



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6732 OF 2022

1. Rafat Begam W/o Abdul Razzak
Age: 63, Occ: Agriculturist and Household,
R/p: Madina Nagar, Parbhani
Tq. And Dist. Parbhani
2. Abdul javed @ Abdul Haque s/o Abdul Razzak,
Age: 40, Occu: Agriculturist and Labour,
R/p: Madina Nagar, Parbhani
Tq. And Dist. Parbhani
3. Abdul Musa S/o Abdul Razzak,
Age: 36, Occu: Agriculturist and Labour,
R/p: Madina Nagar, Parbhani,
Tq. And Dist. Parbhani
4. Bibi Hajra D/o Abdul Razzak,
Age: 34, Occu: Agriculturist and Household
R/p: Madina Nagar, Parbhani,
Tq. And Dist. Parbhani

.....PETITIONERS

VERSUS

1. Saraswatibai W/o Soparao Sawandkar
Age: major, Occu: Agriculturist,
R/o: Yogeksham Nagar, Jintur Road, Parbhani,
Tq. And Dist. Parbhani.
2. Suresh S/o Sopanrao Sawandkar
Age: Major, Occu: Agriculturist,
R/o: Yogeksham Nagar, Jintur Road, Parbhani,
Tq. And Dist. Parbhani.
3. Deelip S/o Sopanrao Sawandkar
Age: Major, Occu: Agriculturist,
R/o: Yogeksham Nagar, Jintur Road, Parbhani,
Tq. And Dist. Parbhani.

4. Sow. Sunita W/o Dashrath Shinde,
Age: Major, Occu: Household,
R/o Golatai nagar, Manwat,
Tq. Manwat Dist. Parbhani
5. Deputy Collector (General Administration) Parbhani
Collector Office, Parbhani,
Tq. And Dist. Parbhani.

.....RESPONDENTS

Mr. A. P. Gaikwad, Advocate for the Petitioners
Mr. V. S. Badakh, AGP for Respondent-State
Mr. P. D. Bachate, Advocate for Respondent no.3

CORAM : ROHIT W. JOSHI, J.

DATED : 23RD JUNE, 2025

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith.
2. Heard finally with consent of parties.
3. The father of the petitioner namely; Abdul Razzak and father of the respondent nos.1 to 4 namely; Sopan Marotrao Sawandkar had made an application to the Deputy Collector (General), Parbhani, seeking permission for exchange of lands. It was prayed that land bearing gut no.595 admeasuring 3.13HR situated at village Takli(k) Tahsil, Parbhani, held by deceased father of the petitioner, be permitted to be transferred to deceased father of the

respondent nos.1 to 4 in exchange of another land bearing gut no.306 admeasuring 2.42 HR situated in the same village owned by one Pratibha Babarao Deshmukh. The application was filed as per Section 29(1) of the Maharashtra Agricultural Lands (Ceiling on holdings) Act, 1961, (hereinafter referred to as Ceiling Act).

4. The Deputy Collector had granted permission for the said transaction vide order dated 16.06.2007. The order directed that the parties should file exchange deed on record within a period of one month from the date of order i.e. on or before 16.07.2007. It was also directed that an amount equal to 40 times of the amount of land revenue should be deposited with the authority within a period of one month from the order. After passing of the said order dated 16.06.2007, the father of the respondent nos.1 to 4 obtained sale deed dated 18.02.2009 from the petitioners, since, their father (Abdul Razzak) had expired in the meantime. It is undisputed that the land bearing gut no.306 owned by Pratibha Deshmukh is not transferred to the petitioners or their deceased father. Breach of the condition imposed vide order dated 16.06.2007 is thus not in dispute.

5. The respondent nos.1 to 4 had made an application for mutation on 22.05.2012 to the office of Deputy Collector (General), Parbhani on the basis of the said sale deed dated 18.02.2009. Vide order dated 25.06.2012, the said authority has rejected the application recording that the sale deed in favour of father of the respondent nos.1 to 4 was executed in breach of the order dated 16.06.2007. It is recorded that the authority did not have jurisdiction to regularize the transaction and therefore *ex post facto* approval could not be granted to the said sale transaction and application for mutation also could not be allowed.

