

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12082 OF 2019

Venkat s/o Sonnappa Sagar
Age 76 year, Occu. Agriculture,
R/o. Gavsud, Tq. & Dist. Osmanabad ...Petitioner

Versus

1. Kailas Guru Nutan Puri
Age 40 years Occu.
R/o. Ganesh Math Osmanabad
Tq. And Dist. Osmanabad.
2. The Collector Osmanabad
3. Maharashtra Revenue Tribunal
Aurangabad. Tq & Dist. Aurangabad. ...Respondents

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Mr. G.N. Chincholkar, Advocate for Petitioner.
Mr. Santosh N. Patne, Advocate for the Respondent No.1.
Mrs. R.R. Tandale, A.G.P. for Respondent Nos.2 & 3.

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CORAM : S.G. MEHARE, J.
RESERVED ON : 09.01.2024
PRONOUNCED ON : 30.01.2024

JUDGMENT :-

1. The petitioner has made the following prayers :
 - "A) This writ petition may kindly be allowed.
 - B) Notices may be issued to the respondents and Record and proceedings may kindly be called for.
 - C) By passing an appropriate writ, order or directions to quash and set aside the judgment and order dated 10.7.2019 passed by Member(Adm.) Maharashtra Revenue Tribunal Aurangabad in Case no. 25/B/2018 Osmanabad.

D) By passing an appropriate writ, order or directions to quash and set aside the judgment and order dated 30.4.2016 passed by S.D.O. alias Deputy Collector, (Atiyat) Osmanabad in Case no. 2011/ Atiyat/Kavi-640.

E) Alternatively petitioner is praying to remand the matter back by setting aside the judgment and order dated 10.7.2019 passed by Member(Adm.) Maharashtra Revenue Tribunal Aurangabad in Case no. 25/B/2018 Osmanabad arising out of judgment and order dated 30.4.2016 passed by S.D.O. cum Deputy Collector, (Atiyat) Osmanabad in Case no. 2011/ Atiyat /Kavi-640 and it may be decided after hearing both side afresh.

F) Pending hearing and final disposal of this writ petition the further impugned the judgment and order dated 10.7.2019 passed by Member(Adm.) Maharashtra Revenue Tribunal Aurangabad in Case no. 25/B/2018 Osmanabad arising out of judgment and order dated 30.4.2016 passed by S.D.O. cum Deputy Collector, (Atiyat) Osmanabad in Case no. 2011/ Atiyat /Kavi-640 and judgment and order dated 17.11.2017 passed by Add. Collector, Osmanabad in case no. 2017/Sapra/ Dharmik/ Kavi. 466 may kindly be stayed

G) Any other suitable and equitable relief may pleased be granted in favour of the petitioner."

2. Heard learned counsel for the petitioner, learned A.G.P. and learned counsel for the respondent no.1.

3. The dispute is about the field survey nos.468 and 469, situated at Osmanabad. The petitioner has a case that the previous Mathpati Nutan Puri Guru Dhanraj inducted him into the said fields and he has been cultivating the suit fields since prior to 1973 till the date of filing of this writ petition. One Apparao Bhosale had filed a

Civil Suit No.4/1973 against the previous Mathpati Nutan Puri Guru Dhanraj Puri. The said suit was decreed against Mathpati Nutan Puri. He was a tenant of the suit fields. That the suit fields were for the service of Ganesh Math.

4. Respondent no.1 had filed an application before the Sub-Divisional Officer/Deputy Collector (Atiyat), Osmanabad on 18.06.2015 and claimed that he was the disciple (chela) of deceased Guru Nutan Puri. The deceased Guru Nutan Puri adopted him, therefore, he inherited the suit fields. Before the Sub-Divisional Officer, he produced the death certificate of Inamdar, Adoption Deed and Virasat Certificate i.e. Muntakhab along with delay condonation application. The Sub-Divisional Officer cum Deputy Collector published the proclamation under Section 8 of Hyderabad Atiyat Inquiries Act 1952 ('the Act 1952' for short) on 18.02.2016 and invited the objections within six weeks from the public or the person having interest. The objections were not received; hence, respondent no.1 by the order dated 30.04.2016, was held the heir of Guru Nutan Guru Dhanraj on the basis of adoption deed. The petitioner impugned the said order in appeal before the Additional Collector, Aurangabad. He contended that the Sub-Divisional Officer passed the order without the adoption deed on record. The Collector observed that the objections were not received within six weeks and a public notice was published in Government Gazette and dismissed the

appeal. The petitioner took the said order before the Maharashtra Revenue Tribunal, Aurangabad by Revision No.25/B/2018. The Maharashtra Revenue Tribunal also dismissed the revision on 10.07.2019.

