



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1415 OF 2002 WITH
CIVIL APPLICATION NO. 9018 OF 2024
IN WP/1415/2002

Zelabai w/o Bhanudas Shejul, Died his L.Rs.

- 1) Tarabai w/o Balasaheb Thombre,
Age: 40 yrs. Occ.: Agri.,
R/o: Dinwada, Tq. Gangapur,
Dist. Aurangabad.
- 2) Vimalbai w/o Raosaheb Shelke,
Age: 37 yrs. Occ.: Agri..
R/o: Bhagathan, Tq. Gangapur,
Dist. Aurangabad.
- 3) Kamalbai w/o Kadu Dhotare,
Age: 35 yrs. occ.: Agri..
R/o: Kate Pimpalgaon,
Tq. Gangapur, Dist. Aurangabad.
- 4) Shobha w/o Ramnath Nage,
Age: 32 yrs. Occ.: Agri..
R/o: Bhokargaon, Tq. Vaijapur,
Dist. Aurangabad.
- 5) Santosh s/o Bhanudas Shejul,
Age: 30 yrs. Occ.: Agri.,
R/o: Rajure, Tq. Vaijapur,
Dist. Aurangabad.
- 6) Manisha d/o Bhanudas Shejul,
Age: 27 yrs., Occ.: Nil,
R/o: Rajure, Tq. Vaijapur,
Dist. Aurangabad.
- 7) Gaiyatri w/o Sainath Jagtap,
Age: 25 yrs., Occ.: Agri.,
R/o: Bhagathan, Tq. Gangapur,
Dist. Aurangabad.

...Petitioners

VERSUS

1. The State of Maharashtra

2. Hiralal Balchand Jain died, L.Rs.

i) Jawaharlal s/o Hiralal Jain,
Age.58 yrs. occ. Agril.
R/o Lasur Tq. Vaijapur, Dist. A'bad
at present R/o Saubhagya Provision Stores,
Parijatnagar, Nashik 5, Dist. Nashik.

ii) Sumatilal Hiralal Jain,
Age. 56 yrs. Occ. Agril.
R/o Lasur Tq. Vaijapur, Dist. A'bad
at present R/o Saubhagya Provision Stores,
Parijatnagar, Nashik 5, Dist. Nashik.

iii) Suwalal Hiralal Jain,
Age. 54 yrs. occ. Lasur,
Tq. Vaijapur, Dist. Aurangabad.

8. Pandharinath S/o Rajaram Jagdale,
Age : 60 years, Occ: Retd. Ex Military,
R/o Lasurgaon, Tq. Vaijapur,
Dist. Aurangabad

...Respondents

...

Mr. C. V. Thorat, Advocate for the Petitioner

Ms. R. R. Tandale, AGP for Respondent No. 1

Mr. A. S. Hire h/f Mr. P. V. Barde, Advocate for
Respondent No. 2

Mr. Y. D. Kale, Advocate for Respondent No. 8

**WITH
CIVIL APPLICATION NO. 7366 OF 2020
IN RAST/33792/2017**

Dada Dhondiba Aaddhane

Age 66 years, Occu: Agriculturist

R/o. Viramgaon, Tq. Paithan,

Dist. Aurangabad

through

General Power of Attorney holder

Ramesh Suryabhan Shejul
Age: 39 years, Occu: Agriculturist
R/o Rajura, Taluka Vaijapur,
District Aurangabad

...Applicant

VERSUS

1. The State Of Maharashtra
2. Hiralal Balchand Jain
Since deceased through legal heirs

2A. Jawaharlal hiralal Jain
Age: Major Occu: Agriculturist

2B. Sumantilal Hiralal Jain
Age: Major Occu: Agriculturist

2C. Suwalal Hirala Jain
Age: Major Occu: Agriculturist

2A to 2C R/o Lasur, Taluka Vaijapur,
Dist. Aurangabad

...Respondents

Mr. D. P. Palodkar, Advocate for Applicant

Ms. R. R. Tandale, AGP for Respondents

CORAM : R. M. JOSHI, J
RESERVED ON : AUGUST 13, 2025
PRONOUNCED ON : AUGUST 20, 2025

JUDGMENT :

