



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10451 OF 2019

- 1) Rajanibai w/o Kamlakarrao Deshmukh
Age : 68 Years, Occu. Household,
- 2) Purushottam Laxmanrao Deshmukh,
Age : 77 Years, Occu. Pensioner,
- 3) Balkrushna Purushottam Deshmukh (dead)
Through his Legal Heir,
Bhagyashri w/o Balkrushna Deshmukh,
Age : 42 Years, Occu. Household,

All R/o. Kasba Peth, Kalamb,
Tq. Kalamb, Dist. Osmanabad.

... Petitioners
[Orig. Respondents]

Versus

- 1) Vitthal Sopan Gunjal,
Died through L.Rs.
Bari Vitthal Gunjal,
Age : 55 Years, Occu. Agriculture,
- 2) Dnyanoba Sopan Gunjal,
Age : 58 Years, Occu. Agriculture,
- 3) Namdev Sopan Gunjal (Dead)
Through his Legal Heir,
Navnath Namdev Gunjal
Age : 48 Years, Occu. Agriculture,
- 4) Govind Sopan Gunjal (Dead)
Through his Legal Heir
Mahadev Govind Gunjal,
Age : 50 Years, Occu. Agriculture,
- 5) Bapurao Sopan Gunjal (Dead)
Through his Legal Heir
Ashruba Bapurao Gunjal
Age : 50 Years, Occu. Agriculture,

6) Rajaram Sopan Gunjal (Dead)
Through Its L.Rs.
Ashok Rajaram Gunjal,
Age 52 years, Occ. Agriculture,

All R/o. Kasba Peth, Kalamb,
Tq. Kalamb, Dist. Osmanabad.

All R.Nos. 1 to 6-
Through their Power of Attorney
Vijay Dnyanoba Gunjal,
Age : Major, Occu. Agril.,
All R/o. Kasba Peth, Kalamb,
Tq. Kalamb, Dist. Osmanabad.

... Respondents
[Orig. Appellants]

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Mr. J. M. Murkute, Advocate for the Petitioners.
Mr. D. R. Bhadekar, Advocate for the Respondents.

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 02.08.2024

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, the matter is taken up for final hearing at admission stage.

2. Petitioners-original respondents, by invoking writ jurisdiction under Articles 226 and 227 of the Constitution of India, are hereby challenging the judgment and order dated 14.12.2018 passed by learned Additional Divisional Commissioner, Aurangabad in Appeal

No. Mashaka/Inam/05/2017 arising out of the judgment and order of Collector, Osmanabad passed under the Hyderabad Abolition of Inams and Cash Grants Act, 1954 in Appeal No. 2011/GA/LR/Desk-2/CR-146/661 dated 06.12.2016. In the present petition, following prayers are raised:

- A. The Writ Petition may kindly be allowed.
- B. By issuing writ of certiorari or any other appropriate writ, order or direction in like nature, judgment and order dated 14/12/2018 passed by learned Additional Divisional Commissioner, Aurangabad in Appeal No. MASHAKA/INAM/05/2017 may kindly be quashed and set aside;
- C. By issuing writ of certiorari or any other appropriate writ, order or direction in like nature, the appeal filed by respondents before Learned Collector, Osmanabad in File No.2011/GA/LR/DESK-2/CR-146/661 may kindly be dismissed;
- D. Pending hearing and final disposal of this Writ Petition, operation and effect of judgment and order dated 14/12/2018 passed by Learned Additional Divisional Commissioner, Aurangabad in Appeal No. MASHAKA/INAM/05/2017 may kindly be stayed.

E. Pending hearing and final disposal of this Writ Petition, the further proceeding initiated before Learned Dy. Collector (General Administration), Osmanabad in pursuance of the order of remand dated 14/12/2018 passed by Learned Additional Divisional Commissioner, Aurangabad in Appeal No. MASHAKA/INAM/05/2017 may kindly be stayed;

F. Ad-interim relief in terms of prayer clause 'C' & 'D' may kindly be granted.

3. Petitioners have averred that lands bearing survey nos. 74 and 75 situated at Kalamb, District Osmanabad were originally owned and possessed by late Thakur Kisanrao Deshmukh in the capacity of Inamdar. Around 1950, both lands were handed over for cultivation to Sopan and Babu. Shortly thereafter, i.e. after a year or so, said Sopan and Babu surrendered lands back to the original owner/Inamdar. However, based on the cultivation of lands while it was in possession of Sopan and Babu, their names came to be entered in revenue record in the year 1950 and in consequence to it, provisional declaration of tenancy was also made in their favour.

