



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6984 OF 2019

CHITALE AGRICULTURAL PRODUCTS LIMITED)
A company incorporated under the provisions of the)
Companies Act, 1913 and deemed to be incorporated)
under the provisions of the Companies Act, 1956 and)
thereafter the Companies Act, 2013, having its)
registered office at Patuck Press Compound, Shravan)
Yeshwant Chowk, Next to Kalachowky Police Station,)
Cotton Green, Mumbai - 400 033.) **... Petitioner.**

Versus

1. STATE OF MAHARASHTRA,)
Through Minister Of Revenue And Forest,)
Government of Maharashtra, Mantralaya,)
Mumbai - 400 021.)
2. NANDKUMAR VASANT DESHPANDE)
3. JAYANT VASANT DESHPANDE)
4. PREMATA RAMCHANDRA DESHPANDE)
5. USHA GAJANAND SAIGAONKAR)
All adults Indian inhabitants, joined in their)
capacity as heirs and legal representatives of)
Vasant Ramchandra Deshpande (since deceased),)
having their address at Natepute, Taluka:)
Malshiras, District: Solapur.)
6. SINDHU BALKRUSHNA)
7. RAMESH ALIAS NARENDRA BALKRUSHNA)
DESHPANDE)
8. SURESH ALIAS SURENDRA BALKRUSHNA)
DESHPANDE)
9. UMESH BALKRUSHNA DESHPANDE)

10. GANESH BALKRUSHNA DESHP ANDE)
All adults Indian inhabitants, having their address)
at Natepute, Taluka: Malshiras, District: Solapur.)
11. THE DISTRICT COLLECTOR, SOLAPUR)
Having his office at Collectorate Compound,)
SiddheshwarPeth, Solapur 413 003)
12. THE ADDITIONAL COMMISSIONER, PUNE)
DIVISION, PUNE)
Having his office at Pune Camp, Pune 411001)
13. THE SUB-DIVISIONAL OFFICER, PANDHARPUR)
Having his office at Malshiras Division,)
Taluka: Akluj, Solapur)
14. MAHARASHTRA STATE FARMING CORPORATION)
LIMITED, A Government of Maharashtra)
Undertaking having their registered office at 270,)
Bhamburda, Senapati Bapat Road, Pune 411016)
15. THE TAHSILDAR, VILLAGE: MALSHIRAS,)
having his office at Malshiras District Solapur)...**Respondents.**

Mr. Sanjay Jain a/w. Mr. Prathamesh Kamat, Mr. Suraj Iyer and Mr. Mani Thevar i/by Ganesh & Co. for the Petitioner.
Mr. Nitin P. Deshpande, for Respondent ____
Ms. S.D. Chipade, AGP for the Respondent-State.
Mr. Drupad Patil a/w. Mr. Namit Kumar Pansare, for Respondent Nos.2 to 4.
Mr. Karandikar i/by Mr. Satish Raut, for Respondent Nos.6,7,9 and 10.

Coram : Sharmila U. Deshmukh, J.
Reserved on : July 12, 2024
Pronounced on : August 14, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith and taken up for final hearing with consent of the learned counsel appearing for the parties.

THE CHALLENGE:

2. Exception is taken to the order dated 17th January, 2019 passed by the Hon'ble Minister under Section 257 of Maharashtra Land Revenue Code, 1966 (MLRC) dismissing the Revision Application thereby confirming the order of the District Collector dated 2nd July, 1985, order of Tahsildar dated 21st June, 2005 and the order of the Additional Commissioner dated 19th March, 2013. By the said order, the Hon'ble Minister directed the Sub Divisional Officer to consider the proposal submitted by the Respondent No.2-herein for re-grant of the property under Section 28-1AA of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short, "Ceiling Act").

THE ISSUES:

3. While testing the validity of the impugned orders, the issues which arise for determination are :

- (a) Maintainability of the composite Revision Application under Section 257 of MLRC challenging the order of District Collector dated 2nd July, 1985 setting aside the order of re-grant of property by Prant Officer in favour of Petitioner, the order of Tahsildar dated 21st June, 2005 certifying the mutation entry in the name of Late Vasant Ramchandra Deshpande in respect of Gat No 242 and the order of Additional Commissioner dated 19th March, 2013 passed in Revision against the order of District Collector dated 2nd July, 1985.

