

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5025 OF 1991
WITH
INTERIM APPLICATION NO.1300 OF 2025

Takia Hajaratbaba Ratan
Maneksha Kadri and Turvat ... Petitioner

V/s.

Tukaram Naru Korde, since
deceased through LR's & Ors. ... Respondents

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.04.04
17:17:21 +0530

Dr. Uday P. Warunjikar with Mr. Sumit Kale and Ms.
Gargi Warunjikar for the applicant/petitioner.

Mr. Sunil G. Karandikar i/by Mr. Rushikesh C. Barge for
respondent Nos.1 to 5.

Ms. Priyanka B. Chavan, AGP for respondent No.6-
State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 4, 2025

P.C.:

Interim Application No.1300 of 2025:

1. For the reasons stated therein, the interim application is
allowed in terms of prayer clause (a).

Writ Petition No.5025 of 1991:

2. Leave to amend to bring heirs and legal representatives of
respondent No.1 on record.

3. Mr. Barge, learned Advocate waives service for newly impleaded heirs and legal representatives of respondent No.1(b) & 1(c).
4. Challenge in the present writ petition under Article 227 of the Constitution of India is to the legality and propriety of the order dated 23rd October 1990 passed by the Sub-Divisional Officer, Mahabaleshwar in Tenancy Application No.10 of 1984, whereby the petitioner's application seeking exemption certificate under Section 88B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("the said Act") came to be rejected.
5. The subject-matter of the said application pertains to Survey No. 772/1 admeasuring half western portion of 75 Ares situated within the jurisdiction of the Authority.
6. It is pertinent to note that earlier, in Second Appeal No.362 of 1963, this Court had recorded a categorical finding that the earlier certificate purportedly issued under Section 88B of the said Act was invalid. Consequently, the petitioner, in order to remedy the defect, preferred a fresh application under Section 88B on 15th November 1985. The said application was duly contested by respondent Nos.1 and 2 by filing a reply, and the Sub-Divisional Officer recorded evidence of the petitioner and its witnesses, as well as that of respondent No.4. Upon consideration of the material before him, the Sub-Divisional Officer, by the impugned order, rejected the petitioner's claim, leading to the institution of the present writ petition.

7. Upon perusal of the impugned order, it is revealed that the primary reason assigned by the Authority for rejecting the application was the alleged lack of material to demonstrate appropriation of the income derived by the Trust, as contemplated by the proviso to Section 88B(1)(b) of the said Act.

8. Shri Warunjikar, learned Advocate for the petitioner, submitted that in the absence of any material produced by the respondents indicating that the Trust had any income other than agricultural income, and particularly when the tenant had admitted non-payment of rent, the Authority's reliance on the requirement of appropriation of income was misplaced. He submitted that the Authority ought to have considered the substance of the matter and not have rejected the application on a hyper-technical ground.

9. Per contra, Shri Karandikar, learned Advocate appearing for respondent Nos.1 and 2, placed reliance on the judgment of a coordinate Bench of this Court in *Kondiba Laxman Hanmar v. Krishnarao Anandrao Dalavi* reported in 2004 (4) Mh.L.J. 324. He submitted that the entitlement of a Trust to obtain an exemption certificate under Section 88B must be reckoned as on 1st April 1957, and that the inquiry ought to have been directed to the status of the Trust as on that date, rather than on subsequent events.

10. On a careful consideration of the rival submissions and on perusal of the material on record, it appears that the Authority focused its inquiry predominantly on the aspect of appropriation of

income by the Trust without adverting to the crucial requirement of determining the Trust's eligibility with reference to the relevant date, viz. 1st April 1957. The law laid down by this Court in *Kondiba Laxman Hanmar* (supra) leaves no manner of doubt that it is the position prevailing as on 1st April 1957 which must form the fulcrum of the inquiry under Section 88B.

11. In the facts of the present case, it is manifest that the Authority committed a material error in law by misdirecting itself in the conduct of the inquiry. The Authority ought to have adjudicated upon the entitlement of the Trust to claim exemption by reference to its status as on 1st April 1957, and not merely upon the quantum or appropriation of income at a subsequent point of time. The impugned order, therefore, cannot be sustained and deserves to be set aside.

12. In the aforesaid circumstances, it would be in the interests of justice to remit the matter to the Sub-Divisional Officer, Mahabaleshwar for a fresh decision. Consequently, the impugned order dated 23rd October 1990 passed by the Sub-Divisional Officer, Mahabaleshwar is quashed and set aside.

13. The proceedings are remitted back to the Sub-Divisional Officer, Mahabaleshwar for a de novo consideration in accordance with law. The Sub-Divisional Officer shall permit both parties to adduce fresh evidence, oral and documentary, in support of their respective contentions, and thereafter, shall decide the matter afresh uninfluenced by any observations made in the earlier proceedings.

14. The Sub-Divisional Officer shall endeavour to conclude the proceedings as expeditiously as possible and preferably within a period of six months from the date of receipt of this order.

15. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)