5. Learned counsel for the petitioner has vehemently argued that the delay of more than three years could not be condoned if the application of virasat is filed. It is an outer limit for condonation of delay as provided under Rule 12(1)(d) of Hyderabad Atiyat Inquiries Rules, 1952. ('Rules 1952' for short). The Deputy Collector had powers to condone the delay upto six months only. It was a property given for service of the temple. The Government has a direct control over it. The Sub-Divisional Officer ought not to have condoned the delay of 23 years. The authorities have illegally held that the petitioner has no concern or interest in the suit land. He prayed to allow the writ petition.

6. Per contra, learned counsel for respondent no.1 Mr. S.N. Patne has vehemently argued that the petitioner has no concern with the suit fields. Hence, the concerned authorities have correctly held that he has no locus to impugn the order of the Sub-Divisional Officer. He would submit that the suit lands are still used for the service of the temple. The respondent no.1 is the successor of the predecessor in title Nutan Puri Maharaj. The suit fields were never misused. Those are used for the purpose for which the Muntakhab was granted. Since

the petitioner has no locus, the petition deserves to be dismissed on that sole ground. The adoption deed was between the adoptee and adopter. A third party like the petitioner has no locus to impugn its legality and validity. There is no bar to condone the delay of more than the period prescribed under Rule 12 of Rules 1952. The respondent no.1 is managing, supervising and protecting the suit fields for the use and benefit of the temple. The respondent no.1 has filed from time to time a petition before the Sub-Divisional Officer for eviction. However, the petitioner is filing false and fraudulent petitions like present petition. The claim of the petitioner that he is cultivating the suit fields on batai basis is false. No lease was made by the original guru in favour of the petitioner. The petitioner has unduly entered his name in the revenue record with a motive to grab or confiscate the suit property. The Act 1952 is not applicable to the present matter as well as to grant the succession i.e. virasat. The suit lands were the service inam land i.e. Madadmash or Khidmatmash. Both mashes are only for religious purpose. Therefore, the Hyderabad Tenancy and Agricultural Lands Act, 1950 ('the Act 1950' for short) is not applicable to such lands. Under Section 102(A)(C) of the Act, 1950, such properties are exempted from tenancy rights. The service inam properties are also free from other provisions of Jehangir Inam or Abolition of Inam Act or Hyderabad Inam Abolition and Cash Grants Act 1954 ('the Act 1954' for short). The petitioner never

acquired the title of the suit fields but he is unnecessarily claiming to be the owner of the suit fields. His arguments reveals that the Civil Court has protected the possession of the petitioner. He supported the impugned judgments and orders and prayed to dismiss the petition.

7. Learned A.G.P. supported the impugned orders.

8. The following points arise for determination of this Court:

(I) Does the petitioner have a locus to object to the succession claim of respondent No. 1?

(II) Can the Deputy Collector condone the delay in the claim of succession for more than six months?

(III) Did the Atiyat Court have the power to determine the claim of succession of respondent no.1?

As to Point No.(I) :

9. Admittedly, the petitioner had not raised the objection to the claim of respondent No.1 for succession after the objections were invited by the Gazette notification. The petitioner learnt about the order of the S.D.O. granting the virasat certificate and preferred the appeal before the Collector.

10. The question is who can raise objections to the application for succession under the Act 1952.

11. Rule 8 sub-rule (3) provides that the Atiyat Inquiring Officer has to invite the objections by citations to be published in the Official Gazette, by affixture of a copy thereof to the Notice Board in

the concerned Tahsil Office, and in such other manner as may be considered necessary; in respect of the applicant's claim, within six weeks from the date of such publication. The Rules 1952 and Act 1952 are silent about who may raise the objections. The normal rule is that the person raising objection must have an interest in the dispute. No third person is generally allowed to object to the rights of the parties. The Rules and the Act are silent on who shall be the objector to such proceeding. Section 3-A of the Act 1952 provides for the inquiries into the claim of succession, or any right, title or interest therein and matters ancillary thereto. The proviso to Section 3-A only refers to the claim of succession and does not refer to another dispute. However, sub-section 1 of Section 3-A empowers the Atiyat Court to inquire into the claims of succession arising out of the Atiyat grants. Section 3-A of the Act 1952 would show that it is only in the nature of an enquiry into the question of succession. It provides for an enquiry as to any right, title or interest of the person claiming by an application. Rule 9 of the Rules 1952 provides that on the expiry of the period specified under Rule 8, the Court shall conduct an inquiry into the applicant's claim, treating the opponents, if any, and the Government as respondents. This rule speaks about the objector. However, it does not restrict who should be an objector. It mentions that the Government should be treated as the opponent. That means the claim of succession could not be accepted as the objections were

not received. At least the Government should be treated as the opponent. Here, the petitioner had some interest in the suit fields. He claimed that he was a bataidar of the suit fields. Considering the nature of the inquiry to be made by the Court on the claim of succession, the Court is of the opinion that in the facts and circumstances of the case, the petitioner had the locus to oppose respondent No.1's application.

