



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.671 OF 2014
WITH
CIVIL APPLICATION NO.12853 OF 2024
IN
WRIT PETITION NO.671 OF 2014

Salar Umrao Mujawar @ Shaikh & Ors. ... Petitioners

versus

The State of Maharashtra & Ors. Respondents

WITH
WRIT PETITION NO.1039 OF 2014
WITH
CIVIL APPLICATION NO.12854 OF 2024
IN
WRIT PETITION NO.1039 OF 2014

Shamshoddin Pahulal Shaikh & Ors. ... Petitioners

versus

The State of Maharashtra & Ors. Respondents

.....

Mr.P.R. Katneshwarkar, Senior Counsel I/B. Mr.S.P. Katneshwarkar, for
the Petitioners

Mr.S.G. Joshi, AGP, for the Respondent Nos. 1 to 5.

Mr.S.S.Kazi, for the Respondent No. 6

Mr. Arvind Deshmukh, for Respondent Nos. 12 to 23.

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CORAM : R.M. JOSHI, J.

RESERVED ON : 15th DECEMBER, 2025.
PRONOUNCED ON : 23rd DECEMBER, 2025.

P.C:-

1. These Petitions take exception to the Order dated 03.06.2011 in File No. 2010/ROR/A-15 passed by Deputy Collector (Atiyat) and Order dated 05.12.2011 in File No. 11/BS/INAM/KAVI-628 passed by Collector (Atiyat) confirming the order passed by Deputy Collector and Notice dated 13.01.2014 issued by Circle Officer seeking handing over the possession of subject lands from Petitioners.
2. The Petitioners in Writ Petition No. 671 of 2014 filed Special Leave Petition before the Hon'ble Supreme Court against order dated 07.03.2013 passed in Writ Petition No. 4699 of 2012. Though the Supreme Court vide order dated 02.01.2014 has not allowed the S.L.P. but has granted leave to the petitioners to approach High Court. Accordingly, petitioners herein have filed this Petition. The Petitioners in W.P. No. 1039 of 2014 however seek challenge to the aforestated orders independently without any leave being granted by the Supreme Court.
3. The facts as appeared from both the Petitions indicate that Abibuddin Mehboobuddin claimed himself to be Inamdar of lands Survey Nos. 111, 112, 113, 115 and 116 (Gut Nos. 226, 264, 265, 267 and 270) total admeasuring 150 Acres land (subject lands). On the other hand, the petitioners claimed themselves to be the owners and in possession of the lands on the basis of transactions entered into with the tenants thereof.

4. It is the case of the petitioners that subject land holders filed proceeding before the Civil Court being R.C.S. No. 684 of 1990 against Collector and Tahasildar, Latur seeking injunction against their eviction from dispossession from the suit lands. The suit came to be decreed on 15.12.1999. No exception is taken to the said Judgment and Decree by the defendants and the said Judgment has become final.

5. In or around year 1974-75 Sub Divisional Officer, Latur passed order dated 24.01.1990 and thereby put the subject lands for auction for cultivation on yearly basis (Eksala lavni). This order came to be challenged before the Additional Commissioner in Appeal bearing 75-REV-A-75, unsuccessfully the Appeal came to be dismissed by order dated 24.01.1990. It is claimed by the Petitioners that in spite of the said order, for non execution thereof, petitioners remained in possession of the subject lands.

6. Deputy collector, Latur passed order dated 30.11.1992 in Appeal No. 92/TNC/CR/66 and 92/TNC/CR/67 under the provisions of Abolition of Inam Act. The Inam in respect of the subject land was held to be abolished. Inamdar challenged the said order by filing two different Appeals before the Additional Commissioner. The Additional Commissioner, however, dismissed the said appeals by order dated 14.09.1994. These orders were taken exception before the High Court in Petition Nos. 2462 of 1996 and

2464 of 1996. This Court by Judgment dated 04.07.2008 allowed the appeals and set aside the order passed by the Deputy Collector and Additional Commissioner holding that the contesting respondents herein are Inamdars of the subject lands.

7. Pursuant to the order passed by this Court, Inamdar moved an application for seeking possession of the subject land before the Deputy Collector (Atiyat) in respect of Gut Nos. 226, 265, 264, 267 and 270. The Deputy Collector by order dated 03.06.2011 directed the possession of the subject land to be taken by Government and to put the same for auction for Eksala lavni. The appeal filed against the said order came to be dismissed by Collector by order dated 05.12.2011. The contesting respondents challenged the said order of Deputy Collector as well as Collector before this Court by filing Writ Petition No. 4699 of 2012. This Court by Judgment and Order dated 07.03.2013 dismissed the Petition and the orders impugned passed therein were confirmed.

8. In this backdrop, the petitioners claim that the orders passed by the Deputy collector and Collector dated 30.06.2011 and 05.12.2011 respectively are not in consonance with law and hence deserve interference. It is also claimed that Notice dated 13.01.2014 issued by the Circle Officer seeking possession of the subject lands be set aside. In so far as the challenge to the orders passed by Deputy Collector and

Commissioner dated 03.06.2011 and 05.12.2011 respectively, the Petitioners claimed that in view of the Judgment and Decree passed in R.C.S. No. 684 of 1990 which has attained finality, the orders passed by these Authorities are not justified. It is claimed that from the protected tenants in respect of the subject land, the petitioners had acquired interest therein. It is also claimed that they were not party to the proceeding. The Judgment and Order of this Court dated 04.07.2008 is sought to be taken exception to on the ground that order came to be passed against dead persons and therefore in view of the abatement caused to the petition in respect of some of the respondents, the entire order passed by this Court deserves to be set aside.

