2025:BHC-AUG:29218

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9715 OF 2022

1. Shaikh Afzal Shaikh Budhan
age 51 years, occ. Agril
r/o Deolai, Aurangabad.
Tq. & Dist. Aurangabad.

2. Riyazkhan s/o Faradkhan
age 56 years, occ. Agril,
r/o Deolai, Aurangabad
Tq. & Dist. Aurangabad.

3. Alatfkhan s/o Faridkhan
age 45 years, occ. Agril
r/o Deolai, Aurangabad
Tq. & Dist. Aurangabad.

4. Shaikh Mohsin Shaikh Rahemtulla
age 40 years, occ. Agril,
r/o Deolai, Aurangabad
Tq. & Dist. Aurangabad. ….Petitioners

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Forest and Revenue Department
Mantralaya, Mumbai 32.

2. The Additional Divisional Commissioner
No. 2, Aurangabad, Dist. Aurangabad.

3. The Additional Collector,
Aurangabad.

4A The Deputy Collector (General Admn.)
Aurangabad, Dist. Aurangabad.

4B The Deputy Collector (Land and Record)
Aurangabad, Dist. Aurangabad. .....Respondents

Mr. G. K. Naik Thigle, Advocate for the Petitioners.
Mr. S. N. Kendre, AGP for the State.
Mr. V. D. Sapkal, Senior Counsel instructed by Mr. S. S. Shete, Advocate for Caveator.

WITH
WRIT PETITION NO. 11740 OF 2022

1. Murlidhar Keshav Dixit
age 88 years, occ. nil/pensioner
r/o Rishikesh Apt. Gananjay Society
Kothrud, Pune 29

2. Heramb s/o Shripad Dixit
age 58 years, occ. Business
r/o State Bank Colony
near Tapar Hostel, Amravati

3. Manjushah d/o Shripad Dixit
age 54 years, occ. Household
r/o State Bank Colony, near
Tapar Hostel, Amravati
Through power of attorney Balbhim s/o
Marutirao patodekar
age 84 years, occ. nil/pensioner
r/o Plot No. 26, Rachnakar Colony
Station Road, Aurangabad .....Petitioners

VERSUS

1. The State of Maharashtra
Through Secretary
Forest and Revenue Department
Mantralaya, Mumbai 32.

2. The Additional Divisional
Commissioner 2, Aurangabad Division
Aurangabad.

3. The Additional Collector
   Aurangabad (General Administration)

4. The Deputy Collector (L.R.)
   Aurangabad. Dist. Aurangabad.

5. The Tahsildar
   Aurangabad. .....Respondents

Mr. Shakil U. Shaikh, Advocate holding for Mr. S. B. Ghute, Advocate for the Petitioners.
Mr. S. N. Kendre, AGP for the State.
Mr. V. D. Sapkal, Senior Counsel instructed by Mr. S. S. Shete, Advocate for Caveator.

WITH
WRIT PETITION NO. 12182 OF 2022

Amit Arvind Agarwal .....Petitioner

VERSUS

1. The Divisional Commissioner
   Aurangabad
   Office at Commissioner Office building
   at Aurangabad.

2. The Additional Collector, Aurangabad.
   Office at Collector office building
   at Auranbad.

3. The Deputy Collector/Administration
   Aurangabad.
   Office at Collector office building
   at Aurangabad.

4. The Tehsildar at Aurangabad
   Office at Tehsil Office, Aurangabad.

5. The Revenue Circle Inspector

Office at Revenue Department
Collector Office Building
At Aurangabad.

6. The Talathi, Sajja Satara
Ofifce at Satara, Tq. & Dist. Aurangabad.

.....Respondents

Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for the Petitioner.
Mr. S. N. Kendre, AGP for the State.
Mr. V. D. Sapkal, Senior Counsel instructed by Mr. S. S.Shete, Advocate for Caveator.

WITH
WRIT PETITION NO. 10895 OF 2022

1, Tukaram Kishan Khedkar
age 78 years, occ. Agriculture
r/o Sutgirni Chowk, Garkheda
Aurangabad, Tq. & Dist. Aurangabad.

2. Sachin s/o Tukaram Khedkar
age 46 years, occ. Business
r/o Sahyadri Hills, Aurangabad
Tq. & Dist. Aurangabad.

3. Sushil s/o Tukaram Khedkar
age 45 years, occ. Business
r/o as above.

4. Vaishali w/o Kalyan Dangode
age 41 years, occ. Household
r/o D-5 Tapdiya Nagar, Aurangabad
Tq. & Dist. Aurangabad.

5. Anand s/o Kalyan Danode
age 40 years, occ. Business
r/o as above.

6. Sau. Sharda s/o Umesh Navthar
age 37 years, occ. Household

r/o Flat No. 10, Wdkar Corner
Hindu Rashtra Chowk, Garkheda
Aurangabad.

7. Santosh s/o Kaisanrao Kulkarni
age 44 years, occ. Services
r/o Row House No. 1-4, Plot No. 13
SamarthREsidency N-7, Cidco,
Aurangabad.

8. Chandrakant s/o Bhagwandas Asrani
age 46 years, occ. Business
r/o Flat NO. H – A16, Raygad Building
Tirupati Enclave, Ulkanagari
Garkheda, Aurangabad.