- (b) Whether the discretion exercised by the Hon'ble Minister refusing to condone the delay caused in challenging the orders dated 2nd July, 1985, 21st June, 2005 and 19th March, 2013 is arbitrary.
- (c) Whether the impugned order dated 17th January, 2019 passed by the Hon'ble Minister stands vitiated as there is adjudication of the issue of maintainability, merits as well as delay.

FACTUAL MATRIX:

4. The facts of the case as pleaded in the petition is that the Respondent Nos.2 to 10 were *Watandars* and in exercise of the rights and powers vested in them under Section 5 of the Maharashtra Hereditary Offices Act, 1874 executed lease for period of 30 years in favour of the Petitioner in respect of the various agricultural lands situated at Purandavade, Mandve, Yeliv of Taluka Malshiras, District Solapur for agricultural purposes and name of Petitioner was entered as lessee in revenue records.

5. After the coming into force of the Maharashtra Pargana and Kulkarni Watans (Abolition) Act, 1950 (for short, "Abolition Act") on 30th April, 1951, for implementation of Section 3 of the Abolition Act, a circular was issued by the Mamlatdar on 31st December, 1952 for deleting the names of *Watandars* from the revenue records and for entering the name of the then State of Bombay as owner of a *watan lands*. Accordingly, the name of the *Watandars* were deleted from the revenue entries.

6. By orders dated 2nd December, 1958 and 9th December, 1958, upon expiry of the prescribed period of 5 years under Section 4 of the Abolition Act, the Prant Officer recorded that the *Watandars* have failed to pay the amount under Section 4 of the Abolition Act and that Petitioner had paid the requisite amount for grant of occupancy rights and directed the Petitioner's lease land be granted to the Petitioner on new tenure as Class-I occupant. Mutation Entry No.2517 of village Purandavade, Mutation Entry No.2525 of village Purandavade and Mutation Entry No.4537 of village Mandve records the orders passed by the Prant Officer and name of Petitioner was reflected as holder of the said lands in 7/12 extracts.

7. In the year 1961, the State of Maharashtra enacted the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and pursuant to an inquiry under Section 14 of the Ceiling Act, declaration came to be published by the Special Deputy Collector on 16th April, 1964 in the Maharashtra Government Gazette, by which the lands of Petitioner in excess of the ceiling limit were acquired by the State Government and granted in favour of the Respondent No.14 i.e. Maharashtra State Farming Corporation Limited.

8. By order dated 12th September, 1967, the Bombay High Court passed an order of winding up of the petitioner-company under Sections 433 and 434 of the Companies Act, 1956 and for appointment of an Official Liquidator. Pursuant thereto, the Official Liquidator took charge of the affairs and the assets of the company.

9. Vide order dated 2nd July, 1985 the Respondent No.11- District Collector, on applications filed by late Vasant Ramchandra Deshpande, set aside the orders passed by the Prant Officer dated 2nd December, 1958 and 9th December, 1958 granting occupancy rights to the Petitioner. On 3rd November, 1998, the late Vasant Ramchandra Deshpande filed an Application before the Respondent No.15- Tahsildar for entering his name in the revenue records in relation to Gat No.242 of Malshiras and on 21st June, 2005, the Tahsildar passed the order entering the name of Vasant Ramchandra Deshpande in 7/12 extract in respect of Gat No 242.

10. Against the order dated 2nd July, 1985 re-granting the lands to Late Shri Vasant Ramchandra Deshpande, revision application came to be filed before the Additional Commissioner by the Respondent No 5 to 9 against the Respondent Nos 1 to 4. Vide order dated 19th March, 2013, consent terms executed between the parties came to be accepted and the names of the Respondent Nos.5 to 9 were entered as owners of 1/4th share in the other rights column of the 7/12 extract in respect of certain properties which were originally leased to the Petitioner.

11. By communication dated 14th October, 2013 addressed by one Dattatraya Waman Chitale, shareholder and Director of the Petitioner Company to the Sub Divisional Officer intimated him that the Petitioner was in liquidation and that the lands are vested with the Official Liquidator, High Court, Bombay.

12. Vide order dated 28th January, 2016 passed in Company Petition No.40 of 1967, the Bombay High Court permitted the revival of the Petitioner-Company.

13. The Respondent Nos.2 to 10 applied to the Tahsildar for allotment of land under the provisions of the Ceiling Act pursuant to the State Government's policy to return lands to persons from whom the same are acquired in which the Petitioner received notice dated 8th April, 2017.