As to Point No.(II) :

12. Rule 3 of the Rules 1952 provides that the claimant shall submit an application for succession within three months of the holder's death. Rule 12 of the Rules 1952 provides for the power of condonation of delay by various officers. The first application was moved before the Deputy Collector. Under sub-rule 2 of Rule 12, the S.D.O. has the power to condone the delay of up to six months only. Admittedly, Nutan Puri Maharaj, the holder, died in 1988, and the petition before the Sub-Divisional Officer was filed in 2011. Respondent No.1 had explained the delay that when Nutan Puri Maharaj died, he was minor and four years old. After he attained the majority, he filed a claim for succession. If the submission of respondent no.1 is considered that he was a minor and filed an application after attaining the majority, he ought to have filed the application for succession within three months of attaining the majority. If the age of the petitioner is considered as per his claim

that he was four years old in 1988, he must have attained the majority around the year 2002.

13. Rule 12 of the Rules 1952 provides the powers of various authorities/courts to condone delay. The S.D.O had powers to condone the delay up to six months only. However, he condoned the delay for more than six months without quoting the reason. When a statute describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all. No Court can travel beyond the powers conferred on it under a statute. The Court on its own has to examine whether the petitions are within limitation and what are its powers. The S.D.O. allowed respondent No.1's claim only on the ground that objections were not received, without examining his powers to condone delay. The appellate Authorities also did not pay heed to the above Rules about the powers of the S.D.O. No Court can travel beyond the provisions of law. However, the S.D.O. committed illegality by condoning the delay of more than six months and traveled beyond the statutory provisions. Rule 12 (2) is mandatory. The S.D.O. had no powers to condone the delay of more than six months.

As to Point No.(III) :

14. Sub-section 2 of Section 12 of the Act 1952 is specific that in the course of any inquiry as to claims to succession, any dispute arises involving questions of succession, legitimacy, divorce or

other questions of personal law, the Atiyat Court shall direct the parties to get the dispute decided in the competent Civil Court. On the production of the final decision of the Civil Court, the Atiyat Court shall give effect to such decision. In simple words, if any dispute arises involving the question of succession, the Atiyat Court shall direct the parties to get the dispute decided in the competent Civil Court and refrain from passing any order of succession. In view of the dispute raised by the petitioner, the S.D.O. could not have exercised his powers under Section 12 of the Act of 1952.

15. It is apparent from the impugned orders that the questions regarding the dispute of the succession, the limitation for filing such an application, and the powers of the Courts to condone the delay have not been dealt with by any of the Courts in accordance with the law and Rules. The Courts ought to have considered these material issues. The objections raised by the petitioner were not before the first Court, that is S.D.O., and respondent No. 1 had no occasion to contest these issues on facts. Therefore, this is a fit case to remit the matter to the S.D.O. for fresh disposal.

16. The discussion made above leads this Court to pass the following order :

ORDER

(I) Writ Petition is allowed.

(II) The order of Sub-Divisional Officer/Deputy Collector (Atiyat), Osmanabad in Case No.2011/Atiyat/Kavi-640 dated 30.04.2016, the orders of the Additional Collector, Osmanabad in case No. 2017/sapr/Dharmik/kavi-466 dated 17.11.2017 and Maharashtra Revenue Tribunal, Aurangabad in Case No.25/B/2018 Osmanabad stand quashed and set aside.

(III) The matter is remitted to the Sub-Divisional Officer, Osmanabad, for deciding it afresh by giving opportunities to the petitioner and respondent No.1 in view of Section 12 sub-section (2) of the Hyderabad Atiyat Inquiries Act, 1952 and Rule 12 (2) of the Hyderabad Atiyat Inquiries Rules, 1952.

(IV) Both parties should appear before the Sub-Divisional Officer, Osmanabad on 08.02.2024.

(V) The Sub-Divisional Officer shall complete the inquiry within eight months from the date of receipt of this order.

(S.G. MEHARE, J.)