9. Pradipkumar s/o Narayandas Tharani
age 46 years, occ. Service
r/o H. No. 1-34-208 Bajarang Dal Mill
Jalna Dist.Jalna

10. Rupali Ajit Koranne
age 42 years, occ. Household
r.o Aurangabad, Dist. Aurangabad.

11. Vasudeo s/o manohar Deshpande
age 54 years, occ. Service
r/o Flat No. 7, shreya nagar, Aurangabad.

12. Sau. Pooja w/o Vasudeo Deshpande
age 49 years, occ. Service
r/o as above.

13. Kakasaheb s/o Dayaram Patil
age 47 years, occ. Service
r/o D17, Saujanya Nagar, Balaji Nagar
Aurangabad.

14. Sau. Survarna w/o Shrikant Naik
age 39 years, occ. Insurance agent
r/o A-2/141 Gajanan Nagar, Aurangabad.

15. Sau. Subhangi w/o Raghunath Madhekar
age 56 years, occ. Household
r/o Venkatesh Bhavan, 2-8-30 S.T. Colony
Fazalpura Aurangabad.

16. Vinod s/o Kakasaehb Gayake
age 34 years, occ. Service
r/o R-43, T10, N-7, Cidoc
Aurangabad.

17. Malkhare Constructions
Through Shashank Subhash Malkhare
Near Yout Hostel, Baba Petrol Pump
Aurangabad, Dist. Aurangabad.

18. Sau. Meena w/o Naresh Talwani
age 47 years, occ. Household
r/o Flat No. A-5, Pagariya Residency
Vedant Nagar, Station road,
Aurangabad.

19. Rajesh s/o Suganamal Chahetinya
age 40 years, occ. Business
r/o Kumar Nagar, Dhule
District Dhule.

20. Shri Rajkumar s/o Narayandas Tharani
age 51 years, occ. Business
r/o Near Bajarang Dal Mill, Jalna

21. Mukhesh s/o Biharilal Motwani
age 33 years, occ. Business
r/o Plot No. G-19, Sindhi Colony
Aurangabad.

22. Sau. Pratibha w/o Mansubrao More
age 40 years, occ. Household
r/o Gurudatta Housing Society
Aurangabad.

23. Sau. Renuka Ganesh Kulkarni
age 34 years, occ. Household
r/o N-7, Cidco,Aurangabad. .....Petitioners

VERSUS

1. State of Maharashtra
Through Principal Secretary
Revenue and Forest Department
Mantralaya, Mumbai.

2. The Additional Divisional Commissioner
Aurnagabad Division,Aurangabad.

3. The Additional Collector
Collector Office, Aurangabad.

4. The Deputy Collector (General Administration)
Aurangabad Collector office, Aurangabad.

5. The Tahsildar
Tahsil Office, Aurangabad
Tq & Dist. Aurangabad.

6. The Circle Officer,
Aurangabad.

7. Talathi Sajja, Satara
Tq. & Dist. Aurangabad.

8. Prashant s/o Bansilal Bamb
age major, occ. MLA
r/o Satara (Khandebacha)
Tq. & Dist. Aurangabad.

9. Laxman s/o Piraji Palaskar
age major, occ. agril .....Respondents
r/o Satara (Khandobacha)
Tq. & Dist. Aurangabad.

10. Pramilabai w/o Tulshiram Palaskar

Age major,, occ. Household
r/o as above.

11. Anuradha w/o Tuakram Ambekar
age 33 years, occ. Service
r/o Sweta Apartment, Flat No. 2
Tilak Nagar, Aurangabad.

12. Sau. Meena w/o Madhukar Sahane
age 42 years, occ. Household
r/o N-5 Cidco, Aurangabad.

13. Madhukar s/o Sadashhivrao Sahane
age 47 years, occ. Insurance agent
r/o N-5 Cidco, Aurangabad.

14. Nitin s/o Rajaram Rathod
age 44 years, occ. Service
r/o Ellora Complex, Town Center
Cidco, Aurangabad.

15. Parvez Khan Shehjad Khan
age 30 years, occ. Business
r/o Unnus Colony, Aurangabad.

16. Rajendra s/o Bhanudas Bhosale
age 48 years, occ. Service
r/o Plot No. 1, Deolali Road,
Aurangabad.

17. Murlidhar s/o Keshav Dixit
age major, occ. Service
r/o Rushikesh Apartment, B Flat No. 2
Gagjay Society, Unit No. 4
Kothrud, Pune

18. Vijay w/o Shripad Dixit,
age major, occ. Service
r/o house no. 23, State Bank Colony
Tapar Hotel Bajarpeth
Amravati

19. Asha w/o Damodhar Dixit
age major, occ. Household
r/o Kuranan Nagar, Bhajimadie
Aurangabad.

20. Sanjay w/o Moreshwar Dixit
age major, occ. Household
r/o Juna, Ravindra Vada
opp. Khullya Murlidhar Mandir
Sadashivpeth, Pune.

21. Kalpana w/o Bhalchand Dixit
occ. Household
r/o Radhamohan Colony, Aurangabad.

22. Arvind s/o Narayan Dixit
age major, occ. Business
r/o Laxmi Colony, Gangapur
Tq. Gangapur,Dist. Aurangabad.

23. Girish s/o Narayan Dixit
age major, occ. Service
r/o Stara, Tq. & Dist. Aurangabad.

24. Suhas /so Purshottam Dixit
age major, occ. Service
r/o 17, Badlapurkar Chal, Chandvilla
Agra, Road Shivaji Chowk, Kallyan
Dist. Thane.

25. Vinaya w/o Satish Dixit
age major, occ. Service
r/o Satara, Tq. & Dist. Aurangabad.

26. Amol s/o Satish Dixit
age major, occ. Service
r/o Tulshibagwalle Colony
Sahkarnagar, Pune.

27. Pratibha w/o Subhash Saptarshi

age major, occ. Service
r/o 58, Vovat Apartment
Sahkarnagar, Pune.

