and pass a reasoned order and submit his report to the State Government. Accordingly, the Additional Collector conducted hearing and submitted report dated 18 November 2017 to the State Government upholding the SDO's report. The State Government conducted hearing after receipt of the report of the Additional Collector and proceeded to pass order dated 19 July 2021 rejecting the request of Petitioners for regrant of the land under Section 9 of the Act of 1959. Petitioners are aggrieved by the order passed by the State Government on 19 July 2021 and have filed the present Petition.

7. I have heard Mr. Railkar, learned counsel appearing for the Petitioners and submit that there was unusual delay on the part of the Minister-Revenue in delivering the order dated 19 July 2021. That hearing in the proceeding was completed in February 2019 whereas the order is delivered 2 years later on 19 July 2021. That, such delay in passing the order is a fit ground for setting aside the Minister's order and for remanding the proceeding for fresh hearing. On merits, he would

submit that the Minister-Revenue has completely overlooked the findings recorded by the SDO with regard to the expenditure incurred by the Petitioners on installation of pipeline. That, the Petitioners have borrowed funds from banks and cooperative societies by creating charge on the land. That, under the provisions of Section 9(1), a watan land can be regranted in favour of an unauthorized holder if it is proved that such holder has made investment for development of a land. That, incurring of expenditure on development of the land is proved and therefore regrant under the provisions of Section 9 ought to have been directed by the State Government. That, the Petitioners have been in lawful possession of the land in question and are entitled to regrant of the land under the provisions of Section 9 of the Act of 1959. That, the land is in continuous possession of the Petitioners since 24 January 1967 and huge expenditure is incurred on development of the same. That purport of Section 9 of the Act of 1959 is to regrant of Watan land in favour of authorized holder who is in continuous possession and who has incurred expenditure on development of the land. That, the Civil Court has also held that possession of the land by the Petitioners is lawful. He would therefore pray for setting aside the order passed by the State Government.

8. *Per contra*, Mr. Agrawal, learned Counsel appearing for Respondent Nos. 2 to 4 would submit that the alleged delay in passing order by the Minister-Revenue would not have any impact on the ultimate decision rendered by him. In support of his contention, he would rely upon the Judgment of the Apex Court in the case of ***M/s. Telestar Travels Pvt. Ltd. Ors. Vs. Special Director of Enforcement***¹.

9. Mr. Agrawal would submit that the State Government has rightly held that since the land is once granted to the original Watandar,

¹ ***AIR 2013 SC (Supp) 1041***

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This Judgment is corrected as per 'Speaking to Minutes' Order dated 14 December 2023.

there is no question of regranteeing the same to the unauthorized occupants like Petitioners. That, the scheme of the Act does not contemplate repeated regrantees of the land. That, once regrantee is made in the name of original Watandar, provisions of Section 9 become inapplicable. That, the Stage Government has correctly considered applicability of the provisions of the Act while passing the order impugned in the present Petition. He would pray for dismissal of the Writ Petition.

10. Rival contentions of the parties now fall for my consideration.

11. The first issue raised by the Petitioners is about the delay in delivery of the order dated 19 July 2021 on the part of the Minister-Revenue. According to Mr. Railkar, the first hearing was held on 5 April 2018 and that the parties had completed their pleadings in February 2019 whereas the decision was rendered on 19 July 2021 i.e. after 2 years from the date of completion of arguments. In my view, mere delay in delivery of decision cannot be a sole ground for setting aside the order dated 19 July 2021 which is otherwise found to be validly passed. In this connection, reliance of Mr. Agrawal on the Judgment in the case of **M/s. Telestar Pvt. Ltd.** (*supra*) appears to be apposite. In that case, the Apex Court refused to set aside the Judgment of adjudicating authority which was delivered 3½ years after the matter was finally argued. The Division Bench of this Court in **Smt. Prabhatai wd/o Shankarrao Bodhankar & Ors. Vs. M/s. Chimote & Sons & Ors.**² refused to set aside the Judgment on the ground of delay in pronouncement by holding that no grievance was ever made by the parties regarding delay in delivery of Judgment. This Court referred to the guidelines laid by the Apex Court in **Anil Rai Vs. State of Bihar**³. This Court also referred to the provisions of Order 20 Rule 1 of the

² 2017(2) ALL MR 638

³ 2001 SC 3173 : [2001 ALL MR (Cri) 1930 (S.C.)]

