

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1204 OF 2010

Arvind Balaji Walvekar

...Petitioner

Vs.

1. State of Maharashtra

Through the Hon'ble Minister

Revenue Department,

Mantralaya, Mumbai.

2. Additional Commissioner,

Pune Division, Pune.

3. Additional Collector, Pune.

4. Sub-Divisional Officer

Pune Division, Pune.

5. Tahsildar, Taluka Pune City,
Pune.

6. Shri Girish Pandurang Gavandi

7. Shri Jagdish Pandurang Gavandi

8. Smt. Kishori Datta Naik

9. Shri Suresh Pandurang Gavandi,
Since deceased through LRs

9a. Pratibha Suresh Gavandi

- 9b. Sanjay Suresh Gavandi
- 9c. Ajay Suresh Gavandi
- 9D. Rajendra Suresh Gavandi – Expired. Leaving behind following L.H. and L.R.
- 9D-A. Meenakshi Rajendra Gavandi
- 9D-B. Shrikan Rajendra Gavandi.
- 9D-C. Mrs. Priyanka Rohit Naik (Daughter)
- 10. Jayant Vishwanath Gavandi
- 11. Ravindra Jayant Gavandi
- 12. Shantanu Ravindra Gavandi
- 13. Shri Siddharth Ravindra Gavandi
- 14. Shri Kishor Kantilal Gandhi
- 15. Shri Shreenath Yashwant Bhimale.
- 16. Shri Atik Habib Ansari.
- 17. Deleted
- 18. Umesh Dattatray Dhone
- 19. Santosh Dattatray Dhone
- 20. Ramesh Dattatray Dhone
- 21. Mangal Dattatray Dhone Since Deceased through Legal Heirs.
- 21(a) Dattatray Shankarrao Dhone,
- 21(b) Umesh Dattatray Dhone.
- 21(c) Santosh Dattatray Dhone,
- 21(d) Ramesh Dattatray Dhone,
- 21(e) Neelam Dattatray Dhone
- 22. The Commissioner, Municipal Corporation of City of Pune.
- 23. The City Engineer (Building Permissions), Municipal Corporation of City of Pune.
- 24. District Inspector of Land Records.
- 25. City Survey Officer No.1, Pune.

....Respondents

Ms. Shruti Tulpule a/w Ketki Gadkari, for the Petitioner.

Mr. A. P. Vanarse AGP, for the Respondent Nos. 1 to 5.

Mr. Sandeep Dinkar Paigude a/w Reshma More, for Respondent Nos. 14, 18, 19, 20 and 21 E.

Mr. A. P. Kulkarni, for Respondent Nos. 22 and 23.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 15 December 2023.

Pronounced On: 3 January 2024.

Judgment:

1. By this petition, Petitioner has challenged the Order dated 25 August 2009 passed by the Minister-Revenue rejecting his Revision Application and confirming the Order dated 16 July 2009 passed by the Additional Commissioner, Pune who in turn, had confirmed the Order dated 23 April 2001 of Tehsildar, by which the land in question has been regranted in favour of the contesting Respondents. Petition thus involves the issue of validity of Order of regrant of the land in question in favour of the contesting Respondents under the provisions of the Maharashtra Pargana and Kulkarni Watans (Abolition) Act, 1950.

2. A brief factual narration as a prologue to the judgment would be necessary. The land admeasuring 4 Acres and 11 Gunthas bearing Survey No. 65/1 at Village-Parvati, Taluka-Haveli, District-Pune within the limits of Pune Municipal Corporation was originally owned by Mr. Trimbak Ganesh Deshpande and Mr. Baburao Laxman

Deshpande, who sold the same to Mr. Manohar Sitram Padalkar vide registered Sale-Deed dated 22 April 1898. It is Petitioner's case that the land was released from Watan Inam before execution of the Sale-Deed and that there is an endorsement to that effect in the Inam Register in the year 1936-37. The heirs of Manohar Sitaram Padalkar sold the land to Mr. Balaji Bhavansa Walvekar by registered Sale-Deed dated 9 September 1937, whose name came to be mutated vide Mutation Entry No. 4046 dated 26 March 1938. It is Petitioner's case that a registered Lease-deed was executed by Balaji Bhavansa Walvekar in favour of Mr. Pandurang Gopal Gavandi for tenure of 25 years for utilization of the leased land for the business of manufacturing of bricks and allied products. On 3 July 1950, a Partnership Deed was executed between the two brothers, Pandurang Gopal Gavandi and Vishwanath Gopal Gavandi for carrying out the business of manufacturing of bricks under the name of Padma Bricks Factory.

3. On 1 May 1951, the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 (**Watans (Abolition) Act, 1950**) came into effect. By Mutation Entry No. 789 dated 28 July 1952, a remark regarding application of provisions of the Watans (Abolition) Act, 1950 came to be recorded in the revenue records of the land. By another Mutation Entry No. 709 dated 31 January 1953 the name of 'Hind Sarkar' was mutated as occupant of the land. It is Petitioner's case that Balaji Bhavansa Walvekar made application dated 19 March 1953 to the Mamlatdar claiming that he was an absolute owner and not a Watandar in respect of the land. Alternatively, he expressed

willingness to pay appropriate Nazrana in the event of the land being treated as a Watan land. It is Petitioner's case that though the application was made for payment of Nazrana within specified time, no Challan was issued and therefore payment of Nazrana could not be made. By Mutation Entry No.911, the earlier Mutation Entry No. 709 was corrected mentioning the names of State Government as well as Balaji Bhavansa Walvekar possibly to convert the land as Class-I land on payment of Nazrana. By Mutation Entry No.1134 certified on 25 December 1961, the remark 'Akari Pad' (assessed waste land) was made in the revenue records of the land possibly on account of non-payment of Nazrana. On 20 March 1962, the Circle Officer proceeded to take possession of the land by conducting Panchanama on the ground of non-payment of Nazrana by Balaji Bhavansa Walvekar. Though taking over of such possession was objected by Balaji Bhavansa Walvekar, the possession of the land was taken from the lessee, Pandurang Gopal Gavandi on 28 May 1962. The partnership between the two brothers, Pandurang and Vishwanath Gavandi was dissolved and Padma Brick Factory was to be exclusively operated by Vishwanath Gopal Gavandi. It is Petitioner's case that in all 7/12 extracts, name of Pandurang Gopal Gavandi was always reflected as 'unlawful possession'.