28. Shamla w/o Yshwant Dixit
age major, occ. Service
r/o 3/27, Pitambar Willa,
Pratam Tokies, Kolbad, Thane.

29. Vishvas s/o Yahvant Dixit
age major, occ. Services r/o 3/27, Pitamber Willa,
Pratap Tokies, Kolbad, Thane.

30. Sujata w/o Jayraj Parulekar
age major, occ. Service,
r/o Manorama Cooprative Society
KRV Hospital, Brahman Society
Nopada Thane (Pachim)

31. Shaikh Mohsin Shaikh Rehmtulla
age major, occ. Service,
r/o Deolai, Tq. & Dist. Aurangabad.

32. Altafkhan Faridkhan
age major, occ. Service,
r/o Deolai, Dist. Aurangabad.

33 Heramb s/o Shripad Dixit
age major, occ. Service,
r/o House No. 23, State Bank Colony
Toper Hotel Rajapeth
Amravati

34. Manjusha w/o Shripad Dixit (Kute)
age major, occ. Service,
r/o777, Shatinagar,Raypur
Chatisgad.

35. Prakash s/o Moreshwar Dixit
c/o Prabhawati w/o Ramchandra Dixit
age major

r/o Surana Nagar, Bhajimandie
Aurangabad.

36. Yashwant s/ o Gangdhar Dixit
c/o Jayant kardikar
age major, r/o Juna Ravindrawada
Opp. Khulla Mrulidhar Mandir Sadashivpeth
Pune.

37. Malti w/o Narayan Dixit
age major, occ. Service
r/o Laxmi Colony, Gangapur
Tq.Gangapur, Dist. Aurangabad.

38. Manjusha w/o Ashok Ranade
age major, occ. Services r/o Stara
Tq. & Dist. Aurangabad.

39. Ella w/o Vighnarajendra Sane
age major, occ. Service,
r/o Navjivan Colony, Hudco
N-8, Aurangabad.

40. Sadhana Jayant Gadre
age major, occ. Service,
r/o G-6, Sumer Castel, pales Mill Compound
Kolmbad Road, Tq. & Dist. Thane.

41. Alok s/o Satish Dixit
age major, occ. Service
r/o Tulshibagwalle Colony,
Sahakarnagar, Pune.

42. Anuradha w/o Gurnath Velankar
age major, occ. Service,
r/o Satara. Tq. & Dist. Aurangabad.

43. Saroj Makrand Nagapure
age major, occ. Service,
r/o Satar, Tq. & Dist. Aurangabad.

44. Nandkumar s/o Yashwant Dixit
age major, occ. Service,
r/o B=6, Shahakar Nivak, Professor
Agashe Pat, Potugjji Charchya, Dadar Mumbai

45. Anuradha w/o Kukunda Ingle
age major, occ. Service
r/o D-41, Ganadhiraj Society
Midhanar Road, Mulund (East)
Mumbai.

46. Shaikh Afjal Shaikh Budhan
age major, occ. Service
r/o Deolai, Dist. Aurangabad.

47. Riyaj Kkhan Faridkhan
age major, occ. Service,
r/o Deolai, Dist. Aurangabad.

48. Jitendra s/o Sahantilal Mutha
age major. Occ. Service,
r/o Satara, Tq. & Dist. Aurangabad.

49. Rajendrasingh s/o tarasingh Jabinda
age major, occ. Service,
r/o Satara, Tq. & Dist. Aurangabad.

50. Narendrasingh s/o Tarasingh Jabinda
age major, occ. Service,
r/o Satara, Tq. & dist. Aurangabad.

51. Balaji s/o Namdeo Bhuke
age major, occ. Service,
r/o Satara. TQ. & Dist. Aurangabad.

52. Purushototam s/o Gangadhar Dixit
age major, occ. Service,
r/o Satara, Tq. & Dist. Aurangabad.

53. Amit s/o Arvind Agrawal
age major, occ. Service,

r/o Satara, Tq. & Dist. Aurangabad.

54. Narayan s/o Gangadhar Dixit
age major, occ. Service,
r/o Satara, Tq.& Dist. Aurangabad.

55. Ajantha Urban Cooperative Bank
Aurangabad. Tq. & Dist. Aurangabad. .. Respondents.

Mr. D. A. Mane, Advocate holding for Mr. M. D. Gitte, Advocate for Petitioners.
Mr. S. N. Kendre, AGP for the State.
Mr. V. D. Sapakal, Senior Counsel instructed by Mr. S. S. Shete, Advocate for Respondent No. 9.

CORAM : R. M. JOSHI, J.
DATE : 13th OCTOBER, 2025.

JUDGMENT :

1. Rule. Rule made returnable forthwith. Since these Petitions involve same question of fact and law, by consent, they are heard together and decided by this common judgment.

2. These Petitions take exception to the order dated 06.06.2022 passed by the Additional Divisional Commissioner in आरओआर/डेस्क इनाम/08–09–10/2018 confirming the order dated 28.12.2017 passed by the Additional Collector which confirmed the order dated 30.05.2014 passed by the Deputy Collector.