1. Writ Petition No. 1415/2022 takes exception to the order passed by the Maharashtra Revenue Tribunal (for short 'Tribunal') dated 27.12.2001 in Appeal No. 43/A/97/A under Section 33 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short 'Ceiling Act') dismissing the Appeal filed by the

Petitioner herein. Whereas the Review Application Stamp No. 33792/2017, which is filed along with delay condonation Application, seeks review of order dated 22.04.2002 dismissing the Petition at threshold and by setting aside the said order of dismissal, on merit interference is sought in the order passed by Tribunal in that case.

2. Since the facts involved in both these proceedings are identical and as the decision of Writ Petition has bearing on the outcome of Review Application, same are decided with consent of both sides by this common judgment.

3. The facts, as they appear from the record, can be narrated in brief as under:

Petitioner claims to be the owner of the land admeasuring 4A and 20R from Gut No. 4 situated at village Rajura, Tq. Vaijapur, Dist. Aurangabad vide registered sale deeds dated 15.04.1969. Similar is the claim of the Applicant in Review Application. It is not in dispute that transaction of sale in both cases have taken place after commencement of the Ceiling Act but before 26th September, 1970. The subject properties were

owned by Hiralal Jain, who has executed the sale deeds in their favour. Both claim that since time of execution of the sale deeds, they are in possession of their respective subject lands. It is claimed by the Petitioner that on receipt of notice dated 06.08.1997 from the Circle Officer, Vaijapur, it has come to the notice of the Petitioner about the proceedings under the Ceiling Act and notice dated 07.08.1997 when the possession of the subject land was sought to be taken on the basis of the order passed by the Authority under the Ceiling Act declaring the land of Hiralal Jain being excess. Review Applicant had also made identical claims in his Petition. It is claimed by them that no notice was issued to them under Section 17(2) of the Ceiling Act and for want of such notice, the order passed by the Authority to the extent of their lands is not maintainable. It is further claimed that Collector has failed to take into consideration mandatory provision of the Act and the Tribunal has failed to appreciate the same.

4. It is contended that Tribunal though has recorded the contentions of the Petitioner in the order

impugned, however, Appeal came to be rejected solely on the ground that order passed under Section 14 of the Ceiling Act has been upheld up to the Supreme Court. Tribunal has not dealt with the merit of the Appeal. Hence, this Petition.

5. Learned Counsels for the Petitioner/Applicant have drawn attention of this Court to the provisions of Section 17(2) of the Ceiling Act, which according to them, mandates issuance of notice to the holder or to the person interested in the subject land. It is submitted that on the basis of the registered sale deeds executed in his favour in the year 1969 by Hiralal Jain and pursuant thereto, they are in possession of the lands and have become holder as well as person interested therein. It is contended that there was no notice issued under Section 17(2) of the Ceiling Act to the Petitioner and as a result of which, the order passed by the Authority under Section 14 of the Ceiling Act of including the land held by the Petitioner/Applicant to be excess is not sustainable. It is their submission that the Tribunal ought to have taken into consideration the said aspects and would

have dealt with the merits of the Appeal rather than its dismissal simply with observations that the proceedings under Section 14 of the Ceiling Act has attained finality up to the Supreme Court. It is their contention that since admittedly the Petitioner /Applicant were not heard while passing of order under Section 14 of Ceiling Act and since they are interested parties, the said order would not bind them.

6. Learned Counsel for the Applicant in Civil Application No. 7366 Of 2020 contends that two Petitions were filed challenging similar order passed by Tribunal and on the same day, were moved before this Court. According to him, though they involved same question of facts and law, one Petition was dismissed at threshold, whereas companion Petition bearing Writ Petition No. 1415/2002 came to be admitted. This, according to him, is clearly an error apparent on the face of the record and as such, the said order of dismissal deserves to be set aside and the Petition needs to be restored. With regard to the condonation of delay, it is argued that after dismissal of the Petition, remedies were adopted and no *mala fides* could

be attributed to the Applicant.

