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wp7458.13

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7458 OF 2013

1. Sadashiv S/o. Kaduji Choutmal, ...PETITIONERS
Age-70 years, Occu- Secretary,
“Bhairavnath” Temple Trust Chapnath
R/o. Chapnath, Tq. Kalamnuri,
Dist. Hingoli
2. Pundlik S/o. Sambhaji Choutmal
Since deceased.

VERSUS

1. The State of Maharashtra, ...RESPONDENTS
Through Tahasildar, Kalamnuri &
Dy. Collector, Hingoli
2. Pundlik S/o. Gyanba Patange,
3. Bhagwan S/o. Gyanba Patange,
4. Shivaji S/o. Gyanba Patange,
All R/o. Kondur, Tq. Kalamnuri
Dist. Hingoli
5. Nana Mhadji Choutmal,
(died) Through LRs
- 5(1) Ramrao Nanarao Choutmal,
R/o. Chapnath, Tq. Kalamnuri,
Dist. Hingoli
- 5(2) Shamrao Nanarao Choutmal,
R/o. Yelegaon, Takaram,
Tq. Kalamnuri, Dist. Hingoli

6. Sahebrao Hanmantrao Maske,
(Dead) through LRs

6(1) Laxman S/o. Sahebrao Maske,

6(2) Kanabrao S/o. Sahebrao Maske,

6(3) Balaji S/o. Sahebrao Maske,

6(4) Subhash S/o. Sahebrao Maske

All Age-Major, Occu-Agriculture
R/o. Chapnath, Tq. Kalamnuri,
Dist. Hingoli

Mr. V. D. Salunke, Advocate for the petitioners

Mr. N. D. Raje, AGP for the respondent No.1/State

Mr. Pavankumar S. Agrawal, Advocate for the respondent Nos. 2
to 4

CORAM : KISHORE C. SANT, J.

RESERVED ON : 19th NOVEMBER, 2024

PRONOUNCED ON : 06th JANUARY, 2025

P. C.

1. This writ petition is filed challenging a judgment and order passed by the learned Member, MRT dated 24-07-2013 in the case No.21/B/2003/H.Inam. The learned Member, MRT by way of the impugned order partly allowed the case of the

present petitioners by confirming the orders passed by the learned Deputy Collector and the learned Additional Collector in the proceeding arising out of the Hyderabad Tenancy Act. It is further directed to the competent authority to take possession of the lands Survey Nos. 52 and 54 & to give those to the successor of the original respondent No.5 who is also respondent No.5 in the present petition. The respondent No.1 is the State of Maharashtra. Respondent Nos. 2 to 6 are the original respondents in the original proceedings.

2. The facts in short as stated in the petition are that the land bearing Survey Nos.52, 53/1/A, 53/1/B, 53/2 and 54 and some part of the land from survey No.55 to the extent of 14 Acre 34 Gunthas from village Chapnath was given by Nizam Government as Inam for the service of temple namely Bhairavnathpuri Mahadeo Temple to one Bhairavnathpuri Mahadeo Puri. The Temple was looked after by method of Guru-Chela succession. After Bhairavnath Puri affairs were looked after by Mahant Kashinath Puri. After Kashinath Puri the land

should have gone to his Chela Rampuri. However, Kashipuri Guru executed a will deed in favour of his nephew i.e. father of present respondent Nos. 2 to 4 namely Gyanoba Patange. The land survey Nos.53/1, 53/2 and survey No. 55 thus was given to Gyanoba Patange. Gyanoba Patange inducted respondent No.5 as a tenant in the land. After Gyanoba Patange, respondent Nos.2 to 5 continued to cultivate these lands. The lands survey Nos.52 and 54 were cultivated by respondent Nana Chautmal deceased and now their heirs are on record. The Tahasildar, Kalamnuri and revenue authorities (Sub-Divisional Officer and Collector, Hingoli) made an application to the Sub-Divisional Officer, Hingoli under Section 34 of the MLR Code in respect of the said lands. It is held that the said lands are government lands and under control of the government except Inam land. He ordered to give the lands on Ek Sala Lawni Basis. Said order is confirmed by the Additional Collector by order dated 20-01-2003. Subsequently, the learned Member, MRT partly allowed the revision application by order dated 24-07-2013.