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This Judgment is corrected as per 'Speaking to Minutes' Order dated 14 December 2023.

Code holding that the said provision does not vitiate a Judgment on the ground of delay. In the present case, the Petitioners did not make any grievance before the Minister-Revenue about delay in delivery of the Judgment. In fact, specific ground of delay has not been raised in the Petition. The issue of delay is vaguely raised in para 19 of the Petition. I am therefore of the view that the order of the Minister-Revenue cannot be set aside only on the ground of alleged delay in the delivery of the Judgment.

12. Coming to the merits of the Petition, the statutory scheme is required to be appreciated. Sections 4 and 5 of the Act of 1959 provide for abolition of inferior watans. Section 6 provides for regrant of watan land to authorized holder. Section 9 deals with eviction of unauthorized holder and regrant of watan land to unauthorized holder in certain circumstances. Sections 4, 5, 6 and 9 of the Act read thus :

“4. Abolition of inferior watans together with incidents thereof.

Notwithstanding anything in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a court or in the existing watan law, with effect on and from the appointed date,

(1) all inferior village watans shall be and are hereby abolished,

(2) all incidents (including the right to hold office and watan property, the right to levy customary fees or perquisites in money or in kind, and the liability to render service) appertaining to the said watans shall be and are hereby extinguished,

(3) subject to the provisions of sections 5, 6 and 9 all watan land shall be and is hereby resumed and shall be subject to the payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated land :

Provided that such resumption shall not affect the validity of any alienation of such watan land made in accordance with the provisions of the existing watan law or the rights of an alienee thereof or any person claiming under or through him.

5. Regrant of watan land to holders of watan.

(1) A Watan land resumed under section 4 shall, in cases not falling under sections 6 and 9 be regranted to the watandar of the watan to which it appertained on payment by or on behalf of the watandar to the State Government of the occupancy price equal to three times the amount of the full

assessment of such land within the prescribed period and in the prescribed manner and the watandar shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; and all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land :

Provided that in respect of the watan land which was not assigned under the existing watan law as the remuneration of the inferior village hereditary office, an occupancy price equal to the amount of the full assessment of such land shall be paid by or on behalf of the watandar for the regrant of such land.

(2) If there is failure to pay the occupancy price under sub-section (1) within the prescribed period and in the prescribed manner, the watandar shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily evicted therefrom by the Collector in accordance with the provisions of the Code.

[(3) (a)] On or after the commencement of the Bombay Paragana and Kulkarni Watans (Abolition), the Bombay Service Inams (Useful to Community) Abolition, the Bombay Merged Territories Miscellaneous Alienations Abolition, the Bombay Inferior Village Watans Abolition and the Maharashtra Revenue Patels (Abolition of Office) (Amendment) Act, 2000 (hereinafter, in this section, referred to as "the commencement date"), the occupancy of the land regranted under sub-section (1) may be transferred by the occupant for agricultural purpose, and no previous sanction or no objection certificate from the collector or any other authority shall be necessary for such transfer. After such transfer, the land shall be continued to be held by such transferee occupant on new and impartiable tenure (Occupant Class II), in accordance with the provisions of the Code ;

[(b) Before the commencement date, if any such occupancy has already, without previous sanction or no objection certificate from the Collector or any other authority, been transferred by the occupant, for agricultural purpose, such transfer may be regularised on the production of registered instruments such as sale deed, gift deed, etc., as a proof thereof, for such transfer. After such regularisation, the occupancy of such land shall be held by such transferee occupant on new and impartiable tenure (Occupant Class II), in accordance with the provisions of the Code :]

Provided that, any such occupancy held on new and impartiable tenure (Occupant Class II) may, after the commencement date, be converted into old tenure (Occupant Class I) by the occupant by making payment of fifty per cent. of the amount of current market value of such land to the Government, and after such conversion, such land shall be held by the occupant as Occupant Class I, in accordance with the provisions of the Code :

Provided further that, if on the commencement date, any such occupancy has already, with the prior permission of the Collector or any other competent authority on payment of the appropriate amount as Nazarana, been transferred for non-agricultural use, such transfer of occupancy shall be deemed to have been made under the first proviso and the land shall be deemed to be held by the occupant as an Occupant Class I, in accordance with the provisions of the Code, with effect from the date of such transfer :

Provided also that, if on the commencement date, any such occupancy has already, without prior permission of the Collector or any other competent authority and without payment of the amount equal to fifty per cent. of the

current market value of such land, as Nazarana, been transferred for non-agricultural use, such transfer may be regularised on payment of an amount equal to fifty per cent. of the current market value of such land for non-agricultural use as Nazarana, and an amount equal to fifty per cent. of such Nazarana as a fine, and on such payment, the occupant shall hold the land as an Occupant Class I, in accordance with the provisions of the Code.

