

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

WRIT PETITION (WP) NO.7969 OF 2018

- 1) Hanumandas s/o Onkarmal Oza, ... (Org. Non-Applicant
No.1)
(Dead) thr. LR's
aged about 68 years, Occ Business, R/o
Mangrulpir, Tah. Mangrulpir Dist. Washim
- i) Smt. Shakuntala wd/o Hanumandas Oza,
aged about 71 years, Occ: Household, R/o
Magrulpur, District Washim.
- ii) Smt. Jyoti wd/o Pradeep Vyas,
aged about 49 years, Occ: Household,
R/o Railway Quarters, Kandiwal West,
Mumbai.
- iii) Smt. Jayshree w/o Satyanarayan Vyas,
aged about 48 years, Occ: Household,
R/o Himayat Nagar, Hyderabad, Telangana.
- iv) Smt. Harsha w/o Suraj Nagala,
aged about 45 years, Occ: Household,
R/o Shantipeth, Jalgaon.
- v) Smt. Sarita w/o Sandipkumar Vyas,
aged about 43 years, Occ: Household, R/o
Jawahar Road, Amravati.
- vi) Smt. Anupama w/o Chadrashekhhar Pandya,
aged about 41 years, Occ: Household,
R/o Radha Nagar, Indore.
- Vii) Shri Ashish s/o Hanumandas Oza,
aged about 36 years, Occ: Business, R/o
Mangrulpir, District Washim.

.... Petitioner(s)

// VERSUS //

- 1) The Additional Commissioner, Amravati Division,
Amravati,
- 2) ~~Kisan s/o Anantrao Ingale,~~ ... (Deleted vide Court's Order dt.24.08.2022)
~~aged about 55 years,~~ (Org.Applicant)
~~Occ: Agriculturist, R/o Shelu Bazar, Tahsil~~
~~Mangrulpir, District: Washim.~~
- 3) Vasant Rao s/o Madhav Rao Surve, ... (Org. Applicant No.2)
aged about 55 years,
Occ: Agriculturist, R/o Lathi, Tahsil Mangrulpir,
District Washim.

... Respondent(s)

Shri S.N. Tapadia, Advocate for the Petitioner

Ms Shamsi Haider, AGP for the Respondent No.1/State

Shri D.L. Dharmadhikari and Shri P.S. Tidke, Advocates for the respondent No.3.

CORAM : ANIL S. KILOR, J.

DATED : 27th March 2023

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The order dated 24.09.2018 passed by the Additional Commissioner, Amravati, Division Amravati, setting aside the orders of Additional Collector, Washim dated 24.11.2011 and Sub Divisional Officer (SDO) dated 02.08.2011, rejecting the

application filed by the respondent No.2-Kishan Anantrao Ingale for declaring the sale deed dated 06.05.2002 as illegal and void, in view of the Section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947(for short “the Act of 1947”), in under challenge in the present matter.

4. The land in question is admeasuring 40 Are of Survey No.44/2 situated at Shelu Khurd, was transferred by the respondent No.3 in favour of the petitioner vide sale deed dated 06.05.2002. Thereafter, the State of Maharashtra granted permission to the Ashram School on the same land and accordingly, as per the case of the petitioner, the petitioner is running the said the Ashram school.

5. It is further case of the petitioner that on 24.08.2007, the complaint was filed by stranger under Section 8 of the Act of 1947, which was dismissed in default.

6. Thereafter, another application came to be filed by one Kisan Anantrao Ingale on 22.08.2008, which was dismissed by the SDO vide order dated 02.05.2011.

7. The applicant Kisan A. Ingale, the original applicant, carried an appeal before the Additional Collector, Washim who allowed the appeal vide order dated 24.11.2011 and thereby cancelled the sale deed dated 06.05.2002 executed by the respondent No.3 in favour of the petitioner.

8. Feeling aggrieved by the same, the petitioner filed revision application before the Additional Commissioner which came to be rejected vide order dated 24.09.2018, which is the subject matter of the present petition.

9. On perusal of the record, it is evident that while rejecting the appeal preferred by the petitioner, the commissioner has recorded the following reasons:

“The land mentioned in sale deed as Agricultural land. The Order of Regularization of Non-Agriculture is of year 2007.

There is no solid evidence to show that the School was on the said land before the sale or even at the time of sale deed.

There is no evidence as to whether there was any construction of the said land of a School building or otherwise, in good condition or dilapidated or claimed. Therefore, it does not amount to land being Non-Agricultural.”

10. It is the case of the petitioner that since the petitioner is running the Ashram School over the land in dispute, under Section 8A of the Act of 1947, an exemption is granted, from applicability of Section 8 of the Act of 1947. The learned counsel for the petitioner has pointed out that as per the Government Notification dated 05.04.1957, which was superseded by Government Notification dated 14.04.1959, it is declared by the Government that the Provisions of Sections 7, 8 and 8 AA of the Act of 1947 shall not apply to the transfer of any land for the purposes of construction of Dharmashala, Schools, Colleges, Public Dispensary and Public Library. It is further submitted that the SDO, after considering the relevant provisions and as there was an inordinate delay in filing the application, rightly rejected the application.

11. On the other hand, the learned counsel for the respondent No.3 vendor supports that the impugned order passed by the Additional Commissioner and submits that the petitioner has suppressed the material fact that the school known as “Swami

Vivekanand Adivasi Ashram Shala”, is not on the land in dispute but it is at a distance of 26 k.m. from the land in dispute.

12. He further submits that the land was not transferred for the purpose of Ashram School but it was transferred as agricultural land and therefore, exemption granted under Section 8A of the Act of 1947, will not apply to this case.

13. The learned AGP reiterates the submission of the learned counsel for the respondent No.3 and submits that the Additional Collector as well as the Additional Commissioner have rightly allowed the application filed by Kisan A. Ingale.

14. In the light of the rival contentions of the parties, I have perused the record and the impugned order dated 24.09.2018.

15. From the reasoning recorded by the Additional Commissioner, it is apparent on the face of the order that the Additional Commissioner has not at all considered the various aspects as raised by both the parties.

16. There are no observations as regards, whether the exemption under Section 8A of the Act of 1947 will apply to the present case and whether there is a school on the land in question, the delay in filing the application and as regards filing of it at the instance of third person.

17. Hence, I am of the opinion that by keeping all the points open, the matter needs to be remanded back to the Additional Commissioner, Amravati Division, Amravati, for deciding the same afresh. Accordingly, I pass the following order:

(i) The writ petition is partly **allowed**.

(ii) The order dated 24.09.2018 passed by Additional Commissioner, Amravati in Revision No.155/PFG/Shelu Kd./2011-12, is hereby quashed and set aside.

(iii) The revision is remanded back to the Additional Commissioner to decide the same afresh, after giving sufficient opportunities to the parties.

18. It is needless to mention that all the points are kept open.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]