14. The revisional jurisdiction of the State of Maharashtra through the Minister for Revenue and Forest was invoked by the Petitioner challenging the order dated 2nd July, 1985 passed by the District Collector, order of the Tahsildar dated 21st June, 2005 and order of the Additional Commissioner dated 19th March, 2013.

15. On 19th April, 2017, alongwith the said Revision Application the Petitioner filed an Application seeking condonation of delay and an Application seeking stay of the impugned order. The Respondent Nos.6,7,9 and 10 filed an application challenging the maintainability of the Revision Application. Vide impugned order dated 17th January, 2019, the Respondent No.1 dismissed the Revision Application.

16. The findings of the Hon'ble Minister can be broadly summarized as under :

ON DELAY:

(i) The Revision Application challenges the order of the District

Collector dated 2nd June, 1985 after a period of 32 years, order of the Tahsildar dated 21st June, 2005 after 12 years, and the order of the Additional Commissioner dated 19th March, 2013, after 4 years.

- (ii) On 14th October, 2013, the Petitioner had addressed communication to the Deputy Collector stating that the subject properties have been transferred to the Petitioner-Company and an Official Liquidator has been appointed in respect of the Petitioner company, and, if any decision is taken in respect of the subject properties, the same would amount to contempt of the orders of the High Court.
- (iii) On 19th November, 2014, the Petitioner had addressed a communication to the Sub Divisional Officer calling upon the Sub Divisional Officer not to pass any order in respect of the subject properties.
- (iv) On 1st March, 2014, the Petitioner had submitted a complaint to the Deputy Collector contending that the subject properties were leased to the Petitioner-Company, which were re-granted to the Petitioner-Company and without offering any opportunity of being heard under the Ceiling Act, the property has been re-granted in favour of late Vasant Deshpande.
- (v) In view of the communications, it is not possible to accept the explanation tendered that the Petitioner was not aware of the said orders being passed. Even after the Petitioner Company

became aware, there is delay of about 4 years in challenging the said orders.

ON MAINTAINABILITY:

- (vi) As per the provisions of Section 4 of the Abolition Act, the issue as to whether any person is the holder of the land falls within the jurisdiction of the Collector and against the order of the Collector the Revision Application has to be filed before the State under the provisions of the Abolition Act. However, the Petitioner has challenged the order under Section 257 of the MLRC before the State Government which is not maintainable. Even if it is accepted that the order can be challenged before the State under MLRC, after the land was acquired by the State Government under the Ceiling Act, the land has been transferred to the Respondent No.14.
- (vii) An application was made by the Respondent No.2 under section 28-1AA of the Ceiling Act for getting the land and pursuant to the orders passed in Petition filed by the Respondent No.2 before the High Court, direction was given to the Collector by the High Court to decide the Application, which has not yet been adjudicated. In light of the orders passed by the High Court directing adjudication of the Application, challenge to the order of 2nd July, 1985 passed by the Collector setting aside the order of the Prant Officer cannot be accepted.
- (viii) A composite application has been filed challenging three orders

of the Collector, the Tahsildar and the Divisional Commissioner under Section 257 before the State Government. It was necessary for the Petitioner to exhaust the remedies before the Appellate Authorities before approaching the State Government and thus, against the order of the Tahsildar, the challenge before the State Government is not maintainable.

- (ix) Against the order of 21st June, 2005, allowing the Application was made by late Vasant Deshpande for entering his name in revenue record, the Respondent No.14 had filed an Appeal before the Assistant Collector, which was decided by order dated 23rd May 2006 by the Assistant Collector. As against the order, Respondent No.14 filed an Application before Deputy Collector which was dismissed by the order dated 16th April, 2010 and thus, the order of 16th April, 2010, not having been challenged further has attained finality.

SUBMISSIONS:

17. Mr. Jain, learned counsel for the Petitioner has taken this Court through the various orders under challenge before the Hon'ble Minister. He would submit that an Application for condonation of delay was filed by the Petitioner explaining the delay that the Company was under liquidation since 12th September, 1967 and that the proceedings before the Prant Officer were without notice to the Petitioner or the Official Liquidator. He would submit that Company has been revived on 20th January, 2016 and thereafter the procedure

for revival was completed. According to him, as the Company was in liquidation, the Company was oblivious of any proceedings and after revival in January, 2017 prompt steps were adopted. He would criticize the impugned order for the reason that the Respondent No.1 has attributed the knowledge of Shareholder and Director to that of the Company .