4. On getting knowledge of the same, Yogiraj, Kamlakar and Laxmanrao (legal heirs of late Kisanrao) initiated separate proceedings praying to cancel the provisional declaration. Inquiry was

conducted by the then Tenancy Tribunal by invoking provisions under Section 38E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 [Hyderabad Tenancy Act], and by order dated 09.03.1960 [Exhibit A], the learned Tribunal and Special Tahsildar, Latur was pleased to cancel the declaration in favour of Sopan and Babu regarding land survey nos. 74 and 75. An appeal came to be preferred against said order of Special Tahsildar (Tribunal) before Deputy Collector (Land Reforms) vide Tenancy Appeal/Kalamb/710/38E/62, however, same came to be dismissed by order dated 06.12.1962 and communication to that extent was made to that extent to Sopan vide Exhibit B.

5. In the above backdrop, learned counsel would point out that there was revenue record showing that forefathers of present petitioners were holding the lands in the capacity of Inamdar. After partition of lands, entries were taken in the name of present petitioners and as such, they are enjoining peaceful possession of the property. However, petitioners came to be served with show cause notice in terms of the provisions of Section 6(3) of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 [hereinafter referred to as "the Act of 1954"] and inquiry was conducted by Deputy Collector (LR), Osmanabad. After taking into account the relevant entries in the

revenue record, by order dated 31.10.1985, possession of petitioners was notified on 01.07.1960 itself and they were regranted tenancy rights under the provision of Section 6(1) of the Act of 1954. They were directed to deposit six times the land revenue towards occupancy price and even to execute agreement bond.

6. It is further averred and asserted that petitioners are in continued possession and enjoyment of the property without any interruption. Present respondents or their forefathers had no concern whatsoever, particularly after cancellation of declaration of tenancy. That, such respondents initiated proceedings again on 02.08.2009 before Tahsildar, Kalamb for issuance of ownership certificate in terms of Section 38E of the Hyderabad Tenancy Act. Said application was rejected by the Tahsildar on 08.12.2009. Therefore, it was not open for the respondents to put up claim for issuance of ownership certificate. That, their attempt to initiate civil proceedings also failed up to the Court of District Judge, Osmanabad seeking relief of declaration and injunction.

7. However, according to learned counsel for the petitioners, on 05.12.2009 further attempts were taken by the respondents to prefer appeal before learned Collector, Osmanabad by invoking provisions of

Section 2A(2)(i) r/w Section 6(1) of the Act of 1954, surprisingly challenging the order of Deputy Collector dated 31.10.1985, i.e. after a gap of more than 24 years. That, learned Collector was pleased to condone the delay and by order dated 06.12.2016, rejected the said appeal by holding that present respondents and their forefathers had surrendered all rights of tenancy and the provisional declaration granted in favour of respondents was also cancelled.

8. Said order of learned Collector dated 06.12.2016 was questioned by present respondents by filing appeal before the Additional Divisional Commissioner, Aurangabad, who has partly allowed the appeal by judgment and order dated 14.12.2018, thereby remanding the matter back to the Deputy Collector with further specific direction to the Deputy Collector to hear both parties afresh. Said judgment and order of Additional Divisional Commissioner is now subject matter of instant writ petition.

9. Learned counsel for the petitioners put forth the grounds questioning the impugned judgment and order that, learned Additional Divisional Commissioner failed to exercise jurisdiction in judicious manner. Secondly, no appeal was maintainable before the Divisional Commissioner, Aurangabad, that too, without condoning

the immense delay. Thirdly, appropriate forum and the competent authority i.e. Tahsildar (Tribunal) had already, after detail inquiry, concluded that forefathers of present respondents had already surrendered tenancy over land survey nos. 74 and 75 and in consequence to it, the provisional declaration in their favour was cancelled. The appeal against the same was also dismissed by Deputy Collector. That, matter had attained finality at this stage itself and it was not open for the respondents to re-open the proceedings. No case was made out for interference and moreover, to remand the matter back to the file of the Deputy Collector.

10. In answer to above, Mr. Bhadekar, learned counsel for respondents, took objection to the initiation of proceedings by present petitioners before Special Tribunal/Tahsildar under the provisions of Hyderabad Tenancy of Agricultural Lands Act, 1950. According to him, issue before the parties was pertaining to Inam land which admittedly stood abolished. He pointed out that petitioners had challenged provisional declaration issued in favour of present respondents in 1958 under Section 38-E of Hyderabad Tenancy and Agricultural Lands Act, 1950. He pointed out that in view of judgment of this Court in ***Bharatlal v Kondia*** 2011 (3) Mh.LJ 380, there was no provision or remedy to challenge the above provisional declaration.