3. It is held that Mahant Kashipuri Guru, Sarnapuri did not obtain Virasat (succession) in his favour under the said Act and thus had no right to make a will deed in respect of Inam land. It is further held that in view of the same, Gyanoba and other respondents to continue with the possession over the land bearing Gut Nos.52 and 54. It is ultimately held that the land would again vest in the government and villagers. It is held that respondents had no right to the said lands. It is also held that no one has right to treat the said property as trust property. The land be given in auction on the basis of Ek Sala Lawani i.e. annual cultivation basis. The petitioners challenged this order in the capacity of the trustees of the trust before the learned Additional Collector. The learned Additional Collector, Hingoli confirmed the order. It is against this order the revision was preferred before the learned MRT where the MRT has passed this impugned judgment and order.

4. The learned advocate Mr. Salunke for the petitioners vehemently argued that the petitioners are the trustees of the

trust. The land was given as Madatmash for maintenance of the temple. The Trust came to be registered in the year 1973. It is the trust who used to give the land on Ek Sala Lawani basis. The learned Tahasildar and the learned Collector without any reason filed an application before the learned SDO wherein the order came to be passed directing to take taking the land in possession of the government. He submits that when there is clear findings that land was given as Madatmash, there was no question of creation of any tenancy rights in the said lands. Holding of respondent No.5 in the capacity of tenant was illegal. The land itself was to go in succession in order of succession from Guru to his Chela. Therefore, there was no question of Mahant Kashipuri executing any will. The authorities have rightly held to this extent that no will could have been executed. However, the authorities have committed mistake by directing the lands to be vested in the government. The MRT has rightly recorded the finding that the land was given to the temple however, still passed the order to the extent of land Gut Nos. 52 & 54 to be taken in possession of the government. The application filed by

Tahasildar, before the SDO was not maintainable. They could have been simply passed an order on administrative side by holding necessary enquiry. Now the SDO has decided the proceedings where he himself is a party. This is clearly against the principle of '*Nemo Judex in Causa Sua*' i.e. no person shall be a judge in his own cause, when basic order and the initiation of proceeding itself is illegal, the subsequent orders also must go as it stands vitiated. He submits that in revenue record there were entries in the name of Deosthan. All these factors are ignored by the authorities. He thus prays for allowing the writ petition by setting aside the impugned order.

5. Mr. Agrawal, learned advocate for respondent Nos.2 to 4 opposed the petition. He submits that trust is not a party to the proceedings. When an appeal was preferred there is no any averment that the petitioners are the trustees or the persons authorized by the trust. Even in the revision, there is no case of the petitioners that they had filed the petition in the capacity as trustees. He thus, submits that the petitioners have no locus

standi. Respondent Nos. 2 and 4 are clearly shown as owners in the revenue entries. Their possession is not disturbed. Their possession is independent. He prays for dismissal of the writ petition.

6. The learned AGP also opposed the petition. There is also an affidavit filed by the respondents-State in this petition.

7. From these facts, there appears no dispute so far as the fact that the land was given as Inam land to Mahant Bhairavnathpuri as Madatmash. The property was to go by succession as Guru-Chela system. However, Kashipuri executed will dated 24-11-1972 in respect of land Survey No. 53/1 8-A 23-G, Survey No. 53/2 10-A 15-G, Survey No. 53/1/B 8-A 24-G, & Survey No. 55 13-A 10-G in favour of his nephew i.e. father of respondent Nos. 2, 3 and 4. At the same time, it appears that they gave the land on tenancy basis to respondent No.5. Respondent No.5 has not appeared before this court in spite of service of notice. It is only on application by the Tahasildar,

Collector before the SDO, the proceeding is initiated. Will deed is not registered. There is no record available as to how the land survey Nos. 53/1 and 53/2-B and 55 went to Kashipuri. There are no documents to show that survey No. 55 to the extent of 13-A 10-G became khalsa land. The learned Sub-Divisional Officer held that the said properties are government properties. Without there being sanction of the government the properties could not have been recorded in the name of the trust. There is also no Virasat sanctioned in the name of Kashinath Puri. The respondents, failed to show that lands became Khalsa land. Though the lands were belonging to the government ultimately he held that the land survey Nos.52 to the extent of 36-A 24-G, Survey No.53/1/A 8A 24-G, Survey No.53/1/B 8-A 23-G, Survey No.53/2 20-A 30-G 54, 24-A 23-G, Survey No.55 28-A 36-G from land gut No.55 14-A 36-G which are already in the government custody. Remaining lands were Inam lands. They are belonging to the government and therefore, the Tahasildar was directed to take those lands in possession of the Government and to give on Ek Sala Lawani basis by holding

auction. In the appeal by the present petitioners, the learned Collector dismissed the appeal and confirmed the order passed by the learned SDO.