18. He would briefly touch upon the merits of the order of the Collector and would submit that the reply filed by the Respondents contends that the Deshpande family had paid occupancy price for re-grant and there was error on part of Revenue Authority which postulates that there was an order of re-grant in favour of the Petitioner-Company. He submits that no order of re-grant in favour of Deshpande family could be passed by the Collector in respect of the assets of the company which were in the hands of the official liquidator without obtaining leave of the Company Court under Section 446 of the Company Act. He submits that the order of the Collector dated 2nd July, 1985 was exercised under Section 257 of MLRC which is not permissible and that too after period of 28 years without any application for condonation of delay and without any order condoning the delay.

19. Pointing out to the observations of the Hon'ble Minister, he submits that the impugned order decides the issue of the maintainability of the Application, the condonation of delay application as well as the merits of the matter which is not permissible

in law. In support he relies upon the following decisions:

- (i) *Madhao s/o. Somaji Sarode vs. Jotiba Dhyan Upasak Shikshan Sanstha, Dudhale and Ors. [2004(3)Mh.L.J.1078];***
- (ii) *Macchindranath Adiwasi Masemari Sahakari Sanstha, Tiwasa and Ors. State of Maharashtra and Ors. [2014(1) Mh.L.J.398];***
- (iii) *Decision of this Court in Kotak Mahindra Bank Ltd. vs. Mr.R.C.Shah (deceased) through LRS and Ors. in Writ Petition (L) No.2886 of 2011, decided on 23rd January, 2012.***
- (iv) *Balkrishna Sadashiv Thakur and Ors.Prabhakar Sadashiv Thakur and Ors., (2021) (5) Mh.L.J.669.***

20. Mr. Karandikar, learned counsel appearing for the Respondent Nos.6,7,9 and 10 would submit that what deserves consideration is the legal effect of the order dated 16th April, 1964 passed under the Ceiling Act, by which the land was acquired by the State Government and thereafter allotted to Respondent No.14. He submits that upon the said order being passed, all rights of the Petitioner came to an end in 1964. He submits that from the year 1964 to 1967, no steps were taken by the Petitioner-Company and even after its revival in 2017, there is no challenge to the order of 16th April, 1964. He points out to the Government Gazette which is at page No.240 and would submit that the lands have been acquired by the State Government. He questions the locus of the Petitioner in the absence of any challenge to the acquisition proceedings. He submits that before the Hon'ble Minister, an objection to maintainability was raised and also specific submission was canvassed on locus. He would further submit that as

per the State Government policy, the surplus land is to be allotted to the land-owner and under the provisions of Section 28-1AA of the Ceiling Act, the right would be only of the owner or of Respondent No.14 and the Petitioner has no right. He would further point out page No.34 of the declaration by the Special Deputy Collector which notified that the lands specified are declared to be surplus land and are forfeited to the State Government. He submits that in the year 1964 itself, the rights of the Petitioner come to an end and therefore the order of the Collector of 1985, even if re-grants the land to the Petitioner would have no effect. He submits that the 1964 notification was not challenged and the possession has been taken. He submits that under Section 4 of the Abolition Act, the land can be re-granted only to the *Watandars* and there is no statutory provision which would permit the Petitioner to get the land. He submits that the Hon'ble Minister has considered the said provision and has decided the maintainability of the Application against the order passed by the Collector dated 2nd July 1985. He submits that the order of Collector is required to be challenged before the State Government under the provisions of Abolition Act and not under Section 257 of the MLRC.

21. Pointing out to the orders passed in Company Petition No.40 of 1967, he submits that order records the fact of acquisition by the State Government and allotment to Respondent No 14. He submits that the orders also note that the assets of the Company are fixed deposits and amount standing to the credit of the bank.

22. Mr. Patil, learned counsel appearing for Respondent Nos.2 to 4 submits that as per Section 4 of the Abolition Act, land resumed is to be re-granted to the holder of the *Watan*. He submits that therefore the petitioner who was a lessee of the land could not have been re-granted the land under the provisions of Abolition Act. He would further submit that the explanation given for condoning the delay as far as the order of re-grant dated 2nd July, 1985 is concerned, is that the company was under liquidation from the year 1967 to the year 2016 and was able to start functioning only after January, 2017. He submits that communication was addressed by the Director and Shareholder of the company, Mr. Dattatraya Chitale on 14th October, 2013, 19th November, 2014 and 1st March, 2014 to the Revenue Authorities raising objections in respect of re-grant of the land. He submits that thus the Petitioner had acquired knowledge of the order passed in the year 2013 itself, and therefore the Application filed in the year 2017 does not set out any acceptable explanation.

