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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11257 OF 2018

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The Tata Power Company Limited & Anr. ... Petitioners

V/s.

The State of Maharashtra Through
Its Minister for Revenue & Ors. ... Respondents

Mr. Girish Godbole, Senior Advocate with Mr. Bhushan Deshmukh, Mr. H. N. Vakil, Mr. Samkit Shah i/by Mulla and Mulla and Craigie Blunt & Caroe for the petitioners.

Mr. R. A. Thorat, Senior Advocate with Mr. P. J. Thorat, Mr. P. P. Kakade, Government Pleader and Mr. Sachin Kankal, AGP for the State/respondent Nos.1 to 6.

CORAM : AMIT BORKAR, J.

DATED : APRIL 1, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The petitioners are challenging the order dated 11 May 2018 passed by respondent No.1, thereby confirming the order dated 20 July 2017, by which he confirmed the order passed by respondent No.3-Collector dated 9 June 2016, purportedly in exercise of power under section 34 of the Maharashtra Land Revenue Code, 1966 (hereafter, "M.L.R. Code", for short).
- 3.** The facts giving rise to the present writ petition are as

follows:

4. On 7 July 1911, an agreement under section 11 of the Maharashtra Land Acquisition Act, 1894 was executed between Tata Hydro Electric Power Supply Co. Ltd. (petitioners' predecessor) and the Secretary of State for India for acquiring land required by the company within limits of villages Lonavala, Khopoli, Bhanaj, Devalad for proposed hydropower project. The entire cost of acquisition was to be paid by the predecessor of petitioner No.1. Accordingly, awards under the provisions of the Maharashtra Land Acquisition Act of 1894 were passed. Possession was handed over to the predecessor-in-title of the petitioners.

5. On 30 September 1926, petitioner No.1 issued debentures to raise funds, and three individuals were appointed as trustees for debenture holders until repayment of the loan by redeeming the debentures. A debenture trust deed was executed between petitioners and JCK Peterson, F.E. Dinshaw, and Abraham Jacob (debenture trustees). On 18 December 1926, Mutation Entry No.26 recorded the names of debenture trustees in the revenue record.

6. On 20 February 1933, the Secretary of State for India in council executed conveyance in favour of the petitioners, which was registered before the Sub-Registrar, Bombay, on 24 April 1933 for land admeasuring 43.03 hectares, which consisted of 17.99 hectares of private land and 25.04 hectares government land. According to the petitioners, the petitioners repaid the debenture loan in 1941; however, the names of debenture trustees were not

removed from the revenue record.

7. On 1 January 1949, petitioner No.1 as a lessor granted a lease in favour of the Governor of Bombay as a lessee of various survey numbers, including Survey Nos.27/B, 33, 62, 63 and 64 of village Khopoli totally admeasuring 7 Acres 31 Gunthas. The lease was for 20 years, commencing on 3 January 1949. Clause 6 of the lease deed empowered the petitioner company to resume any portion of the demised premises by giving six months' notice. Since the Executive Engineer, PWD, Panvel, tried to construct a Ghat within the flow of tale race water for bathing and washing cloths, petitioner No.1 filed Special Civil Suit No.209 of 2005 before the Civil Judge Senior Division, Panvel. The State of Maharashtra was party to the said suit. The Civil Court framed the issue as to whether petitioner No.1 proves Survey Nos.27/B and 43 as properties owned by it. The Civil Court, on 29 January 2013, decreed Special Civil Suit No.209 of 2005, holding petitioner No.1, owner of the properties mentioned therein, which consists of part of the property, which is the subject matter of the present proceeding.