11. His second ground of challenge is that the Special Tribunal opined that there is surrender of tenancy by Babu, but the requirement of foundation or basis of proceedings under Section 19 regarding surrender by Sopan is not properly appreciated. Consequently, order dated 09.03.1960 passed by Special Tribunal is in absence of cogent and reliable evidence as, according to him, order is silent regarding referring to any record. That, there was no evidence before the Special Tribunal on the point of surrender by Sopan. He also questioned the jurisdiction of Special Tribunal as lands were admittedly Inam lands and were to be governed by provisions of Hyderabad Abolition of Inams and Cash Grants Act, 1954, which came into effect after notification of 20.07.1955. He pointed out that after abolition, Inam lands automatically fell in ownership and possession of Government, though Government had authority to re-grant. He would strenuously submit that order of 31.10.1985 passed by Deputy Collector was behind the back of respondents and is therefore virtually and practically *ex parte*, thereby denying principles of natural justice. He also criticized the order passed by Deputy Collector on the point of preliminary jurisdiction and observations of Deputy Collector that proceedings were hit by *res judicata*.

12. For all above reasons he contested the instant writ petition and supported the order of Additional Divisional Commissioner impugned herein regarding remanding matter back to the Deputy Collector for fresh consideration by giving opportunity to both sides to assert and prove their claims.

13. Heard each of the side on 19.07.2024 and the matter was reserved for judgment. While studying the papers, this Court entertained certain queries about documentary evidence which was not finding place and petitioner herein had merely placed on record orders passed by authorities like Special Tribunal, communication received from Deputy Collector, orders passed by Collector and Additional Divisional Commissioner. It was also noticed that petitioners had made wrong prayer by virtue of clause (C) seeking dismissal of the order which was *prima facie* in petitioners' favour itself. Therefore, this Court was constrained to list the matter for queries and further clarification today i.e. on 02.08.2024. Both learned counsel, Mr. Murkute as well as Mr. Bhadekar and their respective parties responded and appeared before this Court. Learned counsel for petitioners admitted that original record and documents supporting his contention are not annexed with the petition. Even learned counsel Mr. Bhadekar was not equipped with the original

Gazette issued by Government conferring powers on Deputy Collector to deal with and decide proceedings of tenancy on Inam lands. According to him, such authority was a designated authority to deal with the matters of Inam land. There are said to be amendments in the previous enactment of Hyderabad Abolition of Inams and Cash Grants Act, 1954. Such material is also not before the Court.

14. Today, on queries to the above extent being raised, both learned counsels agreed that they would approach Deputy Collector, Land Reforms/Inam land, whom both learned counsel unanimously agreed to be the appropriate authority to decide the issues arising amongst themselves and to whom even Additional Divisional Commissioner, whose order is impugned herein, had already remanded the matter for fresh consideration by giving opportunities to both sides to agitate their claims afresh with necessary documents in support of their contentions. However, they both requested that Deputy Collector, Land Reforms/Inam Land, Dharashiv shall not get influenced by observations of this Court or even the observations of Additional Divisional Commissioner. They also prayed that matter may be directed to be dealt and decided expeditiously i.e. within stipulated period.

15. Both learned counsel, in presence of their respective parties, requested to fix particular date for appearance before Deputy Collector, Land Reforms/Inam Land, Dharashiv who is reported to be competent authority to deal and decide the issue under consideration. By consent, both agreed to appear before such forum on 30.08.2024 for fresh consideration of the matter.

16. In view of above discussion, both parties are directed to remain present before the Deputy Collector, Land Reforms/Inam Lands, Dharashiv on 30.08.2024. Both parties are at liberty to adduce evidence afresh to substantiate their case. Learned Deputy Collector, Land Reforms/Inam Lands, Dharashiv shall conduct and conclude proceedings as far as possible in a stipulated period of six months from the date of appearance of the parties. It is made clear that said authority shall not get influenced by observations made by either this Court or by the learned Additional Divisional Commissioner and said authority shall independently exercise its mind and jurisdiction and decide the matter on its own merits. Writ Petition is disposed of in above terms. Rule discharged.

[ABHAY S. WAGHWASE, J.]