23. He submits that the Hon'ble Minister has gone into the issue of maintainability of the Petition in view of the order passed by this Court dated 21st September, 2017 in petition filed by the Respondents, where this Court has held that the Respondents herein shall be entitled to raise all issues before the Revenue Authority, including one of jurisdiction and/or the maintainability as well as the delay. He points out that separate application was filed on 17th July, 2017 raising preliminary objection as to the maintainability of the

Revision. He would further submit that while rejecting the delay one of the factors to be taken into consideration can be *prima facie* merit of the matters.

24. He has taken this Court in detail through the orders passed by the Hon'ble Minister and would point out that the Collector's order was challenged directly before the State Government and therefore the same was held to be defective. He further submits that the Ceiling Act, there was a window of 90 days, which was open for re-allotment of the land and which was not availed by the petitioner. He submits that by order dated 15th October, 2013 passed in Writ Petition No.9652 of 2013, this Court had directed the issuance of lead form which process has started from 2013 and is pending. He would further point out that the Hon'ble Minister has held that against the order of the Collector, Appeal is permitted and that Revision is not maintainable. He would further submit that Hon'ble Minister has noted that against the order of the Tahsildar dated 21st June, 2005 entering the name of late Vasant Deshpande in respect of Gat No.242, an Appeal has been preferred by the Respondent No.14, which came to be dismissed as against which, the challenge before the Assistant Collector failed and the Deputy Collector has confirmed the order which has attained finality. In support he relies upon the following decisions:

- (i) ***Decision of this Court in Nandkumar V. Deshpande and Ors. Chitale Agricultural Products Limited and Ors. in Writ Petition No.10165 of 2017, decided on 21st September, 2017,***

- (ii) Board of Trustees of the Port of Kolkatta vs. Kalipada Bhakat and Ors. [(2014) 10 SCC 573]**
- (iii) Siddheshwar s/o. Panchappa Hawa vs. State of Maharashtra and Ors. [2019 SCC OnLine Bom 904]**
- (iv) Decision of this Court in Shri Dr.Ravindra s/o. Ambardasji Saokar vs. State of Maharashtra and Ors. in Writ Petition No.4617 of 2018 decided on 3rd July, 2023,**
- (v) Everest Fincap Pvt.Ltd vs. Krishna Realtors and Ors. [2017 SCC OnLine Bom 7981];**
- (vi) MICO Employees' House Building Co-operative Society Limited vs. Bangalore Development Authority and Ors. [ILR 2014 KAR 2153];**
- (vii) V.K. Seshasayee and anr. vs. Official Liquidator (2005 SCC OnLine Mad 826);**

25. Ms.Chipade, learned AGP would point out that pursuant to the order passed by this Court leave was obtained by the Respondents under the Ceiling Act and thereafter proposal was submitted to the Collector. She would further point out the operative part of the order directing the Sub Divisional Officer to take a decision on the Application filed under Section 28-1AA of the Ceiling Act by the Respondents for re-allotment of the land.

26. In rejoinder, Mr.Jain would submit that the undisputed facts are that there was grant in favour of the Petitioner, which grant was set aside in the year 1985 by the Collector without notice. He submits that the said order is passed under Section 257 of the MLRC, which

was not applicable. He submits that the provisions of the Abolition Act provides for the Authority to whom the challenge could have been made and thus the order of the Collector itself was without jurisdiction. He submits that two letters dated 14th October, 2013 and 19th November, 2014 on which the Hon'ble Minister has relied to non-suit the petitioner was not on record and was not produced by any of the parties. He would further submit that as far as Section 28 of the Ceiling Act is concerned, whether the petitioner or the *watandars* is to be allotted the land is a question pending before the Collector as is evident from the operative part of the order. He submits that the Respondent No 14 was not party to the three orders under challenge before the Hon'ble Minister. He submits that while exercising the powers under Section 257 of MLRC, the Hon'ble Minister could not have gone into the merits of the matter.