8. The learned Member, MRT also considered all these aspects and passed the impugned order. Property survey Nos.52 and 53 also came to respondent No.5 who is in possession as tenant. It is held that Mahant Kashipuri had no right to execute any will deed in favour of his nephew as the land was to be succeeded by his Chela. On the aspect of obtaining the Virasat also, it is held that even Mahant Kashipuri did not obtain Virasat in his name and thus respondent Nos. 2 to 4 also cannot claim ownership right over the lands. So far as claim of the trust it is held that considering the documents, trust had also no right over the property. There is breach of condition and therefore land should be vested in the government. So far as claim of respondent No.5 (1) 5(2) it is concluded that the order passed by the learned Collector is illegal. So far as survey Land Nos. 52 and 54 are concerned it is held that same will have to go to the

successor of the original respondent No.5 on yearly basis till they decline to take land on Ek Sala Basis.

9. Considering all over submissions and the judgment of the MRT now only question is about validity of the will, creation of tenancy & the locus-standi of the petitioners.

10. So far as the first submission of Mr. Salunke this court finds that since land was given as service Inam land (Madatmash) (Service Land) the property would vest in Deosthan. After the trust was formed that should be vested in the trust. However, nothing is brought on record to show that property was registered as trust property. The fact remains that land was Deosthan land and thus there was no question of creating any tenancy. So far as execution of the will, there was no question of Kashi Puri Guru having any right to execute will. It is nobodys case that land was belonging to Kashipuri in his personal capacity or that it was his self acquired property. Thus there is no question of Kashi Puri Guru getting any right. The

will is clearly without any sanctity of law. Once MRT comes to a conclusion that there was no question of will deed and also creation of tenancy, there is no question of protecting the rights of the persons who are in possession on the basis of so called tenancy. If the land is to vest in the government, it is for the government to auction the land every year for Eksala Lawani. Order to the extent of giving land to respondent No.5 on Eksala Lawani needs to be set aside as regards survey Nos. 52 and 54. Authorities to give the land in auction on the basis of Eksala Lawani every year to person offering highest bid.

11. So far as locus standi is concerned, this court finds force in the submission of Mr. Agrawal that there is nothing in the entire pleading before the authorities that the petitioners have filed a proceedings in the capacity as trustees or they are authorized by the trust to file the proceedings. In this petition except stating that they are trustees nothing is brought on record to show that they are authorized to file proceeding on behalf of the trust. In schedule-I, these properties are not

mentioned to be trust property. This court holds that the petitioners have no right of whatsoever nature in the property.

12. From 7/12 extract it does appear that in the records land Gut No. 53/1/A is shown to be Khidmat Inam land for worship, Gut No.53/1/B is shown in the name of respondent Nos. 2 to 4, Land Gut No. 53/2 is shown to be Khidmad Inam. The Gut Nos.52, 53/1/A, 54, 55 & 53/5 names are shown as Bhairavnath Khidmad to the extent mentioned in the record. However except that there is nothing to show that they are owners of the lands. During the course of the hearing the learned advocate for the petitioners has produced on record the application made to the Assistant Charity Commissioner bearing enquiry No. 594/2018 under Section 41(A) seeking permission to auction the land on the basis of Eksala Lawani on land Gut Nos. 52 to the extent of 14-H 81-R, Survey Nos. 53/1/A 3-H 47-R, Survey No.53-1-B 3-H 47-R, Survey No.53/2 8-H 40-R, survey No. 54 10-H, Survey No. 55 9-H 70-R. The Assistant Charity Commissioner allowed the application by order dated 21-06-

2018. It is directed to the trustees to keep the amount in the account of the Sansthan. This application was filed by the present petitioner Sadashiv Choutmal on behalf of trust. Further the proceedings was arising out of the Hyderabad Atiyat Act Enquiry Act, 1952. There is nothing to show that Kashi Puri had ever obtained any Virasat in respect of the land and for this reasons this court finds that the learned Member, MRT has rightly passed the order. No interference is called for in the judgment and order except direction to give land for cultivation to successors of original respondent No.5. The authorities shall hold auction for giving land Survey Nos.52 and 54 on Ek Sala Lawani basis from time to time.

13. The petition stands disposed off in above terms.

[KISHORE C. SANT, J.]