6. This order dated 25.06.2012 was challenged by the respondent nos.1 to 4 before the Additional Divisional Commissioner. The said authority has partly allowed the revision vide order dated 08.02.2013, thereby setting aside the order dated 25.06.2012 passed by the Deputy Collector and remanding the matter back for fresh consideration. Perusal of the order passed by the Additional Divisional Commissioner will demonstrate that the said authority has dealt with correctness of the order in the light of the provisions of the Ceiling Act.

7. The consequence of non compliance or breach of order passed under Section 29(1) is provided under Section 29(3), which states that after giving reasonable opportunity to show cause, the lands transferred in breach of Section 29(1) are required to be forfeited by the government and upon such forfeiture, the land vests with the State Government. Perusal of the scheme of the Act does not indicate any authority with the learned Commissioner to interfere with the matter.

8. The learned Advocate representing the respondent no.3 is unable to point out any provision enabling the Commissioner to interfere in the matter. The order dated 08.02.2013 passed by the Additional Divisional Commissioner, Aurangabad is clearly without jurisdiction.

9. However, pursuant to the said order dated 08.02.2013, the Deputy Collector has revisited the matter and has passed order dated 01.10.2023 directing that the land bearing gut no.595 should be taken in possession by the Tahsildar, Parbhani and the same should be recorded in the revenue record in the name of Government of Maharashtra by deleting the name of petitioners.

10. Against the said order dated 01.10.2013, the respondent nos.1 to 4 filed an appeal before the Additional Divisional Commissioner, Aurangabad. The said appeal is partly allowed vide order dated 10.10.2018. The Commissioner has observed that the earlier order dated 08.02.2013 is holding the field, therefore, the Deputy Collector should ensure compliance of the said order after affording opportunity of hearing to the parties. This order dated 10.10.2018 is impugned in the present petition.

11. Order dated 01.10.2013 is passed by the learned Deputy Collector holding that the sale deed dated 18.02.2009 is clearly executed in breach of the order granting permission dated 16.06.2007. The consequence of transfer of property in breach of order passed under Section 29(1) is provided under Section 29(3) of the Ceiling Act. The Deputy Collector has therefore, ordered forfeiture of land in favour of State Government. In the light of said statutory provision, an order of forfeiture passed under Section 29(3) is appealable under Section 33(5) of the Ceiling Act and the Appellate Authority is the Maharashtra Revenue Tribunal. The Divisional Commissioner had absolutely no jurisdiction to entertain

appeal against the order dated 01.10.2013.

12. The learned Counsel for the respondent nos.1 to 4 contends that the Divisional Commissioner is the superior authority of the Deputy Collector under the provisions of the Maharashtra Land Revenue Code and accordingly, it is competent to issue appropriate directions to the Deputy Collector and accordingly, the directions issued vide order dated 10.10.2018 are within the jurisdiction of authority of the Divisional Commissioner.

13. The said contention by the learned Advocate for respondent nos.1 to 4 is liable to be rejected. It is clear from reading of Section 33 of the Ceiling Act that an order of forfeiture can be challenged only before the Maharashtra Revenue Tribunal. The order dated 10.10.2018, which is impugned in the present petition does not stand scrutiny of law.

14. It must however, be mentioned that after passing of the said order dated 10.10.2018, the Deputy Collector has passed fresh order dated 03.03.2020. The learned Deputy Collector has issued directions for payment of money for regularization

of the sale transaction. The order dated 03.03.2020 passed by the Deputy Collector is only a consequence of earlier orders dated 08.02.2013 and 10.10.2018 passed by the Divisional Commissioner. Both these orders as stated above are without jurisdiction. It is well settled that an order passed in compliance of an order which is without jurisdiction is also bad in law.

15. However, it is informed that the petitioners have now filed a substantive appeal challenging the order dated 03.03.2020 passed by the Deputy Collector by filing appeal before MRT. The MRT shall decide the appeal in the light of relevant statutory provisions and judgment of this Court in the matter of *Bhanudas S/o Shetiba Jadhav Vs. The Additional Collector, Osmanabad and another* dated 09.06.2025.

16. The Writ Petition stands **disposed** of accordingly.

(ROHIT W. JOSHI, J.)