27. In sur-rejoinder, Mr.Patil, would contend that the letters of 2013 and 2014 were produced on record by the Respondent No.14 and the petitioner's contention is not that the letters were not produced but that the copies were not given.

REASONS AND CONCLUSIONS:

28. The revisional jurisdiction of the State Government under Section 257 of MLRC was invoked by filing a composite application challenging the order of the Collector dated 2nd July, 1985 setting aside the order of the Prant Officer which had in the year 1958 re-granted the subject land to the Petitioner and regranting the land

to Late Vasant Deshpande. The second order is passed by the Tahsildar on an application by Late Vasant Deshpande for certifying the mutation entry in his favour in respect of Gat No 242 consequent to the order of Collector dated 2nd July, 1985. The third order dated 19th March, 2013 is passed by the Additional Commissioner on the application filed by other branch of Deshpande family challenging the order dated 2nd July, 1985 and on basis of consent pursis entered into the between Respondents *inter se* entered the name of Respondents as $\frac{1}{4}$ th owners in respect of the Gat No.217.

29. Vide order dated 21st September, 2017 passed in Writ Petition No 10165 of 2017, this Court had directed the Revisional Authority to decide the Revision application within period of three months with a clarification that the Respondents herein will be entitled to raise all points including of jurisdiction and/or maintainability and delay. The order of this Court was accepted by all the parties.

30. The facts and circumstances narrated above would justify a brief advert to the relevant statutory provisions of the Abolition Act and the Ceiling Act. Section 4 of Abolition Act provides for watan land resumed to be re-granted to holder of the watan to which it appertained on payment or occupancy price. Section 3 of the Ceiling Act prohibits holding of land in excess of ceiling area and the area in excess of ceiling to be surplus land. Section 14 of Ceiling Act empowers the Collector to hold an inquiry into surplus land and

Section 21 governs the issuance of declaration regarding surplus land and the consequences thereof. Under Section 28-1AA, the State Government has the power to grant land to State Corporations. Section 33 provides for Appeals against an order or award of Collector to Maharashtra Revenue Tribunal.

ON MAINTAINABILITY:

31. In the present case, powers under Section 28-1AA of Ceiling Act were exercised and after acquisition of surplus land in the year 1964 the surplus land was granted to Respondent No.14. The Respondent No.2 has preferred an application seeking re-allotment of the land pursuant to State Government policy which is pending adjudication. The order of this Court dated 28th January, 2016 in Company Petition No.40 of 1967 records that the lands owned by the Company were acquired and some lands have been surrendered to the Respondent No.14 herein. The position emerging from the facts is that on the day of filing the Revision Application, the subject lands were acquired by the State Government and the Respondent No.2 had applied for re-allotment of the subject land.

32. The obstacle in the way of challenge to the orders of the Collector re-granting the land and the certification of the mutation entries in favour of the Deshpande family is the locus of the Petitioner once the lands have been acquired under the Ceiling Act by the State Government and allotted to the Respondent No.14. The Petitioner in the year 2017 did not retain any interest in the subject land in the

absence of any challenge to the order of acquisition of the year 1964. Under Section 4 of Abolition Act, a watan land resumed is to be regranted to the holder of the watan to which it appertained and under Section 21(4) of Ceiling Act, the Collector is to take possession of the land delimited as surplus and in case of land which the landlord is entitled to resume, restore possession of the land to the landlord named in the declaration. I therefore find that the legal effect of the acquisition in the year 1964 has wiped out the interest of the Petitioner in the subject land and therefore the Petitioner had no *locus* to invoke the revisional jurisdiction *qua* the order of Collector re-granting the land to Late Vasant Deshpande. All interest of the Petitioner came to an end atleast from the date of notification of acquisition dated 7th May, 1964. The Petitioner company was functioning till the year 1967 and there was no challenge to the acquisition at any point of time by the Petitioner.