8. On 28 August 2014, the Collector, Raigad, issued a show-cause notice to the petitioners under section 53 of the M.L.R. Code for the resumption of land Survey No.27/B/1 on the ground that the land was leased in 1922, which expired in 1952. Therefore, the petitioners filed a reply to the show-cause notice stating that no lease deed exists as referred to in the show-cause notice and requested the authority to supply a copy of such a lease deed. The then Collector concluded the hearing without providing a copy of

such a lease deed. However, after the completion of the hearing, the Collector was transferred and a new Collector, who did not grant the opportunity of hearing to petitioner No.1, issued a notice to the petitioners to appear for the hearing. The petitioners pointed out the absolute ownership and binding force of the decree in Special Civil Suit No.209 of 2005. It was also submitted that the exercise of power by the First Authority is a mala fide exercise of power at the instance of one Gagangiri Maharaj Ashram Trust. On 9 June 2016, the then Collector, who never granted the opportunity of hearing to the petitioners, passed an order purportedly under section 34 of the M.L.R. Code for resuming the land of about 43 hectares comprising five survey numbers. The show-cause notice was issued under section 53 of the M.L.R. Code and only concerned one land, i.e. Survey No.27/B/1.

9. On 28 June 2016, the Circle Officer deleted the petitioner's name from the revenue record. On 3 August 2016, the petitioners filed LND Appeal No.828 of 2016 before the Commissioner, Konkan Division, under section 247 of the M.L.R. Code challenging the Collector's order dated 9 June 2016. On 20 July 2017, the Commissioner dismissed the petitioners' appeal, against which the petitioners filed a revision before the Revenue Minister. On 11 May 2018, the Revenue Minister dismissed the petitioners' appeal, holding that the appeal was not maintainable in view of section 34(3) of the M.L.R. Code and that the petitioners' only remedy was to file a civil suit. Hence, the petitioners filed a present writ petition.

10. Mr Godbole, the learned Senior Advocate for the petitioners,

submitted that despite various orders passed by this Court, purportedly, the lease of 1922, referred by the Collector in its order, has not been placed on record. Such a request was made even before the Collector, but till today, a copy of such a lease deed has not been produced before any authority nor before this Court. The impugned order is, therefore, based on a non-existent document. The show-cause notice was issued under section 53 of the M.L.R. Code, whereas the Collector passed an order purportedly under section 34 of the M.L.R. Code on the ground that the occupant had died intestate without known heirs. The Collector relied upon the report of the Tehsildar, a copy of which was never supplied to the petitioners; the decree of the Civil Court is binding on the State Government and all its Officers, which recorded a finding that the petitioners are the owners of part of the property. He, therefore, submitted that the impugned order cannot be sustained.

11. Per contra, Mr. Thorat, learned Senior Advocate on behalf of the respondents, submitted that the document described as conveyance dated 20 February 1933 is, in fact, a lease deed. The 1922's lease deed referred in the impugned order is not available with the respondents. He submitted that to interpret the document, the document must be read as a whole. On careful reading of the document dated 20 February 1933, it is evident that the petitioners agreed to pay rent to the respondents and, therefore, the document needs to be termed as a lease deed and, therefore, the impugned orders passed by the Collector are in accordance with the law.

12. For the purpose of adjudicating the issue involved, it is necessary to set out relevant provisions of the M.L.R. Code, which are as follows:

“2. Definitions.

In this Code, unless the context otherwise requires,—

(1) to (22)

(23) “occupant” means a holder in actual possession of unalienated land, other than a tenant or Government lessee; provided that, where a holder in actual possession is a tenant, the land holder or the superior landlord, as the case may be, shall be deemed to be the occupant;

34. Disposal of intestate occupancies.

(1) If an occupant dies intestate and without known heirs, the Collector shall take possession of his occupancy and may lease it for a period of one year at a time.

53. Summary eviction of person unauthorisedly occupying land vesting in Government.

(1) If in the opinion of the Collector, any person is unauthorisedly occupying or wrongfully in possession of any land or foreshore vesting in the State Government or is not entitled or has ceased to be entitled to continue the use, occupation or possession of any such land or foreshore by reason of the expiry of the period of lease or tenancy or termination of the lease or tenancy or breach of any of the conditions annexed to the tenure, it shall be lawful for the Collector to evict such person.