4. It is Petitioner's case that by letter dated 29 June 1964, the Mamlatdar, Pune informed Balaji Bhavansa Walvekar that he was not required to pay Nazrana in respect of the land by referring to the Order dated 3 June 1964 passed by the Prant Officer deleting the land from Inam land. Balaji Bhavansa Walvekar passed away on 16

April 1967. The Collector, Pune called upon the heirs of Balaji Bhavansa Walvekar to show cause as to why the Mamlatdar's Order dated 29 June 1964 should not be set aside.

5. In the meantime, the tenure of the lease executed in favour of Pandurang Gopal Gavandi expired, who addressed letter dated 18 September 1972 for renewal of the tenure of lease. The heirs of Balaji Bhavansa Walvekar however refused to extend the tenure of lease.

6. The heirs of Balaji Walvekar filed Special Civil Suit No. 111 of 1974 before the Civil Judge Senior Division, Pune against the State Government for a declaration that they are the owners of the land and for deletion of entry of 'Akari Pad' from the revenue records. Plaintiffs also prayed for restoration of possession and for grant of mesne profits from 20 March 1962 till restoration of possession of the land. The Suit was decreed vide Judgment and Decree dated 30 October 1987 directing the Defendant-State Government to deliver possession of the land to the Plaintiffs, declaring the mutation entry of 'Akari Pad' as illegal and directing its deletion and inclusion of names of Plaintiffs as occupants of the land. The State Government filed First Appeal No. 991 of 1988 in this Court challenging the Judgment and Decree dated 30 October 1987. The heirs of Balaji Walvekar filed cross-objections insofar as the non-grant of claim of mesne profits. The First Appeal has been transferred to the District Court, Pune and renumbered as Civil Appeal No. 9 of 2016, which continues to remain pending before the District Court.

7. In the meantime, a Government Resolution dated 4 February 1983 was issued *inter alia* providing for grant of Inam lands to the Watandar on payment of Nazrana equivalent to 50 times of assessment, if the land is intended to be used for purposes other than agriculture. The Government Resolution also provides that if a Watandar is not in occupation, then the protected tenant can be granted land on payment of Nazrana equivalent to 6 times the assessment. On 6 April 2000, the heirs of the lessee-Pandurang Gopal Gavandi, viz Suresh Pandurang Gavandi and others filed application before the Tehsildar for regrant of the land by offering to pay the occupancy price. The Tehsildar instituted an enquiry by recording statement of Pandurang Gopal Gavandi, who, according to the Petitioner, falsely claimed that he was cultivating the land. It is Petitioner's case that, execution of registered Lease-deed as well as passing of Decree of the Civil Court were suppressed by the heirs of lessee-Pandurang Gopal Gavandi. It is Petitioner's case that both, Pandurang Gopal Gavandi as well as his son-Girish Pandurang Gavandi falsely claimed that they were not aware about the heirs of Balaji Walvekar. The Talathi addressed a letter dated 31 March 2001 stating that despite making detailed enquiries, the heirs of Balaji Walvekar were not traceable. On the basis of enquiry so conducted, the Tehsildar proceeded to allow the application filed by the lessee-Pandurang Gavandi and his heirs holding that Balaji Walvekar was a Watandar and that since Gavandis were protected tenants and in possession of the suit land for over 50 years, they should be regranted

the land. Accordingly, the Tehsildar has passed an Order for regrant of the land in favour of the Gavandis by Order dated 23 April 2001.

8. The heir of Balaji Walvekar, (Petitioner) did not challenge the Tehsildar's Order dated 23 March 2001, on the ground that he was not aware about passing of that order. The said Order was however challenged by the heirs of Pandurang Gavandi's brother viz. Jayant Viswanath Gavandi and others by filing RTS Appeal No. 316 of 2001 before the Sub-Divisional Officer, Pune. The Sub-Divisional Officer rejected the Appeal by Order dated 7 August 2003. However, the Tehsildar's Order of regrant was set aside directing that status-quo should be maintained till the decision of the First Appeal pending before this Court. Though the Petitioners did not challenge Tehsildar's Order before the Sub-Divisional Officer, it is Petitioner's case that Petitioner No.1 filed Intervention Application in proceedings before the Sub-Divisional Officer which was allowed and that he was permitted to intervene in the Appeal filed by Jayant Vishwanath Gavandi and others.

9. Girish Pandurang Gavandi and others filed Appeal before the Additional Collector, Pune challenging the Sub-Divisional Officer's Order by filing RTS Appeal No. 316 of 2001 which came to be dismissed. Girish Pandurang Gavandi and others therefore filed first Revision before the Additional Collector, Pune. By Order dated 16 July 2007, the Additional Collector/Commissioner, Pune allowed the first revision and restored Tehsildar's order of regrant dated 23 April 2001. Petitioners filed second revision before the Minister-

Revenue challenging the order of the Additional Commissioner/Collector, Pune. During pendency of the second revision before the Minister, the heirs of Pandurang Gavandi transferred the land to Dhone Family on 29 December 2007. That transaction was further validated vide Confirmation Deed dated 7 November 2008. The Minister-Revenue dismissed Petitioner's second revision by Order dated 25 August 2009 which is subject matter of the present petition. By Order dated 17 June 2010, the Petition came to be admitted and parties were directed to maintain status-quo.