33. Another aspect which militates against the maintainability of the Revision Application is the composite application filed challenging the orders. The Abolition Act does not expressly state the Authority to whom an appeal or revision would lie from the order of the Authority ordering the re-grant. In ***Annaji Vasudev Dangarkar & Ors vs Ramchandra Deshpande [AIR 1967 Mysore 111]***, the Court while considering whether the order of regrant can be challenged in the Civil Court noted thus:

"25. The very question, whether an appeal lies from an order of a revenue officer re-granting or refusing re-grant under Section 4

(1) of the Watan Abolition Act, came up for consideration before a Bench of this Court in *Sonubai v. Yamunabai*, 1962-40 Mys LJ 953. This is what their Lordships stated:-

"... Section 203 of the Bombay Land Revenue Code does provide that in the absence of any express provision either in the Bombay Land Revenue Code or in any other law to the contrary, an appeal shall lie from any decision or order passed by a Revenue officer under the Bombay Land Revenue Code or under any other law for the time being in force, to that officers' immediate superior. Section 3(1) of the Bombay Land Revenue Code defines a revenue officer as an officer appointed and employed in or about the business of the land revenue. It is thus clear that the Prant Officer, who made a re-grant to the petitioner, was a revenue officer as defined by Section 3(1) of the Bombay Land Revenue Code and if he made an order under Section 4 of the Para-gana and Kulkarni Watans (Abolition) Act, it is clear from Section 203 of the Bombay Land Revenue Code that since that order was one made by a revenue officer although under the Bombay Paragana and Kulkarni Watans (Abolition) Act, an appeal lay from that order to the officer who was immediately superior to the Prant Officer, there being no provision to the contrary anywhere. The meaning of Section 203 of the Bombay Land Revenue Code is that if an order is made by an officer whether the order is one made under the Bombay Land Revenue Code or whether under any other law for the time being in force, an appeal from that order lies to the immediate superior officer who made the order....."

That being the position, it is obvious, that the appeal presented to the Collector by respondent 1 from the order made by the Prant Officer, re-granting the land to the petitioner was perfectly maintainable. It is equally clear that from the order made by the Collector in appeal, a further appeal to his immediate superior officer was also competent as provided by Section 203 of the Bombay Land Revenue Code..."

34. In the present case, the Collector has passed the order dated 2nd July, 1985 setting aside the order of the Prant Officer and re-granted the subject land to Late Vasant Deshpande in exercise of powers under Section 4(1) of the Abolition Act. Considering the decision of ***Annaji Vasudev Dangarkar & Ors vs Ramchandra Deshpande*** (supra) the order was rightly passed in appeal against the order of Prant Collector and further challenge was required to be adopted under the Abolition Act and not under the MLRC even if the authorities are revenue authorities.

35. Apart from the admitted position that the order of 21st June, 2005 was challenged by the Respondent No 14 which had failed, against the order of the Tahsildar dated 21st June, 2005 certifying the mutation entry in favour of Late Vasant Deshpande revision is preferred directly by the Petitioner before the State Government by-passing the hierarchy of the authorities under the MLRC which was not maintainable. The Hon'ble Minister has therefore rightly held that the challenge cannot lie straight to the State Government.

ON DELAY:

36. Coming to the aspect of delay, the delay is of 36 years, 12 years and 4 years in challenging order of Collector, Tahsildar and Divisional Commissioner respectively. The explanation tendered in the Application seeking condonation is that the Petitioner Company was revived after a span of about 49 years and for the period from 1967 to 2016 the Company being in liquidation, was unaware of any

proceedings.

37. The explanation of the Company being unaware of the impugned orders was not accepted by the Hon'ble Minister in view of the letters dated 14th October, 2013, 19th November, 2014 and 1st March, 2014. The contention is that these letters on the basis of which the petitioner was non-suited were not on record of the revision proceedings is countered by showing that the Respondent No.14 had placed these letters on record.

38. Before this Court, the submission of Mr.Jain is that the knowledge of the Share holder cannot be attributed to the Company which was under liquidation. The fact remains that the letters of the year 2013 and 2014 were written by one of the Directors of the Petitioner-Company at the time when the Official Liquidator was in charge of the affairs of the Company and was empowered to do all acts in the beneficial interest of the Company. The Company Application (L) No 803 of 2015 was filed by the same Director Dattraya Waman Chitale in which the permission to revive was granted by order dated 28th January, 2016. Nothing stopped the Director from filing an appropriate application in the Company Petition to bring it to the notice of the Official Liquidator that the property of the Company was re-granted to Late Vasant Deshpande to the detriment of the Company.

39. The communication dated 1st March, 2014, which is relied upon by the Hon'ble Minister to decline exercise of jurisdiction, refers to the

re-grant order and paragraph 4 of the said communication specifically states that the complaint is on behalf of the Petitioner Company. The admitted position is that at least in the year 2013/2014 the erstwhile director/shareholder of the Company had knowledge about the same.