(1-A) Before evicting such person, the Collector shall give him a reasonable opportunity of being heard and the Collector may make a summary enquiry, if necessary. The Collector shall record his reasons in brief for arriving at the opinion required by sub-section (1).

(2) The Collector shall, on his finding as aforesaid, serve a notice on such person requiring him within such time as may appear reasonable after receipt of the said notice to vacate the land or foreshore, as the case may be, and if such notice is not obeyed, the Collector may remove him from such land or foreshore.

(3) A person unauthorisedly occupying or wrongfully in possession of land after he has ceased to be entitled to continue the use, occupation or possession by virtue of any of the reasons specified in sub-section (1), shall also be liable at the discretion of the Collector to pay a penalty not exceeding two times the assessment or rent for the land or such amount as may be prescribed, whichever is higher, for the period of such unauthorised use or occupation.”

13. I have perused the material on record, including the affidavit-in-reply filed by the respondents, and based on materials on record, the following factual scenario emerges:

(i) On 28 August 2014, the Collector issued notice to the petitioners under section 53 of the M.L.R. Code on the ground that the period of lease executed in favour of the petitioners came to an end on 31 July 1952 and in the absence of renewal of the lease, petitioners' possession became that of the unauthorised occupant;

(ii) The show-cause notice concerned only one piece of land, i.e., Survey No.27/B/1.

(iii) The petitioners requested a copy of the lease deed referred to in the show-cause notice before the Collector. However, a copy of such a lease deed was not furnished to the petitioners.

(iv) On 9 June 2016, the Collector passed an order purportedly under section 34(1) of the M.L.R. Code on the ground that the

occupants, i.e. debenture trustees, died intestate without known heirs. Therefore, it is necessary to resume possession of five different lands, i.e. Survey Nos.27/B/1, 47/B, 66, 69/B and 67.

14. The Civil Court in Special Civil Suit No.209 of 2005 framed the issue of ownership in relation to Survey Nos.27/B and 43 and answered said issue in favour of petitioner No.1, holding it to be the owner of said properties.

15. The impugned orders cannot be sustained for more than one reason. The first reason is that the show-cause notice was issued under section 53(1) M.L.R. Code on the ground that the lease deed executed in the year 1922 expired in 1952 and, therefore, the petitioners' possession is that of unauthorised occupants. However, based on such show-cause notice, the Collector passed an order purportedly under section 34(1) of the M.L.R. Code on the ground that debenture trustees (occupants) died intestate and without known heirs. The second reason is that the show-cause notice was issued in relation to only one property, i.e. 27/1/B/. However, an order of land resumption was passed in relation to five properties, i.e. Survey Nos.27/B/1, 47/B, 66, 69/B and 67. The third reason is that on perusal of the conveyance dated 20 February 1933, it appears that the document conveyed petitioner No.1 the lands mentioned in the schedule of document subject to payment of rent assessment. The document nowhere mentions lease period upto 1952.

16. Moreover, the second schedule to the said document and in particular Clause 6 required petitioners to issue notice to the

government in case the lands were no longer used or required for the purpose stated in the document to exercise the option of resumption and in case the Government fails to exercise the option as to resumption within six months, the company was granted liberty to sale land subject to payment of rent to be paid to the Government. The cumulative effect of clauses in the document dated 20 February 1933 does not indicate that the lease of limited period, as mentioned in the order, was created in favour of petitioner No.1. It appears that the petitioners are entitled to use lands granted in their favour for the purpose mentioned in the document subject to payment of rent. Moreover, the Civil Court held petitioner No.1 as the owner of part of land Survey No.27/B/1, which is the subject matter of appeal before the District Court.

17. I am, therefore, satisfied that the action of resumption of land based on the issuance of show-cause notice under section 53 of the M.L.R. Code and order of the Collector purportedly under section 34(1) of the M.L.R. Code cannot be sustained. Hence, the following order:

18. Rule is made absolute in terms of prayer clauses (a) and (b).
No costs.

(AMIT BORKAR, J.)