10. Ms. Tulpule, the learned counsel appearing on behalf of the Petitioner would submit that the impugned Orders of Tehsildar, Additional Collector and Minister-Revenue proceed on an erroneous assumption that the land is Watan land, when infact the Civil Court has held vide Decree dated 30 October 1987 that the land is not a Watan land. That since the land has been declared as non-Watan land, the provisions of Watans (Abolition) Act, 1950 would have no application and therefore the Order of regrant passed by the Tehsildar is without jurisdiction. That the said order is procured by Pandurang Gopal Gavandi and his heirs by suppressing the information that he was occupying the land merely in his capacity as a lessee and was carrying on the non-agricultural activity of business of bricks manufacturing. That the Tehsildar's order is passed on a misrepresentation by Gavandi Family that they were cultivating the land and were protected tenants.

11. Ms. Tulpule would further submit that the Decree of the Civil Court is binding on the Revenue Authorities its declaration that the land is not a Watan land is fully binding on the Revenue Authorities. She would further submit that the Additional Collector, Addl. Commissioner and Minister-Revenue have erroneously proceeded to ignore the decree of the Civil Court on the specious ground of lack of jurisdiction of the Civil Court under the provisions of the Maharashtra Revenue Jurisdiction Act, 1876 (**Revenue Jurisdiction Act**). That the State Government was a party-Defendant to the Suit, in which declaration is issued that the land is not a Watan land. The Officers of the State Government cannot ignore the Decree by assuming that the Decree passed by the Civil Court is a nullity when the Appeal filed by the State Government challenging the Decree is still pending before the District Court.

12. Ms. Tulpule would further submit that even if the Decree of the Civil Court is held to be not binding on the Revenue Authorities, the report of the Circle Officer had clearly recorded that the land does not have entry of Inam. Even if it is assumed that the land is a Watan land, it ought to be regranted to the heirs of Balaji Walvekar and that Gavandis, in their capacity as lessees, have no authority to seek regrant thereof. She would further submit that Petitioner's failure to challenge Tehsildar's order could not have been a reason for rejection of Revision by the learned Minister. That Petitioner was not even aware about passing of Order by Tehsildar. Upon acquiring knowledge of Tehsildar's order, he immediately intervened in proceedings before the Sub-Divisional Officer and was

added as a party. That Tehsildar's order has merged into the order of Sub-Divisional Officer which in turn has merged into the orders of Additional Collector and Addl. Commissioner and finally in the order passed by the learned Minister. That therefore it cannot be held that Petitioner acquiesced in the order passed by the Tehsildar. Lastly, Ms. Tulpule would submit that the transfer effected by Respondent Nos. 6 to 9 in favour of Respondent Nos. 17 to 21 is in breach of status-quo order and that therefore the said transaction has no recognition in the eyes of law.

13. In support of her contentions, Ms. Tulpule would rely upon the following judgments:

- i. ***Gangabai Ramrao Patil vs. State of Maharashtra and Others*** 2019 (6) Mh.L.J. 896
- ii. ***Shrikant R.Sankanwar and Others Vs. Krishna Balu Naukudkar*** 2003 (2) Mh.L.J. 276
- iii. ***Ramijabi Maktumsaheb Jamadar Vs. Ghudusaheb Farid Avati*** 1951 ILR Bom. 1019
- iv. ***Sayed Mohomed Baquir El-Edroos (Dead) by LRs. Vs. State of Gujarat*** (1981) 4 SCC 383
- v. ***ITI Ltd. Vs. Siemens Public Communications Network Ltd.*** (2002) 5 SCC 510
- vi. ***Sheth Abdullamiyan Abdulraheman Vs. The Government of the Province of Bombay*** 1942 ILR Bom. 717
- vii. ***Gopinath s/o. Ganpatrao Pensalwar Vs. State of Maharashtra and another*** 2007 (1) Mh.L.J. 819
- viii. ***Kunhayammed and Others Vs. State of Kerela and Another*** (2000) 6 SCC 359
- ix. ***Jehal Tanti and Others Vs. Nageshwar Singh (Dead) Through LRs.*** (2013) 14 scc 689
- x. ***Keshrimal Jivji Shah and another Vs. Bank of Maharashtra and others*** 2004 (3) Mh.L.J. 893

14. *Per-contra* Mr. Paigude, the learned counsel appearing for Respondent Nos.18, 19, 20 and 21(e) would oppose the Petition and submit that the learned Minister has rightly rejected the Revision filed by the Petitioner by upholding the Order passed by the Additional Collector. He would submit that there is a specific admission in the Lease Deed executed in favour of Pandurang Gopal Gavandi that the land is '*Inam Class-4 land*'. That once the status of the land as Watan land is accepted and acknowledged in the Lease Deed, the Petitioner cannot now be permitted to take a *volte face* and contend that the land is not Watan land. That the Decree of the Civil Court has been obtained by Balaji Walvekar by practicing manifest fraud by contending that Balaji Walvekar was cultivating the land from 1937 to 1962 whereas in the present petition, Petitioner contends that the land was leased to Gavandi Family. That since the Decree of the Civil Court is without jurisdiction and an outcome of manifest fraud, the same cannot nullify the Order of regrant passed in favour of Gavandi Family. That Civil Court does not have jurisdiction under Section 11 of the Revenue Jurisdiction Act. That the suit was otherwise barred by limitation. That Petitioner acquiesced in Tehsildar's Order by not challenging the same. His intervention in Appeal filed by Gavandi family member cannot be construed as an independent challenge to the Order by him. That the Appeal filed by Jayant Viswanath Gavandi and others before SDO was in respect of competing claims within the Gavandi family and the said Appeal did not *per se* question the Order of regrant. That therefore the decision to regrant land in favour of GAvandi family attained finality and Petitioner was

estopped from filing Revision directly before the learned Minister in absence of challenge by him to Tehsildar's Order.