3. These Petitions are filed by the legal heirs of Inamdars and their successors in title in respect of lands Survey no. 6/1 and 6/2 situated at Satara, Tq. & Dist. Aurangabad (for short 'subject lands'). It is the case of the Petitioners that in the previous round of litigation Mr. Palaskar and others claimed themselves to be the tenants in respect of the subject lands and had initiated proceedings under the provisions of Hyderabad Abolition Inam and Cash Grants Act, 1954 (for short 'Act of 1954'). In the said proceeding, order came to be passed on 30.07.1991 by the Deputy Collector, Aurangabad holding Asaram Chopde as occupant and Narayan Chopde and others having occupancy rights in respect of Survey No.6 to the extent of 18 Acres and 23 R land. Occupancy price was determined at Rs. 720/- which was sought to be deposited and accordingly deposited. Being aggrieved by the said order, Appeal came to be filed before the Additional Commissioner, Aurangabad. The Additional Commissioner, by order dated 13.08.1992 allowed the Appeals filed by both sides and relegated the matter back to the Deputy Collector, Aurangabad by setting aside order dated 30.07.1991. On fresh enquiry, the Deputy Collector confirmed the order dated 30.07.1991 and exception was taken thereto before the Additional Commissioner, Aurangabad unsuccessfully. Being aggrieved by the said judgment

proceeding came to be filed before the Hon'ble Minister (Revenue), who by order dated 21.01.2004, allowed the Appeal filed by the Inamdars and their successors and set aside the order dated 31.10.2001 granting occupancy right to the tenants. Tulsiram Palaskar and Laxman took exception to the said order by filing Writ Petition No. 1486/2004. This Court, by judgment dated 10.03.2004 dismissed the Petition. SLP filed against the said order is also dismissed by Supreme Court.

4. It is the case of the Petitioners that in this backdrop local MLA moved an Application/complaint dated 13.12.2010 in respect of the subject lands. He had a grievance that the case of the tenants was not properly presented and which has led to passing of adverse orders against them. He alleged dereliction of duties by revenue authorities. On the basis of this complaint, proceeding was initiated by the Deputy Collector, (General Administration). In the said proceeding, the Deputy Collector (General Administration) passed order dated 30.05.2014 and directed possession of the subject lands to be taken. While passing this order, it is held by the said Authority that without there being right with the purchaser of the land, transaction of sale in respect of the land was done. It is further held

that as per Section 6(2) of the Act of 1954, the Inamdar has not deposited occupancy price and therefore, in order to avoid further complications such order came to be passed. This order was challenged by filing Appeal before the Additional Collector, which came to be rejected by order dated 28.12.2017. Challenge to the said order before the Divisional Commissioner was unsuccessful as by order dated 06.06.2022 the Divisional Commissioner rejected the Appeal.

5. Learned counsel for Petitioners submits that this is a proxy litigation initiated on behalf of the tenants at the behest of MLA. It is his submission that the authorities below have committed error in holding that the Inam in respect of the subject properties is covered by Section 6 of the Act of 1954 and not by Section 5 thereof. It is his contention that this Court, in judgment dated 10.03.2004, has held that it is a 'Madad Mash Inam' which is personal inam and it is perpetual and alienable. It is his submission that the land comprised in such Inam is covered by Section 5 of the Act of 1954 which does not contemplate any occupancy price to be paid by the Inamdar to the Government. It is his submission that this provision contemplates payment of occupancy price only by permanent tenants

and other tenants. It is his submission that once it is held that occupancy right in respect of the land comprise in Inam which is alienable Section 6 has no application thereto and the authorities below have committed serious error in applying the said provisions to the present case. It is argued that the contention of Petitioners was not accepted about application of Section 6 on the ground that no evidence was led to that effect by ignoring the findings recorded by this Court in Writ Petition No. 1406/2004 with regard to the nature of Inam to be Madad Mash. He drew attention of the Court to the orders impugned indicating that this issue was raised specifically before the authorities and which has not been dealt with in accordance with law and order came to be passed only for the reason that MLA insisted and pressurised for the same. To support this submission, he drew attention of the Court to the initial report of Authority which shows that no action is contemplated in the report and the follow up compliance done by the MLA. It is his submission that in absence of application of Section 6 of the Act of 1954, it could not be said that any breach has been committed by the Inamdars either in obtaining non-agricultural permission or even for creating third party interest in the subject property which requires no permission of State Government in view of Section 29 of Maharashtra

Land Revenue Code (for short 'MLRC'). According to him, the subject lands would be 'Class I land' and not 'Class II land' and it is rightly so categorised in revenue record. It is argued that being Class I land and Inam in perpetuity and alienable, question of obtainment of permission in respect of transaction of sale does not arise. It is his further submission that in any case, the sale-deeds entered into between the parties could not have been said to be null and void nor the permission granted while converting subject land from agricultural to non-agricultural could have been assailed before Authority under Act of 1954. To support his submissions, he placed reliance on following judgments :-

(i) Vitthal Kondhalkar vs. State of Maharashtra and others
1981 Bom CR 32.

(ii) Anil Rai vs. State of Bihar
(2001) 7 SCC 318.

6. Learned Senior Counsel for original tenants and learned AGP resisted the said contentions. It is argued by learned Senior Counsel appearing on behalf of the tenants that it is immaterial at whose instance the proceedings are initiated as it would be open for the authorities even to take suo moto action if any non-compliance of the provisions of the Act are found. In this regard, reference is made

to Section 2-A of the Act which deals with the power of the State Government or authorised officer to decide certain questions relating to Inam and Appeals, and the act of invocation of suo moto powers which cannot be faulted with. It is his submission that Section 3 of the Act clearly shows that on abolition of Inam, the property vests with the State Government free from any encumbrances, and in such circumstances unless there is evidence to indicate that there was re-grant, question of there being any right with the Inamdar to transfer the subject land to the third party does not arise. It is his submission that any such transaction would be null and void and hence rightly being held so by the authorities below. He however fairly accepts that the subject lands comprise of Madadmash Inam which it is held in perpetual and alienable. It is his submission that irrespective of the said fact, the provisions of Section 6 only would have application to the present case and in view of the said provisions more particularly, Section 6(2), unless Inamdar pays occupancy price he is not entitled to any rights in respect of subject lands. According to him, unless Inamdar shows that the land is re-granted to him, question of Inamdar having right to occupy the land or to transfer the same does not arise. He sought to make reference to the rules framed under the Act of 1954 which contemplate the period within which the occupation price is required to be paid. It is his submission that Sections 5 and 6 are not independent provisions but are required to be read conjointly and hence even if it is accepted that subject inam is Madadmash it cannot lead to exclusion of applicability of Section 6 to the case in hand. To support his submissions, he has placed reliance on judgment in case of *Amrutrao Shankarrao Deshmukh and another vs. Laxman Tulshiram Powar and others*, **2011(6) Bom.C.R. 13**.