7. On merit, it is his submission that the entire scheme of the Ceiling Act does not contemplate declaration of any transaction after commencement of the Act to be null and void and only in such case such transaction can be kept out of the transaction. By referring to provision of Section 18(2) of the Ceiling Act, it is his contention that during the enquiry under Section 14 of the Ceiling Act, it is obligation on the part of the Collector to consider certain matters and the transfers of any land from the date of commencement of the Act till 26.09.1970 are required to be considered in calculating total ceiling area. Thus, it is his contention that if the arguments advanced on behalf of the Intervenor are accepted that there is complete bar to the transaction and the transaction would be illegal under Section 8 of the Ceiling Act, the provision under Section 18(b), which was introduced by way of amendment by Act 21 of 1975, would become redundant. In any case, it is his submission that Petitioner being physical holder of the land and title holder as well as actual holder i.e., possessing the

land, is the person interested as contemplated by Section 17(2) of the Act. He further argued that all these aspects ought to have been considered by the Tribunal and, therefore, this is a fit case wherein the order impugned is set aside and the proceedings are relegated back to the Tribunal for decision afresh. To support his submissions, he placed reliance on following judgments: Shriram s/o Jagoji Brahmane vs. State of Maharashtra and Others, 2007(2) Mh.L.J. 353, Pandharinath S/o Vithalrao Awari vs. The State of Maharashtra and Others, [2009 (2) Mah L R 545] & H. A. Somvanshi vs. The State of Maharashtra, 1978 (2) MH. L.R. 73.

8. Learned Counsel for the Intervenor resisted the Petition and Review Application by submitting that Section 8 of the Ceiling Act impose restrictions on the transfer of any land of area after commencement of the Act. It is his submission that once such restriction is there, consequences of such transfer would be entail as provided by Section 10 of the Ceiling Act. He placed heavy reliance on the judgment of the Coordinate Bench of this Court in case of Suhas Pralhadrao Deshmukh vs.

State of Maharashtra, 2007(4) ALL MR 75, to argue that once the transfer has been effected after coming into force of the Act, Section 8 would have application to such transfer. It is his contention that since in view of the express restriction for transfer of the land, it cannot be said that the Petitioner has acquired any interest in the land, which was included in the returns filed under Section 12 by the land owners. It is his contention that it would also be relevant to take into consideration the provision of Section 16 of the Act while deciding issue involved in the present Petitions. He has drawn attention of the Court to the fact that in the instant case proceedings under Section 14 and the order passed therein have attained finality, by referring to the order of the Hon'ble Supreme Court in case of Hira Lal (Dead) By Lrs. Etc vs. State of Maharashtra and Another, 1997(1) BCR 302. Finally, it is argued that the Intervenor is allotted with the subject lands long back and his right to receive the lands cannot be ignored.

9. In order to appreciate rival submissions, it would be absolutely necessary to take note of the

relevant provisions of the Act. Firstly, it would be relevant to take note of Section 8 of the Ceiling Act, which reads thus:

8. Restriction on transfer.-

Where a person, or as the case may be, a family unit holds land in excess of the ceiling area on or after the commencement date, such person, or as the case may be, any member of the family unit shall not, on and after that date, transfer any land, until the land in excess of the ceiling area is determined under this Act.

Explanation :- In this section, "transfer" means transfer, whether by way of sale, gift, mortgage with possession, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a court, tribunal or authority (except where such decree or order is passed in a proceeding which is instituted in such Court, Tribunal or before such authority before the 26th day of September, 1970), but does not include transfer by way of sale or otherwise of land for the recovery of land revenue or for sums recoverable as arrears of land revenue, or acquisition of land for a public purpose under any law for the time being in force.

10. This provision speaks about the restrictions on the transfer of the land in excess of the ceiling area after the commencement of the Act until the land in excess of the ceiling area is determined under this

Act. Explanation indicates that restrictions applied to the transfer in any manner does not include transfer by way of sale or otherwise of the land for the recovery of the land revenue or acquisition of the land for the public purpose under the law for the time being in force. Pertinently, though restrictions are imposed consequence of any transaction so entered into has not been provided. The transaction is not deemed to be invalid.