15. Mr. Paigude would submit that there is no palpable error in the order of the learned Minister and that therefore this court would be loathe in exercising jurisdiction under Article 227 of the Constitution of India for interfering in the same. Alternatively, Mr. Paigude would submit that even if the order of regrant of Tehsildar is made subject to the outcome of the Appeal pending before the District Court, the possession of his clients over the land must be protected. In support of his contentions, Mr. Paigude would rely upon the following judgments:

- i. ***Ramrao Jankiram Kadam Vs. State of Bombay*** SCR (1963) Supp. 322
- ii. ***Sankalchan Jaychandbhai Patel and Ors. Vs. Vithalbhai Jaychandbhai Patel and Ors.*** (Civil Appeal Nos. 12808-09 of 1996)
- iii. ***The Secretary of State for India Vs. Chinmal Jamnadas*** MANU/MH/0130/1941
- iv. ***Nusli Neville Wadia Vs. Ivory Properties and Ors.*** (2019) 15 SCR 795

16. I have also heard Mr. Vanarase, the learned AGP for Respondent Nos.1 to 5 and Mr. Kulkarni, learned counsel appearing for Pune Municipal Corporation.

17. I have given my anxious consideration to the submissions canvassed by the learned counsel appearing for the parties and have perused the records of the case.

18. Before India's independence, hereditary offices were granted in the form of watans for performance of various duties. The Bombay Hereditary Offices Act 1874 (now renamed as Maharashtra Hereditary Offices Act 1874) was enacted to regulate the hereditary offices. The Act defined the terms 'Hereditary Office' and 'Watandar' as under:

" Hereditary Office " means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue or with the village police, or with the settlement of boundaries, or other matters of civil administration. The expression includes such office even where the services originally appertaining to it have ceased to be demanded.

The watan property, if any, and the hereditary office and the rights and privileges attached to them together constitute the watan.

"Watandar" means a person having an hereditary interest in a watan. It includes a person holding watan property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance. It includes a person adopted by an owner of a watan or part of a watan, subject to the conditions specified in sections 33 to 35

The Maharashtra Hereditary Offices Act 1874 prohibited and regulated alienation of watan and watan rights and watan property.

19. After independence, services appertaining to the hereditary offices were not required and therefore it was decided to abolish Paragana and Kulkarni Watans and accordingly, Watans (Abolition) Act, 1950 was enacted. Section 3 of the Act abolishes all Paragana and Kulkarni Watans and extinguishes all rights to hold office and any liability to render service appertaining to such Watans. Subject to provisions of Section 4, the State Government resumed all Watan lands and made the same subject to payment of land revenue. Section 4 of the Watans (Abolition) Act, 1950 provides for regrant of

the resumed land to the holder of Watans on payment of occupancy price equal to 12 times the amount of full assessment within five years of coming into force of the Act. Upon such regrant, the Watandar is treated as deemed occupant primarily liable to pay the land revenue under the provisions of the Maharashtra Land Revenue Code, 1966 **(the Code)**. Section 8 of the Watans (Abolition) Act, 1950 provides that if any Watan land had been lawfully leased and such lease was subsisting on the appointed day, the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 shall apply to such lease and that such rights and liabilities of holders of said lands and his tenants shall be governed by the provisions of the Tenancy Act. It would be apposite to reproduce the relevant provisions of the Watans (Abolition) Act, 1950:

3. Abolition of certain watans together with the right to office and incidents

With effect from and on the appointed day, notwithstanding anything contained in any law, usage, settlement, grant, sanad or order—

- (1) all Paragana and Kulkarni watans shall be deemed to have been abolished ;
- (2) all rights to hold office and any liability to render service appertaining to the said watans are hereby extinguished ;
- (3) subject to the provisions of section 4, all watan land is hereby resumed and shall be deemed to be subject to the payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated land :

Provided that such resumption shall not affect the validity of any alienation of such watan land made in accordance with the provisions of section 5 of the Watan Act or the rights of an alienee thereof or any person claiming under or through him;

- (4) all incidents appertaining to the said watans are hereby extinguished.

4. Holder of watan land to be occupant.

(1) A watan land resumed under the provisions of this Act shall 3[subject to the provisions of section 4A] be regranted to the holder of the watans to which it appertained on payment of the occupancy price equal to twelve times of the amount of the full assessment of such land within 4[five years] from the date of the coming into force of this Act and the holder shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and rules made thereunder ; all the provisions of the Code and rules relating to unalienated

land shall, subject to the provisions of this Act, apply to the said land :

Provided that in respect of the watan land which has not been assigned towards the emoluments of the officiator, occupancy price equal to six times of the amount of the full assessment of such land shall be paid by the holder of the land for its regrant :

Provided further that if the holder fails to pay the occupancy price within the period of 1[five years] as provided in this section, he shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily ejected in accordance with the provisions of the Code.