7. Learned AGP also resisted the Petitions on the ground that admittedly the subject land which was Inam land, the Inam thereto was abolished with coming into force the Act of 1954. He also drew attention of the Court to Section 3 of the Act which shows that on abolition of Inam all lands stand vested in the State Government and thereby rights of all other persons stand extinguished. To support his submissions, he placed reliance on the entries taken in the revenue record indicating vesting of subject lands in the Government. It is his submission that once the land vests with the State Government, the question of any exercise of right by Inamdar over the same including occupancy right would not arise. It is his submission that whether the complaint is made by the MLA or any

other person should not make any difference as it is open for the authorities to even take suo moto cognizance of any non-compliance of the provisions and definitely when it was so pointed out.

8. In the beginning it is made clear that the authorities under the Act of 1954 under Section 2-A could exercise powers when called upon or even suo moto. The complaint/grievance made by MLA therefore could not be termed as proxy litigation as sought to be canvassed on behalf of Petitioners as being representative of people it would be his duty to raise grievance of people. Thus, without getting influenced by the fact as to at whose instance the proceedings are initiated by authorities, the merit of order is considered in the light of facts and provisions of the Act of 1954.

9. At the outset, it would be necessary to take into consideration the scheme and relevant provisions of the Act of 1954 in order to appreciate the submissions made across the bar by rival sides. The Act aims at abolition of Inams and to provide for consequences thereof. Section 3 makes provision with regard to abolition and vesting of Inam and consequences thereof. As per Section 3(1), all Inams to which the Act is made applicable under

sub-section 2-A of Section 1 of this Act, shall be deemed to have been abolished and shall vest in the State. It further provides for the effect and consequences of such vesting. According to Clause (a) the provisions of Land Revenue Act as specified therein for the purpose of land revenue shall apply to the said Inams. According to Clause (b) all rights, title and interest vesting in the inamdar, kabiz-e-kadim, permanent tenant and tenant in respect of the inam land, other than the interests expressly saved by or under provisions of this Act shall stand vested in the State free from all encumbrances. Clause (c) specifies that all such Inam lands shall be liable to payment of land revenue. Clause (d) entitles the State to receive all rents and land revenue in respect of the said Inams. Land revenue and arrears thereof even becomes recoverable from the amount of compensation payable to the Inamdar in view of Clause (e). Provision is made in Clause (g) with regard to the entitlement of Inamdar to receive compensation from the Government in case of cash grants. Relationship with regard to the Inam land between Inamdar and Kabiz-e-kadim, permanent tenant or tenant stands extinguished in view of Clause (h). as per Clause (j), in case of Inam to which Act applies under Sub-section 2-A of Section 1, Inamdar stands released of the liability to render services, if any. According to Sub-section (3), Sub-sections (1) and (2) shall not operate as bar to the recovery by the inamdar of any sum which becomes due to him before the date of vesting. Section 4 deals with abolition of cash grant and consequences thereof. Sections 7 to 10 deal with the method of awarding compensation for abolition of cash grant etc to which we are not concerned in the present proceeding. Occupancy right in respect of Inam lands are provided in Sections 5 and 6. Different provisions are made in respect of such occupancy rights where the Inam held in perpetual and which is alienable to which Section 5 applies and Inam from land to which provisions of Section 5 do not apply, Section 6 has application. The other provisions deal with the powers of the authorities under the Act to decide certain matters as contemplated by Section 2-A thereof.

10. It would be also relevant to take note of certain definitions as provided therein. Section 2(c) defines Inam means land held under a gift or a grant made by the Nizam or by any Jagirdar with or without the condition of service and whether or not coupled with the remission of the whole or part of the land revenue thereon. Section 2(d) deals with definition of 'Inamdar' meaning a person holding an inam or a share therein. According to Section 2(g),

occupied land means Inam land which is not uncultivated land, waste land etc and which is in actual or constructive possession of Inamdar. These provisions indicate that not only actual but even constructive possession of the land would be sufficient to consider the land to be occupied land. The entire perusal of the Act indicates that it deals with the issues covered therein i.e. in respect of the occupation of the land in question and applicability and determination of occupancy price as applicable in Sections 5 and 6 thereto. As recorded above, it also deals with determination of amount of compensation in respect of abolition of cash grants. Except for these, there is no other provision which deals in other subject matter under the Act.

11. This becomes more clear from the fact that Sub-Section 2-A provides for the powers of the State Government or authorised officer to decide certain questions related to Inam and appeals. It would be necessary to reproduce said provision which reads thus :-

> [2-A Power of State Government or authorised officer to decide certain questions relating to inams and appeals :
>
> (1) If any question arises :
>
> (i) Whether any land is an inam,

(ii) Whether any inam is held with or without conditions of service and whether or not coupled with the remission of the whole or part of the land revenue,
(iii) Whether any inam is a community service inam or watan,
(iv) whether a commutation settlement in respect of any watan has or has not been effected,
(v) whether any land held as inam is or is not alienable without the permission of the competent authority, or
(vi) whether any person is a kabiz-e-kadim, permanent tenant or tenant, the State Government or an officer authorised by that Government shall decide the question.