11. Section 9 deals with the acquisition of the land in excess of ceiling area. Whereas, section 10 contemplates the consequences of such acquisition after commencement of the Act. There is also a restriction to the partition of the lands between family as provided by Section 11 of the Act.

12. Section 14 enables the Collector to hold an enquiry in respect of every person holding land in excess of the ceiling are and determining the surplus land held by such person or family unit. This exercise has to be done after the expiry of period referred in Section 12 of the Act, which mandates submission of returns by a person or family unit.

13. It would also be relevant to take note of Section 17, which reads thus:

17 - Notice to persons affected by enquiry under section 14.-

(1) For holding an enquiry under section 14, the Collector shall cause public notice, in the prescribed form, to be given at convenient places in village or villages in which the land comprised in the holding is situate, specifying in the notice the land in respect of which enquiry is to be held to ascertain the surplus land (if any) held by the person or family unit, and calling upon all persons interested in the land to submit to the Collector their objections within a period of fifteen days from the date of publication of the notice. Where a public notice has been given as provided in this sub-section, then the holder and all persons who are interested in the land shall be deemed to have been duly informed of the contents of such notice. If in the course of any proceedings a question arises whether a person was duly informed of the contents of the notice given in pursuance of this sub-section, the publication of the notice in the manner provided in this sub-section shall, notwithstanding anything contained in sub-section (2), be conclusive proof that he was so informed of the contents of such notice.

(2) The Collector shall serve notices to the same effect on the holder, and all other persons who are known or believed to be interested in the land, calling upon them to appear before him personally or through an agent on a date and at a time and place (such date not being earlier than fifteen days after the issue of notice), to be stated in the notice.

(3) The notices under sub-section (3) may also call upon the holder -

(a) to state any objections or suggestions to the particulars given in the notice;

(b) to show cause, where necessary, why -

(i) any land transferred in contravention of the provisions of section 8, or any land transferred during the period specified in clause (a) of sub-section (1) of section 10, or any land partitioned in contravention of the provisions of section 11, should not be taken into consideration in calculating the ceiling area, as provided in sub-section (1) of section 10 or section 11,

(ii) any land acquired in wilful contravention of section 9 should not be forfeited, as provided by sub-section (3) of section 10,

(iii) any land held in excess of the ceiling area should not be forfeited to the State Government as provided by sub-section (3) of section 13,

(iv) any land referred to in sub-section (2) of section 10 or in section [11-A] held by him should not be deemed to be surplus land as provided in that sub-section or in section [11-A];

(c) to state the land to be retained by the holder under section 16; and to furnish to the Collector in the prescribed form, the prescribed particulars of the land so to be retained.

Explanation :- Subject to the provisions of this Act and of the Amending Act, 1972, in this section and in the following provisions of this Act, the expression 'holder', unless the context requires otherwise, includes a family unit.

14. This provision can be divided into two parts, which requires the Collector to issue public notice in the prescribed format calling upon all person interested in the land to submit to the Collector their objections within a period of 15 days from the date of publication of the notice. Publication of notice in the manner provided in this provision and shall be conclusive proof that the person is informed of the contents of such notice notwithstanding anything contained in sub-section (2).

15. In the backdrop of this provision of public notice, there is specific provision of service of notice on specified categories of persons in sub-section (2). This part of section mandates the Collector to issue notice to the same effect on the holder and/or all other persons who are known or believed to be interested in the land. Such person is required to show cause as to why land transferred in

contravention of provision of Section 8 and other provisions should not be taken into consideration in calculating the ceiling area as provided by Section (1) of sections 10 or 11. This provision more than sufficiently demonstrates that irrespective of the fact that the transfer effected in favour of a person is hit by Section 8, a notice is necessarily to be issued to such person to show cause as to why such land transferred in contravention of the said provision should not be taken into consideration while calculating the ceiling area. This becomes more clear from provision of Section 18(b). This provision requires the Collector to consider amongst other matters following matter:

“Whether any land transferred between the period from the 26th day of September, 1970 and the commencement date, or any land partitioned after the 26th day of September, 1970, should be considered or ignored in calculating the ceiling area as provided by sub-section (1) of section 10 of section 11”

16. This clearly indicates that it is open for the Collector, in appropriate cases, to consider or to

ignore in calculating the area as provided by section 10 of 11, whether any land transferred between the period of commencement of the Act till 26 September, 1970 or land partitioned after 26 September, 1970.