2[(2) 3[(a)] On or after the commencement of the Bombay Paragana and Kulka-rni Watans (Abolition), the Bombay Service Inams (Useful to Community) Abolition, the Bombay Merged Territories Miscellaneous Alienations Abolition, the Bombay Inferior Village Watans Abolition and the Maharashtra Revenue Patels (Abolition of Office) of (Amendment) Act, 2000 (hereinafter, in this section, referred to as “the commencement date”), the occupancy of the land re-granted under sub-section (1) may be transferred by the occupant for agricultural purpose, and no previous sanction or no objection certificate from the Collector or any other authority shall be necessary for such transfer. After such transfer, the land shall be continued to be held by such transferee occupant of new and impartiable tenure (Occupant Class II) in accordance with the provisions of the Code;

3[(b) Before the commencement date, if any such occupancy has already, without previous sanction or no objection certificate from the Collector or any other authority, been transferred by the occupant, for agricultural purpose, such transfer may be regularised on the production of registered instruments such as sale deed, gift deed, etc., as a proof thereof, for such transfer. After such regularisation, the occupancy of such land shall be held by such transferee occupant on new and impartiable tenure (Occupant Class II), in accordance with the provisions of the Code:]

Provided that, any such occupancy held on new and impartiable tenure (Occupant Class II) may, after the commencement date, be converted into old tenure (Occupant Class I) by the occupant, by making payment of fifty per cent. of the amount of the current market value of such land to the Government, and after such conversion, such land shall be held by the occupant as Occupant Class I, in accordance with the provisions of the Code :

Provided further that, if on the commencement date, any such occupancy has already, with the prior permission of the Collector or any other competent authority, on payment of the appropriate amount as Nazarana, been transferred for non- agricultural use, such transfer of occupancy shall be deemed to have been made under the first proviso and the land shall be deemed to be held by the occupant as an Occupant Class I, in accordance with the provisions of the Code, with effect from the date of such transfer :

Provided also that, if on the commencement date, any such occupancy has already, without prior permission of the Collector or any other competent authority and without payment of the amount equal to fifty per cent. of the current market value of such land as Nazarana, been transferred for non-agricultural use, such transfer may be regularised on payment of an amount equal to fifty per cent. of the current market value of such land for non-agricultural use as Nazarana, and an amount equal to fifty per cent. of such Nazarana as a fine, and on such payment, the occupant shall hold the land as an Occupant Class I, in accordance with the provisions of the Code.]

(3) Nothing in 1 [sub-sections (1) and (2)] shall apply to any land—

(a) the commutation settlement in respect of which provides expressly that the land appertaining to the watan shall be alienable without the sanction of the State Government ; or

(b) which has been validly alienated with the sanction of the State Government under section 5 of the Watan Act.

Explanation.—For the purposes of this section the expression “holder” shall include—

(i) all persons who on the appointed day are the watandars of the same watan to which the land appertained, and

(ii) in the case of a watan the commutation settlement in respect of which permits the transfer of the land appertaining thereto, a person in whom the ownership of such land for the time being vests.

8. Application of Bombay Tenancy and Agricultural Lands Act, 1948.

If any watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the †Bombay Tenancy and Agricultural Lands Act, 1948, shall apply to the said lease and the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of this Act, be governed by the provisions of the said Act.

Explanation.—For the purposes of this section the expression ‘land’ shall have the same meaning as is assigned to it in the †Bombay Tenancy and Agricultural Lands Act, 1948.

20. A Government Resolution was issued on 4 February 1983 issuing clarificatory instructions for applicability of various land tenure abolition laws including the Watans (Abolition) Act, 1950. Under the G.R., it was directed that the amount of Nazrana for converting new tenure of Watan land re-granted under Section 4(1) of the Watans (Abolition) Act, 1950 into ordinary Rayatwari tenure was 50 times the market value of the land for use of purposes other than agricultural and 20 times the assessment if land is intended to use for agricultural purposes. The said G.R. also provided that if persons entitled for regrant of the resumed watan lands are those who had acquired permanent tenancy rights in the land, the occupancy price charged would be six times the rent which they were paying to the Watandars. The heirs of Pandurang Gopal Gavandi viz. Suresh, Girish, Jagdish and Kishori filed application dated 6 April 2000 before the Tehsildar seeking regrant of the land claiming that the land bearing Survey No.65/1 was Inam land and that the Applicants' father had taken it on Khand (tenancy) on 25 October 1948. They further stated in the application that the holder of the Watan land did not pay Nazrana upto the year 1956 and therefore entry of 'Akari Pad' was made in the revenue records and that the land was in possession of Pandurang Gopal Gavandi/his heirs since 25 October 1948. They showed willingness to pay Nazrana and requested for regrant of the land by recording their names as occupants.

21. It is Petitioner's case that the claim of heirs of Pandurang Gopal Gavandi of possession of land in application dated 6 April 2000 was false as the possession of the land was taken over by the

State Government on 20 March 1962 and the Civil Court had directed delivery of possession by the State Government to Balaji Walvekar vide Decree dated 30 October 1987. It appears that the application dated 6 April 2000 did not make any reference to the Decree dated 30 October 1987 or even to the registered Lease-deed dated 28 October 1948, the tenure of which had expired by the year 1973. Be that as it may. The Tehsildar ordered an enquiry into regrant application submitted by the heirs of Pandurang Gavandi.

22. Perusal of the application dated 6 April 2000 would indicate that the same was made on an assertion that the land is Inam Watan land and that Balaji Walvekar failed to pay Nazrana within the stipulated time. However, Balaji Walvekar had instituted Special Civil Suit No. 111 of 1974 for declaration of absolute ownership of the land and for deletion of Mutation Entry 'Akari Pad' and its substitution his name in the revenue records. In the suit, Issues No.9 and 11 were framed as under :

9. Do Plaintiffs prove that the suit land had gone out of Watan prior to Watan Abolition Act?

11. Do Plaintiffs prove that disputed land has ceased to be the Watan land?

23. Both the issues were answered in affirmative by the Civil Court. It would be relevant to reproduce some of the findings recorded by the Civil Court while answering Issue No.11.

7. Issue No.9: “The discussion while dealing with Issue No.2 is sufficient enough to hold that the suit land had gone out of the hands of Watan holders right from the year 1898 onwards. It is not the defendants case that either Manohar or said Balaji belonged to the family of Watandar Shri. Deshpande. So I answer Issue No.9 in the affirmative.