[(2)(I) x x x
(II) x x x
(3) x x x
(4) x x x

This provision therefore makes it abundantly clear that except for subject matters described in Clauses (i) to (vi), the authorities would get no jurisdiction. It is relevant to note that as per Sub-section (1), if any question arises i.e. (i) to (vi), authorised officer shall decide the same. Thus, any other question than the one covered by this provision would be beyond jurisdiction of such authority.

12. It would not be out of context to make reference to certain provisions of the MLRC more particularly Chapter III thereof which deals with lands. Section 29 categorises classes of persons holding land and there are three such categories of occupants; (i) Occupants – Class I, (ii) Occupants – Class II and (iii) Government lessees. As per Section 29(2), Class I shall consist of persons who hold unalienated land in perpetuity and without any restrictions on the right to transfer. Occupant Class II holds unalienated land in perpetuity but subject to restriction on the land to transfer. This provision makes it clear that in case of Occupant Class I, the occupant holds unalienated land in perpetuity without any restriction on the right to transfer meaning thereby transfer of the property can be effected without sanction/permission of the authorities under the said Act.

13. At this stage, it needs to be recorded that the previous round of litigation though was pertaining to the issue raised by the persons claiming themselves to be the tenant in respect of occupancy

rights of subject lands, in the said proceeding an issue was decided as to the nature of Inam in question. In this regard, reference can be made to the judgment of this Court in Writ Petition No. 1406/2004 wherein it is held that the Inam in question is Madad Mash. There is no dispute made by learned counsel for the rival parties with regard to the fact that Madad Mash is an Inam which is in perpetual and alienable. Once the fact is not in dispute that the lands comprised in Inam is in perpetual and alienable, it is necessary to see which provision of the Act would apply to such case.

14. It would be relevant to take note of the relevant provisions in this regard, which read thus :-

> *5.* ***Occupancy rights in respect of lands comprised in an inam held in perpetuity and which was alienable:***
> *1) In the case of an occupied land comprised in an inam including a community service, inam or watan, which under the terms of the grant or commutation settlement was to continue in perpetuity and was alienable without the permission of any competent authority:*
> *(i) if it is in the possession of a kabiz-e-kadim, or of a permanent tenant or tenant holding from the inamdar, such kabiz-e-kadim, permanent tenant or tenant, and*

(ii) in other cases, the inamdar shall be primarily liable to the State Government for the payment of land revenue due in respect of the land held by him and shall, subject to the provisions of sub-sections (2), (3), (4) and (5), be entitled to all the rights and be liable to all the obligations in respect of such land as an occupant under the Land Revenue Act, 1317 Fasli and the rules made thereunder.

2) In the case of land referred to in clause (i) of sub-section (1) :

(a) the permanent tenant shall be liable to pay occupancy price equal to twice the amount of the full assessment of the land in his possession; and

(b) the tenant shall be liable to pay occupancy price equal to six times the amount of the full assessment of the land in his possession

to the inamdar within the prescribed period and in the manner provided in sub-section (3):

Provided that in the case of a tenant, the occupancy price may be paid in three equal instalments at such intervals as may be prescribed.

3) The permanent tenant or, as the case may be, the tenant shall deposit the amount of the occupancy price payable by him under sub-section (2), with the Collector within the period prescribed under that sub-section.

4) If the permanent tenant or the tenant fails to deposit the amount of the occupancy price under sub-section (3), it shall be recoverable as an arrear of land revenue and if it is not so recovered within a period of one year from the expiry of the period prescribed under sub-section (2), the permanent tenant, or as the case may be, the tenant shall be deemed to be unlawfully occupying Government land and shall be liable to be summarily evicted therefrom in accordance with the provisions of the Land Revenue Act, 1317 Fasli.

5) On the deposit under sub-section (3), or recovery under sub-section (4), of the entire amount of the occupancy price payable by a permanent tenant or tenant, it shall be paid to the inamdar in the prescribed manner.

6) Where under sub-section (4), a permanent tenant or tenant is deemed to be unlawfully occupying any land, such land shall be deemed to be vested in the inamdar as the occupant thereof free from encumbrances, if any created thereon by the permanent tenant, or as the case may be the tenant and the inamdar shall be primarily liable to the State Government for the payment of the land revenue in respect of such land in accordance with the provisions *of the Land Revenue Act, 1317 Fasli and the rules made thereunder.*

15. A bare perusal of this provision clearly indicates that this provision contemplates payment of occupancy price by permanent tenant or other tenant as prescribed therein. Such occupancy price becomes payable to the Inamdar and it is open for the tenant to deposit such occupancy price within prescribed period as per the rules with the Collector. This provision does not contemplate payment of any occupancy price by Inamdar to the State Government. Most importantly in case of failure on the part of tenant to pay occupancy price in time, he is deemed to be unlawfully occupying the land and in that case as per Sub-section (6) such land shall be deemed to be vested in the Inamdar free from all encumbrances. Thus, Inamdar becomes liable for payment of land revenue. Thus, the scheme clearly indicates that the lands comprised in an Inam would not vest in Government in case tenant fails to pay occupancy price or unlawfully occupies the land but it would vest in the Inamdar. The possession of the land therefore would be with the Inamdar in such case.