(4) Notwithstanding anything contained in sub-section (3), the occupancy of the Mahar watan land re-granted under sub-section (1), shall not be transferrable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may, by general or special order determine.]

6. *Where any watan land resumed under section 4 is held by an authorised holder, it shall be regranted to the authorised holder on the payment by him to the State Government of the occupancy price mentioned in section 5 and subject to the like conditions and consequences; and all the provisions of section 5 shall apply mutatis mutandis in relation to the regrant of the land under this section to the authorised holder as if he were the watandar.*

9. Eviction of unauthorised holder and regrant of watan land to him in certain circumstances and disposal of land not regranted.

(1) Where any watan land resumed under section 4 is in the possession of an unauthorised holder, such unauthorised holder shall be summarily evicted therefrom by the Collector in accordance with provisions of the Code :

Provided that where in the case of any unauthorised holder, the State Government is of opinion that in view of the investment made by such holder in the development of the land or in the non-agricultural use of the land or otherwise, the eviction of such holder from the land will involve undue hardship to him, it may direct the Collector to regrant the land to such holder on payment of such amount and subject to such terms and conditions as the State Government may determine and the Collector shall regrant the land to such holder accordingly.

(2) Watan land which is not regranted under sub-section (1) shall be disposed of in accordance with the provisions of the Code and the rules made thereunder applicable to the disposal of unoccupied unalienated land.”

13. Thus, the statutory scheme is such that after the watan land is resumed by the State Government under Section 4 of the Act and if it is held by an authorized holder, the same can be regranted to the authorized holder on payment of occupancy price as provided for in Section 5. On the contrary, if it is found that the watan land is in unauthorized possession of any holder, such unauthorized holder is be summarily evicted by the Collector under Section 9 of the Act of 1959. However, Proviso to Section 9(1) empowers the State Government to direct the

Collector to regrant the resumed land to unauthorized holder if a satisfaction is recorded that an investment is made by the unauthorized holder for development of the land or for non-agricultural use of the land and that eviction of such unauthorized holder would involve undue hardship to him. Thus under the statutory scheme, after resumption of the land under Section 4, it is required to be ascertained whether the land was in possession of authorized holder, in which case provisions of Sections 5 and 6 would apply. If on the other hand, the land is found to be in possession of an unauthorized holder, the provisions of Section 9 would apply. The Act does not recognize a concept where the land which is once regranted in favour of the authorized holder under Sections 5 and 6 can again be considered for the purpose of regrant to an unauthorized holder under Section 9. There is no dispute to the position that after coming into effect of the Act of 1959, the land was regranted to the original Watandar Mr. Baban Salve. There is a specific admission to this effect in paragraph 1 of the Petition. Thus regrant of land under Sections 5 and 6 of the Act of 1959 was completed in favour of the original Watandar, who was authorized holder of the land. Therefore, there is no question of any unauthorized holder being in possession of the land for the purpose of application of Section 9 of the Act. It is admitted position that Smt. Renubai Walve came in possession of the land subsequently by virtue of Agreement for Sale dated 26 January 1967 i.e. after regrant of the land under Sections 5 and 6 in favour of Mr. Baban Salve. Since the Act does not recognize the concept of more than one regrant, once in favour of authorized holder and again in favour of an unauthorized holder, there is no question of conducting any inquiry under Section 9 of the Act about incurring of any expenditure on development of the land by the unauthorized holder. In my view, therefore, provisions of Section 9 are wholly inapplicable to the present case.

14. The State Government has rightly appreciated this position while passing the order dated 19 July 2021. The order passed by the State Government does not suffer by any palpable error for this Court in exercise of jurisdiction under Article 227 of the Constitution of India. Time has come to draw curtains on long and unnecessary litigation that has ensued between the parties. I, therefore, do not find any merit in the Petition filed by the Petitioners. It is dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)

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This Judgment is corrected as per 'Speaking to Minutes' Order dated 14 December 2023.

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