11. Issue No. 11:

“In the present case it is not in dispute that the suit land is Inam land of Class (V) and that Judi was imposed atleast prior to the year 1898. In 1863-64 Govt. thought that the service in each Pargana was no more necessary and so decided to accept that is called as Service Commutation Settlement by imposition of Judi in commutation of service. Sec. 5 of the Bombay Hereditary Office Act, 1874, generally prohibits alienation by the Watandar. Sub-section 2 thereof reads as follows :

“ In case of any watan in respect of which Service Commutation Settlement has been effected, either under Section 15 or before that section came into force, Clause (A) of this section shall apply to said Watan, unless the right of alienating such Watan without the consent of the Govt. is conferred upon the Watandars by the terms of such settlement or have been acquired by them under the said terms”.

There is no evidence on record to show how the service of Watandar Shri. Deshpande was discontinued and on what terms and in what circumstances. So as soon as the services from the Watandar was disclaimed by the Govt. the holding of the suit land by the Watandar was in his own right, of course, subject to the payment of Judi as agreed. Judi is “rent imposed on free holding” (See Appendix D in Law of Land Tenures by Shri. D.M. Kshirsagar, 1935 edition). Admittedly right from the year 1898 till the Watan Act became operative, the State Govt. never objected to such transfer during this period of more than 50 years. On the other hand, the right of successor-in-title of the original Watandars was recognised by the Govt. by mutating their names in the revenue record of the suit land. From this fact it is reasonable to conclude that such transfer by the original Watandar to their vendor was permissible according to law or the rules then prevalent. Even in Inam register Ex.93, for the year 1936-37, there is endorsement that Survey No.65 and 75 have been deleted from Inam land. For all these reasons I hold that the suit land ceased to be the Watan land.

24. After recording the above findings, the Civil Court decreed the suit in term of the following order:

1. The defendants shall deliver possession of field Survey No.65/1 of Village-Parvati, Poona City to the Plaintiffs.
2. It is hereby further declared that Mutation Entry in the name of "Akari Pad" is illegal and same shall be deleted and instead the name of the Plaintiff be substituted as Occupants of the suit land.
3. Since the land is lying fallow even today I decline to pass order to determine further mesne profits.
4. The defendant shall pay costs of this suit to the plaintiffs.

25. Thus, a specific finding is recorded by the Civil Court that the suit land ceased to be Watan land. The Appeal against the Decree dated 30 October 1987 initially filed before this Court has been transferred to the District Court, Pune and has been renumbered as Civil Appeal No. 9 of 2016, which continues to pend till date. Once the Civil Court has recorded a specific finding that the suit land is not a Watan land, the provisions of the Watans (Abolition) Act, 1950 would have no application to the land in question. In the application filed by the heirs of Pandurang Gavandi, Tehsildar was not made aware of passing of Decree dated 30 October 1987 by the Civil Court. Balaji Walvekar or his heirs also could not bring the factum of passing of Decree by the Civil Court to Tehsildar's attention as they were not aware about pendency of proceedings before the Tehsildar for regrant of the land. Perusal of the Order dated 23 April 2001 passed by the Tehsildar would indicate that the same is passed on an assumption that the land bearing Survey No.65/1 is Watan land. The Tehsildar has recorded a finding that before coming into effect of the Watans (Abolition) Act, 1950, the land has been in occupation of Pandurang Gopal Gavandi as a tenant on payment of rent of Rs.1,484/- per year. The Tehsildar has further held that the holders failed to pay occupancy price of six times the assessment within the stipulated period upto 30 April 1956 and therefore the land came in occupation

of the State Government. The Tehsildar then refers to the provisions of the Government Resolution dated 4 February 1983 providing for regrant of land not in cultivation of the holder in favour of the tenant on payment of Nazrana equivalent to six times the rent. The Tehsildar accordingly proceeded to determine the amount of occupancy price at Rs.7,129/- and upon payment of the said occupancy price, the Tehsildar proceeded to regrant the land in the name of the Applicants subject to the condition *inter alia* that the land must be used only for agricultural purposes.

26. There is some degree of debate between the parties about the purpose for which the land was being occupied by Pandurang Gopal Gavandi. Petitioner claims that the occupation was for non-agricultural purposes for manufacturing of bricks whereas the heirs of Pandurang Gopal Gavandi represented before the Tehsildar that the land was under cultivation as protected tenant. In my view, it is not really necessary to go into that issue at this juncture as the entire case hinges on the issue as to whether the land was Watan land or not. If the land is not Watan land, provisions of Watans (Abolition) Act, 1950 would have no application and therefore there is no question of regrant either in favour of the holder (Walvekar) or in favour of the lessees/tenants (Gavandis). As observed above, the Civil Court has clearly held that the land is not a Watan land. The said finding of the Civil Court is now under challenge in the Appeal pending before the District Court.