16. As compared to the above provision, if provisions of Section 6 of the Act of 1954 are perused, then it clearly states that it applies to the occupancy rights in respect of lands to which Section 5 does not apply. It would therefore be necessary to take note of the said provision which reads as under :-

> ***6. Occupancy rights in respect of occupied lands to which section 5 does not apply.—***
> *(1) In the case of an occupied land comprised in an inam other than land to which the provisions of section 5 apply,—*
>
> *(a) where such land is in the possession of the inamdar, or kabiz-e-kadim or of a permanent tenant or tenant holding from the inamdar, then such inamdar, kabiz-e-kadim, permanent tenant or tenant shall, in respect of the land which is in his possession, be primarily liable to the State Government for the payment of land revenue and shall, subject to the provisions of sub-sections (2), (3), (4) and (5), be entitled to all the rights and be liable to all the obligations as an occupant in respect of such land under the Land Revenue A ct, 1317 Fasli and the rules made thereunder;*
>
> *(b) the rest of the land, in respect of which under clause (a) neither the inamdar nor the kabiz-e-kadim nor the permanent tenant nor the tenant is primarily liable for*

the payment of land revenue, shall be at the disposal of Government and any person in possession of such land shall be deemed to be unlawfully occupying Government land and shall be liable to be evicted therefrom in accordance with the provisions of the Land Revenue Act, 1317 Fasli.

(2) In respect of the land for which the inamdar, kabiz-e-kadim, permanent tenant or tenant is liable under sub-section (1) for the payment of land revenue,—
(a) the inamdar or, as the case may be, the kabiz-e-kadim, shall be liable to pay an occupancy price equal to six times the amount of the full assessment of the land,
(b) the permanent tenant shall be liable to pay an occupancy price equal to eight times the amount of the full assessment of the land, and
(c) the tenant shall be liable to pay an occupancy price equal to twelve times the full assessment of the land, to the State Government within the prescribed period either in lump sum or by such instalments as may be prescribed.

[(3) (a) On or after the commencement of the Hyderabad Abolition of Inams and Cash Grants (Amendment) Act, 2015 (hereinafter, in this sub-section, referred to as "the commencement date"), the occupancy of Madad Mash Inam lands held on the new and impartible tenure (Occupants-Class II) may be transferred by the occupant

for agricultural purpose, and no previous sanction or no objection certificate from the Collector or any other competent authority shall be necessary for such transfer. After such transfer, occupancy of such land shall be continued to be held by such transferee occupant on new and impartible tenure (Occupants-Class II), in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 :

Provided that, any such occupancy held on new and impartible tenure (Occupants-Class II) may, on or after the commencement date, be converted into Occupants-Class I by the occupant, by making payment of [five per cent.] of the amount of the current market value of such land to the Government as Nazarana, and after such conversion, such land shall be held by the occupant as Occupants-Class I, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966.

Provided further that, on or after the commencement date, if any occupancy, held on new and impartible tenure (Occupants-Class II) has, without the prior sanction of the Collector or any other competent authority and without payment of the amount equal to five per cent of the current market value of such land], been transferred by the occupant for non-agricultural use, such transfer may be regularised on payment of an amount equal to 4[five per cent. of the current market *value of such land] as Nazarana, and an amount equal to fifty per cent. of such sum as a penalty, and on such payment, the occupant shall hold the land as Occupants-Class I, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966.*

(b) Before the commencement date, if any occupancy of Madad Mash Inam lands, held on new and impartible tenure (Occupants-Class II) has already, without previous sanction or no objection certificate from the Collector or any other competent authority, been transferred by the occupant, for agricultural purpose, such transfer may be regularised without payment of any sum as Nazarana, 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 deemed to be held by such transferee occupant as an Occupants-Class II, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 :

Provided that, before the commencement date, if any such occupancy of Madad Mash Inam lands, held on new and impartible tenure (Occupants-Class II), has already, without prior sanction of the Collector or any other competent authority, been transferred by the occupant for non-agricultural use, such transfer may be regularised on payment of an amount equal to [five per cent.] of the market value of such land on the date of the order of *regularisation as Nazarana, and an amount equal to ten per cent. of such sum as a penalty, and on such payment, the land shall be deemed to be held by such transferee occupant as Occupants-Class I, in accordance with the provisions of the Maharashtra Land Revenue Code, 1966, with effect from the date of such order.*

(c) The provisions of clauses (a) and (b) shall not be applicable to,—
(i) the property permanently dedicated as waqf which is administered under the provisions of the Waqf Act, 1995 ;
(ii) the Khidmat Mash (Service Inam) lands ;
(iii) the Madad Mash Inam lands, part of which is given for Khidmat (service) of devasthan subject to the terms and conditions of muntakhab (sanad) ;
(iv) the original Government lands granted by the then Government :

Provided that, the Collector shall verify that the muntakhab (sanad) of the Madad Mash Inam land does not fall in sub-clauses (i) to (iv).]

(4) If any person liable to pay to the State Government the occupancy price under sub-section (2) fails to pay the same within the period prescribed under that sub-section, it shall be recoverable as an arrear of land revenue and if it is not recovered within a period of one year from the expiry of the period prescribed under sub-section (2), the

person shall be deemed to be unlawfully occupying Government land and shall be liable to be summarily evicted in accordance with the provisions of the Land Revenue Act, 1317 Fasli.

(5) If the occupancy price payable by a permanent tenant or tenant under sub-section (2) is paid by him or recovered from him under sub-section (4) then—

(a) a sum equal to one-fourth of the of the amount paid by, or recovered from, the permanent tenant, and

(b) a sum equal to one-half of the amount paid by, or recovered from, the tenant shall be paid to the inamdar.

(6) Nothing in this section shall entitle the inamdar, kabiz-e-kadim, permanent tenant, tenant or any other person to claim compensation for the modification or extinguishment of any of his rights to, or interest in, the land to which this section applies.]