17. In the light of provisions of law, as narrated and discussed above, when the Petitioners have come out with a specific case before Tribunal that there are registered sale deeds in their favour effected by original land owner after commencement of the Act before 26.09.1970, it was incumbent on the part of the Tribunal to ascertain the said fact and then to decide as to whether the Petitioners are the persons as covered by Section 17(2) of the Ceiling Act and yes, the consequence of non issuance of notice to them under the said provision.

18. Tribunal further ought to have taken into account the provision of Section 8 of the Act, which provides for restriction to the transfer, however, the transfer effected after the commencement of the Ceiling Act, is not declared to be deemed illegal. On the contrary, combine reading of Sections 17 and 18 indicates that in fact it was obligatory on the part of

the Collector to take into consideration such transfer and then to decide whether it should be ignored or considered. This exercise has not been done by the Collector and this fact should have been taken into account by the Tribunal.

19. The Tribunal proceeds on the footing that the order passed by the Authority under Section 14 of the Act has attained finality up to Hon'ble Supreme Court. It is true that the order passed under Section 14 has attained finality, however, the issue as to the requirement of notice to the Petitioners and consequence of non issuance of the notice were not raised and hence, not considered in the said order and consequently not dealt with by any Court including Hon'ble Supreme Court. Needless to say that right to property though is not a fundamental right but is certainly a constitutional right and in order to deprive any person of his property, the same could be done only in accordance with law and not otherwise. Moreover, when a statute describes a thing to be done in a particular manner, it should be done in that manner only or not at all.

20. Even in case of Suhas Pralhadrao Deshmukh (supra), this Court was dealing with the issue as to the execution of a registered sale deed dated 07.05.1985 i.e., much after 25.09.1971. The said Court has recorded specific findings that the Petitioner has only acted in the interest of original land owners. In respectful view of this Court, the said judgment has no application to the present case owing to the difference in the facts of both cases. Suffice it to say that all these issues sought to be raised before the Tribunal since include the issues of fact, it was for the Tribunal to record such finding on facts first and then to accept or not the contention of the Petitioners. This exercise cannot be undertaken in this Petition and no findings of fact are permissible to be recorded for the first time.

21. In so far as the Review Application is concerned, in view of the fact that two similarly placed Petitions were considered differently by this Court without there being any reason or justification therefor. Admittedly, both Petitions were moved on the same day with similar pleadings and prayer and one

Petition came to be admitted and another was dismissed. There cannot be any better case to hold that there is error apparent on the face of record and such error deserves to be corrected. In so far as time lapsed in between passing of the order of this Court and moving application for Review, from the facts and circumstances of the case, it cannot be said that the Applicant was not pursuing other remedies. In any case, since constitutional right of the Applicant in respect of his property is affected adversely and involved in this proceeding, this is a fit case for allowing the Review Application by condonation of delay caused, if any. Consequently, Review Application stands allowed. Writ Petition bearing No.1618/2002 stands restored.

22. Though this Court finds that grievance sought to be made by the Intervenor to be not unreasonable that he is being deprived of his right to get land allotted to him long back, however, at the same time, the denial of right of property to the Petitioners without following due process of law cannot be ignored. The balance of convenience, therefore, lies in favour of Petitioners than the Intervenor.

23. In view of above discussion, both Petitions stand allowed. Impugned order dated 27.12.2001 passed in Appeal No. 43/A/97/A & Appeal No. 42/A/97/A respectively by the Tribunal are hereby set aside. The proceedings are relegated back to the Tribunal for decision afresh. Since the proceedings are of year 2001, Tribunal to decide the same within a period of three (03) months from the knowledge of this judgment.

24. Pending civil application(s), if any, stands disposed of.

(R. M. JOSHI, J.)