27. As observed above, the Tehsildar was not aware of the findings of the Civil Court about the land not being Watan land. However, this aspect came to be highlighted before the Sub-Divisional Officer, before whom the Tehsildar's order was challenged, not by the Petitioner but by the heirs of brother of Pandurang Gopal Gavandi. As observed above, there was a Partnership Deed executed between the two brothers- Pandurang and Vishwanath- whereby both brothers agreed to carry out the business of manufacturing bricks and allied products in the name of Padma Brick Factory. The partnership was apparently dissolved in the year 1962 and thereafter Pandurang alone started claiming rights in respect of the land and his heirs got the land re-granted in their names by Tehsildar's order dated 23 April 2001. The other partner, Vishwanath's heir got aggrieved by regrant made exclusively in name of heirs of Pandurang and therefore filed RTS Appeal No. 316 of 2001 before the Sub-Divisional Officer. During pendency of the said Appeal, Petitioner apparently got wind of passing of order of regrant by the Tehsildar and filed intervention application before SDO, which was allowed and Petitioner was impleaded as Respondent No.5 in RTS Appeal No. 316 of 2001. The SDO noticed passing of Decree by the Civil Court and pendency of Appeal filed by the State Government and held that the Tehsildar could not have passed an Order of regrant during pendency of civil proceedings. SDO held that the order passed by this Court in pending First Appeal would be binding on the Revenue Authorities. SDO accordingly set aside Tehsildar's order of regrant and directed maintenance of position prior to passing of Order dated 23 April

2001. The Additional Collector rejected the Appeal filed by the heirs of Pandurang Gavandi by Order dated 2 May 2005.

28. When the proceedings were taken in revision before the Additional Commissioner, Pune by the heirs of Pandurang Gavandi, the Additional Commisisoner invoked the provisions of Section 11 of the Revenue Jurisdiction Act and held that Petitioner had the remedy of filing Appeal under the provisions of Section 247 of the Code against Tehsildar's order, which he failed to file. The Additional Commissioner further held that the Civil Court did not have jurisdiction in respect of the cases where Appeal can be filed under the provisions of the Code. By recording these findings, the Additional Commissioner proceeded to ignore the Decree passed by the Civil Court and directed restoration of Tehsildar's order of regrant. The learned Minister-Revenue has adopted the reasoning of the Additional Commissioner by holding that the Decree passed by the Civil Court is not binding on account of bar under Section 11 of the Revenue Jurisdiction Act. Additionally, the learned Minister has accused Petitioner of not filing Appeal against Tehsildar's order.

29. Since the Addl. Commissioner, Pune and the learned Minister-Revenue have relied upon provisions Revenue Jurisdiction Act, it would be apposite to refer to Section 4 of the Act, which reads thus:

4. Bar of certain suits.—Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:—

(a) ¹[claims against the ²[Government] relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. 3 of 1874, or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed ³[by the ⁴[State] Government] or any officer duly authorized in that behalf, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared by Government or any officer duly authorized in that behalf to be held for service;

(b) objections—

to the amount or incidence of any assessment of land-revenue authorized ³[by the ⁴[State] Government], or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

(c) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance ³[by the ⁴[State] Government] or any officer duly authorized in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants;

claims to set aside on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land-revenue;

(d) claims against ²[Government] -

(1) to be entered in the revenue survey or settlement records or village papers as liable for the

land-revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue survey or settlement, or (3) to have any such entry either omitted or amended;

(e) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act 4 of 1868, or any other law for the time being in force;

(f) ¹[claims against ²[Government]]—

to hold land wholly or partially free from payment of land-revenue, or

to receive payments charged on or payable out of the land-revenue, or

to set aside any cess or rate authorized ³[by the ⁴[State] Government] under the provisions of any law for the time being in force, or

respecting, the occupation of waste or vacant land belonging ⁵[to the ²[Government]];

(g) claims regarding boundaries fixed under Bombay Act No. 1 of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks:

Proviso.—Provided that if any person claim to hold land wholly or partially exempt from payment of land-revenue under—

(h) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(i) an instrument or sanad given by or by order of the ¹[²[State] Government] under Bombay Act No. 2 of 1863, section one, clause first, or Bombay Act No. 7 of 1863, section two, clause first, or

(j) any other written grant by the British Government expressly creating or confirming such exemption, or

(k) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation 17 of 1827, chapter X, or under Act No. 11 of 1852, which declares the particular property in dispute to be exempt;

such claim shall be cognizable in the Civil Courts.

30. Rival parties have canvassed submissions about interpretation of Section 4 of the Revenue Jurisdiction Act and have relied upon various judgments in support of their respective contentions. However, in my view, this Court cannot determine the issue of jurisdiction of civil court, whose decree is not under challenge in the present petition. The same is under challenge in appeal pending before the District Court, who alone can decide the said issue. Ignoring this position, both Addl. Commissioner and Minister-Revenue have held that Civil Court did not have jurisdiction to decide the issue whether the land is watan land or not.

31. In my view, both the Additional Commissioner as well as the Minister-Revenue have committed palpable error in declaring that the Civil Court did not have jurisdiction to make a declaration about status of land not being Watan land. Whether Civil Court has jurisdiction or not will be decided, not by revenue authorities, but by hierarchical Appellate Courts. The Revenue Authorities cannot adjudicate upon the issue of jurisdiction of Civil Courts. If the Civil Court has committed error in exercising jurisdiction, the Appellate Court can correct the error in pending Appeal. In the present case, the Appeal against the decree is pending before the District Court. The District Court alone would have jurisdiction to decide whether bar under Section 11 of the Revenue Jurisdiction Act would apply in the facts and circumstances of the present case. The issue of jurisdiction of the Civil Court would be decided by the District Court while deciding the Appeal. The Additional Commissioner or the Minister-Revenue

cannot proceed to ignore the decree by making a declaration that the Civil Court lacked jurisdiction to decide the suit. Curiously, in the present case, the Appellant before the District Court is the State Government itself. The second revision in the present case is decided by the State Government through the learned Minister. The net effect of the findings recorded by the Additional Commissioner and the Minister-Revenue is that the Appellant before the District Court (State Government) has virtually succeeded in the Appeal by giving declaration that land is watan land, that civil court did not have jurisdiction and that therefore the decree is nullity. Such course of action adopted by the Revenue Authorities is unknown to law. If the State Government believes that bar under Section 11 of the Revenue Jurisdiction Act is attracted in the present case and/or Civil Court has committed any jurisdictional error while passing the decree, it can urge before the Appellate Court that the decree be set aside. However, the State Government, cannot on its own, record a finding in parallel proceedings that the decree of the Civil Court is nullity or not binding on it.