17. It is thus clear from above provisions that in respect of land comprised in Inam which is held not perpetual and it was not alienable, the provisions of Section 6 of the Act of 1954 would apply wherein not only the tenant and Kabiz-e-kadim but also Inamdar is

made liable for payment of occupancy price. It is pertinent to note that this occupancy price varies from person to person who is required to pay the same. It is further provided in sub-section (4) that if any person is liable to pay to the State Government occupancy price in sub-section (2) fails to pay the same, it becomes recoverable as arrears of land revenue and if not recovered within a period of one year from expiry of period prescribed, the person shall be deemed to have been in unlawful occupancy of the Government land and shall be liable to be summarily evicted. This provision clearly indicates that irrespective of abolition of Inam to which Section 6 applies, the land stands vested in the Government, its occupation continues with Inamdar or tenant as the case may be.

18. Now dealing with the arguments of learned Senior Counsel that these provisions are not independent, a plain reading of both provisions indicate that Section 5 has application to inam perpetual and alianable whereas Section 6 applies to inam not covered by Section 5 i.e. inams not perpetual and alienable. The terminology/language used in both provisions is so clear that it leaves no room of doubt that both provisions are independent to each other. Meaning thereby inam which is perpetual and alienable, only

Section 5 would apply and once it is applicable, it would be out of question to make provisions of Section 6 attracted to it. Moreover from the provisions of Sections 5 and 6 it could be also seen that legislative intent is absolutely clear that in case of perpetual and alienable inam, no occupancy price is payable by inamdar. On the other hand, in respect of other inam not covered by Section 5 Inamdar is required to pay occupancy price. This becomes more obvious in view of the different occupancy price required to be paid by permanent tenant, other tenant and Inamdar. The provisions in question therefore indicate legislative intent of dealing with different inam lands differently. This Court, therefore, finds no reason to hold that Sections 5 and 6 are not independent provisions.

19. Learned Senior Counsel also sought to convince this Court to accept his contention that once land vests in the State unless re-grant is done, Inamdar would not get right in the subject lands. This submission however does not get any support from the provisions of the Act of 1954. He was unable to point out any provision which require re-grant of the lands. What has not been provided by legislature cannot be permitted to be read in. This would amount to re-writing of statute, which is wholly impermissible for the

Court to do. Moreover, the provisions therein more than sufficiently indicate that vesting of land to the Government would not lead to automatic cessation of possession thereof by Inamdar or tenant as the case may be.

20. This aspect becomes even more clear from the impugned orders. Deputy Collector in the order dated 30.05.2014 has directed possession to be taken of the land in question. This clearly means that irrespective of the fact that there was abolition of Inam and the land vested in the Government, the actual possession was never contemplated to have been taken from occupier as contemplated by Section 6(4) of the Act of 1954. It would be taken over only in case of compliance of Section 6 thereof and not otherwise. In case of perpetual and alienable inam, the only consequence which entails in respect of same is that the lands in question become amenable to the land revenue thereafter. Only where the tenant claims occupancy right, the question of payment of occupancy price would come for him to pay the said amount to the Inamdar.

21. It is pertinent to note that the Additional Collector in order dated 28.12.2010 in paragraph No. 3 has rejected the contention of the Petitioner that the Inam is covered by provisions of

Section 5 on the ground that in support of the said submission there was no evidence led. This finding is totally erroneous in view of the fact that in the earlier round of litigation in respect of the same lands, this Court has held that it is a Madad Mash land and it is not in dispute it being perpetual and alienable and therefore it was covered by Section 5 of the Act of 1954. The authorities have failed to take into consideration the said aspect and thereby committed serious error in law while passing impugned orders. As held in the previous round of litigation, when the concerned Inam is Madad Mash, which is admittedly perpetual and alienable, this Court has no hesitation to hold that the provisions of Section 6 of the Act of 1954 have no application to the present case as the case is covered by Section 5 of the Act.

22. As far as revenue record is concerned, in 'gav namuna 7' the holding of land is shown as Class I land. In the facts of the case, where the inam is perpetual and alienable, the said classification done by revenue authorities appears correct. In any case, it would not be open for the Authorities under Act of 1954, to consider the correctness or otherwise of classification of lands done in revenue record in exercise of powers under MLR Code. Similarly, it would not

be open to take exception to the registered sale-deeds except in respect of lands covered by Section 5 of the Act or non-agricultural permissions granted by the authorities concerned under different statute. The whole entertainment of complaint of MLA on these counts becomes unsustainable.

23. The orders impugned indicate that the Deputy Collector in order dated 30.05.2014 has held that the lands in question are sold during the pendency of the proceeding between the tenant and Inamdar before the Hon'ble Supreme Court and since the purchasers had not received ownership rights, the sale transaction becomes illegal. This finding is confirmed by the appellate authority. as far as these findings are concerned, perusal of the provisions of the Act more particularly Section 2(A) indicate that it was not open for the authority under the provisions of the Act to decide correctness or otherwise of the sale-deeds executed by the Inamdars in favour of the subsequent purchasers. Under Clause (v) the question whether any land held as Inam is or is not alienated without permission of the competent authority only could have been gone into by the authority. Pertinently, the Deputy Collector had not gone into the said issue however recorded finding to the effect that Section 6 has application

to the case. As admitted by both sides, the land in question is Madadmash land and is perpetual and alienable, the relevant provisions applicable would be Section 5 only and not Section 6.

24. The said order further indicates that occupancy price since not paid by Inamdar under Section 6(2) of the Act of 1954, it was held that there is breach of said condition which has resulted into taking possession of the land in question. The authority has failed to take into account provisions of Section 5 which are applicable to the Inam in question and subject lands. Since both Sections 5 and 6 are independent, there is a manifest error committed by the Deputy Collector in holding that there is breach of condition by non-payment of occupancy price under Section 6(2) of the Act of 1954.

25. As a result of above discussion, the orders impugned cannot sustain in law and deserve to be set aside and are accordingly set aside. Petitions stand allowed. Rule made absolute in above terms.

(R. M. JOSHI)
Judge

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