40. It is no doubt true that where the official liquidator has been appointed the directors are not in control of any assets and liabilities or the affairs of the company. However, the official liquidator is empowered to take control of all the assets of the company and to administer the same. Despite acquiring knowledge in the year 2013/2014, no steps were taken on behalf of the company through the Official Liquidator and therefore the Hon'ble Minister has rightly declined to accept the explanation about the Company not being aware of the said proceedings.

41. One of the challenges mounted by Mr. Jain was that after arriving at a finding that there is no sufficient explanation for condonation of delay, the Hon'ble Minister has thereafter decided the matter on merits, which is impermissible in law. He draws support from decisions of ***Kotak Mahindra Bank Ltd vs R.C. Shah*** (supra) and ***Madhao vs J.D.U.S Sanstha*** (supra) which holds that the sufficiency of cause has been considered independently of the merits of the matter. The decisions does not assist the case of the Petitioner as the Hon'ble Minister has restricted the examination to the issues of maintainability and delay as per the directions of this Court dated 21st September, 2017 and while deciding the issue of maintainability has

factored the issue of locus of the Petitioner. Upon my reading of the impugned order, I do not find that there has been an adjudication on merits. As far as the decision of ***M.A.M.S.S Vs State of Maharashtra*** (supra) is concerned, the facts are clearly distinguishable as in that case the appeal was dismissed as it was not accompanied by an application for condonation of delay.

JUDICIAL REVIEW OF EXERCISE OF DISCRETION:

42. In ***Sheo Raj Singh (D) Tr Lrs vs Union of India*** reported in ***[(2023) 10 SCC 531]***, the Apex Court held thus:

“30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an ‘explanation’ and an ‘excuse’. An ‘explanation’ is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an ‘explanation’ from an ‘excuse’. Although people tend to see ‘explanation’ and ‘excuse’ as the same thing and

struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in Manjunath Anandappa v. Tammanasa, which in turn relied on the (2003) 10 SCC 390 decision in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha where it has been held that:

"an appellate power interferes not when the order appealed is not right but only when it is clearly wrong".

43. Applying the above enunciation of law to the facts of the present case, the Hon'ble Minister has refused to condone the delay by declining to accept the explanation of lack of knowledge in light of the communications of the year 2013-2014. In my view, the distinction

sought to be drawn between knowledge of the Company and knowledge of the shareholder/Director is a plea designed to tide over the inaction for a period of almost four years. It cannot be said that the appointment of Liquidator prohibits the interested party from bringing to the notice of the Official Liquidator or filing any application in the Company Petition that the assets of the Company are being re-allotted to the detriment of the Company. As noted by the Apex Court in the above decision, an appellate power interferes not when the order appeal is not right but only when it is clearly wrong. In my view, the discretion exercised by the Hon'ble Minister was not arbitrary and deserves no interference.

44. The propositions canvassed by Mr. Jain in respect of the order passed by the Collector dated 2nd July, 1985 as to whether the Collector could have entertained the application of Late Vasant Deshpande after delay of 28 years and without notice to the Official Liquidator or Petitioner would entail examination of the order dated 2nd July, 1985 on merits. The proceedings are perched at the threshold of consideration of delay and maintainability and therefore review of the decision of 2nd July, 1985 on merits is impermissible.

CONCLUSION:

45. Considering the provisions of Section 4(1) of Abolition Act and Section 21(4) of Ceiling Act, the re-grant and re-allotment of the acquired land could be in favour of the holder of watan or the landlord. In absence of any challenge to the notification of 7th May,

1964, by which the land was acquired by the State Government and thereafter transferred to the respondent No.14, the rights of the Petitioner came to an end in the year 1964 itself and the Petitioner did not have any locus to challenge the orders passed *qua* the subject lands.

46. The composite application challenging the orders passed under the Abolition Act and the MLRC was not maintainable. Further there could not be a direct challenge before the State Government against the order of Tahsildar of the year 2005 without adhering to the hierarchy of authorities provided under the MLRC.

47. On the aspect of condonation of delay, there is unexplained delay of about four years atleast from 2013-2014 and refusal to condone the delay by the Hon'ble Minister in light of the communications by the erstwhile Director cannot be said to be arbitrary.

48. In view of the discussion above, I find no reason to interfere with the discretion exercised by the Hon'ble Minister rejecting the application for condonation of delay. Petition stands dismissed. Rule is discharged.

[Sharmila U. Deshmukh, J.]