32. In my view, therefore the Orders passed by the Minister-Revenue and the Additional Commissioner suffer from serious jurisdictional error. They are unsustainable and are liable to be set aside. As observed above, the entitlement of Gavandis for regrant of land hinges squarely upon the issue as to whether the land in question is Watan land or not. The Civil Court has already made a declaration that it not a Watan land. The correctness of the said finding will be examined by the District Court in pending Appeal. In such

circumstances, the Tehsildar could not have proceeded on an assumption that the land is Watan land and ordered its regrant in favour of the Gavandis. The proper course of action for Tehsildar was await decision of the Appeal preferred by the State Government. If the State Government succeeds in the Appeal and it is held that land is Watan land, the Tehsildar would be in a position to decide whether regrant thereof can be granted and in whose favour. If on the other hand, the Civil Court's decree is maintained, there is no question of ordering regrant by applying the provisions of Watans (Abolition) Act, 1950. In my view, the Revenue Authorities could not and ought not to have ventured into the exercise of ordering regrant under the provisions of Watans (Abolition) Act, 1950 during pendency of State Government's Appeal before the District Court. Consequently, the Order dated 23 April 2001 passed by the Tehsildar is clearly erroneous. The SDO had rightly set aside the Tehsildar's Order and the Additional Collector, had rightly rejected the Appeal filed by heirs of Pandurang Gavandi. The Additional Commissioner erred in restoring the order of the Tehsildar and the Minister- Revenue has erred in rejecting Petitioner's second revision.

33. The issue about failure on the part of the Petitioner to file Appeal against the Tehsildar's order dated 23 April 2001 is rendered academic as the Tehsildar could not have entertained the application for regrant in the light of the finding of the Civil Court that the land is not Watan land. I therefore need not delve into the doctrine of merger sought to be canvassed by Ms. Tulpule. Therefore, this

judgment need not be burdened by discussing various judgments relied upon by her in support of her contention of merger of orders.

34. The learned counsel have relied upon the judgments on the issue of jurisdiction of Civil Court to decide disputes in respect of which remedies are provided under the Code. In my view, whether Civil Court had jurisdiction to pass Decree dated 30 October 1987 will be decided by the District Court and it would be premature for this Court to record any finding about jurisdiction of the Civil Court to entertain Special Civil Suit No. 111 of 1974. I therefore need not burden this judgment by discussing application of various case laws about jurisdiction of Civil Court to decide issue about status of watan land. If the issue of jurisdiction is decided in the present Petition, the same would virtually decide the appeal pending before the District Court. For the same reasons, I need not discuss the judgments cited by parties on the issue of supremacy between orders passed by the Civil Court and Revenue Authorities. All contentions on these issue are kept open.

35. I am therefore of the view that the issue of entitlement or otherwise of Gavandis to claim regrant of the land would depend squarely upon the sustainability of the findings recorded by the Civil Court in decree dated 30 October 1987. It would therefore be prudent to await the outcome of the District Court in Civil Appeal No. 9 of 2016. In the event decree of civil court is reversed by holding the land as watan land both tenants/lessees (Gavandis/their successors-in-title) as well as the holders (Walvekars) can initiate proceedings for regrant of the land before Tehsildar. Therefore, the

hearing of the appeal before the District Court needs to be expediated so that clarity is achieved about status of the land. Civil Appeal No. 9 of 2016 is pending for the last 25 long years considering the fact that the First Appeal was filed in this Court in 1988 in this Court.

36. There is yet another angle, which the Addl. Commissioner and Minister-Revenue have completely glossed over. Even if the land is treated as Watan land, whether the holder thereof (Walvekar) had right to seek regrant is not decided in any manner. The issue about nature of possession by Gavandis is also not considered and Gavandis are treated as cultivators of the land and protected tenants without deciding the objection of Petitioner that Gavandis were granted lease only for the commercial activity of manufacturing of bricks and allied products. It must also be borne in mind that the Tehsildar proceeded to order regrant after being satisfied through enquiry conducted by the Talathi about non-availability of heirs of Balaji Walvekar. The report of Talathi is factually incorrect as Balaji Walvekar's heir has prosecuted the further proceedings. All these aspects are not taken into consideration by the Ld. Minister while rejecting Petitioner's second revision. Therefore, in the event of the District Court holding that that land is indeed a watan land, claims of not just Gavandis but even of the holders (walvekar) for regrant will also have to be considered and decided.

37. Mr. Paigude has expressed an apprehension that setting aside the order of Tehsildar may entail loss of possession of his clients. It is for Respondent Nos. 18 to 21 to adopt necessary proceedings, if not already adopted, to protect their alleged possession of the land, re-

grant of which will become void on account of setting aside of Tehsildar's order dated 23 April 2001.

38. I accordingly proceed to pass the following Order:

- (i) Orders of the Minister-Revenue dated 25 August 2009, Additional Commissioner dated 16 July 2007 and Tehsildar's Order dated 23 April 2001 are set aside.
- (ii) The entitlement, if any, of Petitioner and of Pandurang Gopal Gavandi/his heirs/successor-in-title to seek regrant of the land would depend on the final outcome of Civil Appeal No.9 of 2016 pending before the District Court, Pune. They shall be at liberty to initiate appropriate proceedings in that regard depending on the outcome of Civil Appeal No. 9 of 2016.
- (iii) The District Court, Pune is requested to expedite the hearing of Civil Appeal No. 9 of 2016 and to make an endeavor to decide the same as expeditiously as possible, preferably within a period of one year from today.

39. With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no order as to costs.

SANDEEP V. MARNE, J.