9. Learned Senior Counsel appearing on behalf of the petitioners submits that in R.C.S. No. 684 of 1990 filed against the Government Authorities, the Civil Court has passed Judgment and Decree not to dispossess the land holders by Judgment and Decree dated 15.12.1999 and since the said decree has attained finality, it binds the Government Authorities. It is his further submission that the petitioners claim their rights through the protected tenants in whose favour the ownership certificates were issued and Mutation Entries were also taken in revenue record. It is his submission that in so far as the Petition bearing No. 2462 and 2464 of 1996, this Court has failed to take into consideration the fact

that number of respondents therein were deceased and the order came to be passed against deceased person is not tenable in the eyes of law. It is his submission that the issue also involves question about as to whether the subject lands are service Inam or Madadmash. It is his further submission that there cannot be such order in respect of the certain respondents and the petition can be allowed to be abated against other respondents. It is his submission that in respect of the similar set of facts so also status of the parties, there cannot be two different sets of order. It is his further submission that the Judgment and Order passed by this Court against dead person is not an order sustainable in law and as such there cannot be different orders in respect of similarly placed occupiers / owners of the subject lands.

10. Learned counsel for the contesting respondents opposed the Petition firstly on the ground that prayer clause -B set out in the petition is not tenable. It is further submitted that this is not the case wherein the abatement of a Writ Petition against some of the respondents would affect legality of the order passed therein. It is submitted that the said order has been passed on merit and without the Court having information / knowledge about the death of certain parties. It is his submission that the said order is not challenged in this Petition as there is no prayer made in that regard. According to him, in any case application for setting aside

abatement has already been filed and it is pending. It is further argued that the present petition is also not maintainable in view of the fact that the Wakf Board is not made a party to the Petition. It is his submission that the Judgment and Decree passed in Civil Suit has no bearing on the outcome of the proceedings under the Atiyat Enquiries Act or Hyderabad Agriculture Tenancy Act. It is further sought to be argued that the petitioners have not challenged the order of Collector. On these amongst other submissions, the petition is sought to be dismissed.

11. Perusal of the record indicates that the petitioners claimed themselves to be the successors of the original holders of the land who claimed themselves to be the protected tenants. Undeniably a Suit came to be filed before the Competent Civil Court bearing No. R.C.S. No. 684 of 1990. It would be relevant to take note of the said Judgment which indicates that it was a grievance of plaintiffs about they cultivating the suit land as tenants prior to 30 years of filing of the suit and being declared as protected tenants under the Hyderabad Agricultural Tenancy Act and ownership certificate being issued by the State in their favour. It was also claimed that, on the basis of the said certificate their names have been mutated on the revenue record, more particularly on 7/12 extract. It was alleged that due to political pressure Tahasildar, Latur sought to attach the suit land without giving prior notice or intimation. In these circumstances,

they were required to file the said suit. The issues framed by the learned Trial Court therein indicate that it was a case of the plaintiffs that the suit lands were sought to be attached without any notice and intimation. The learned Trial Court accepted the said case of the plaintiffs and permanent injunction came to be passed restraining the defendants from obstructing or causing interference in the possession of the plaintiffs over the suit lands. No doubt this order has not been taken exception to by the parties to the suit and the same has attained finality. This decree however cannot be construed as complete embargo on evicting them even by following due process of law. It needs to be recorded that rights of parties qua provisions of Hyderabad Agricultural Tenancy Act and also under Hyderabad Atiyat Enquiries Act, can be decided by forum provided under concerned statute and jurisdiction of Civil Court is barred. Therefore, no decree passed by Civil Court would bind the said forum / Authorities, on subject matters covered by these statutes.

12. It is also pertinent to note that in the backdrop of the said Judgment and Decree, an order came to be passed by this Court in W.P.No. 2462 of 1996 and 2464 of 1996 dated 04.07.2008. In the said Writ Petition the Inamdar of the subject land took exception to the Judgments dated 30.11.1992 and 14.09.1994 passed under the provisions of Hyderabad Abolition of Inam and Cash Grants Act, 1954. After taking into

consideration the entire facts of the case it was held that “there is no dispute that the present petitioner is Inamdar. Even in these documents it is mentioned that the Inam was Niaz-A-Rasool. In other words, it is for the service of Mohd. Prophet. It is explained that for giving feast on the birth date of Mohd. Prophet, the Inam was created and land was granted. These documents also shows that from 1975 the land were in possession of the Government and every year the land was given for cultivation for a period of one year.” It is further observed that the present Inam is not governed by the abolition of Inams Act but it is the one which is covered by Atiyat Enquiries Act and therefore, previously there was enquiry under the said Act. This Court further observed that all these aspects were not considered by the Deputy Collector or Additional Commissioner. Consequently, the orders passed by the Deputy Collector Land Record dated 30.11.1992 and order passed by the Additional Commissioner dated 14.09.1994 came to be set aside. The Applications filed by respondent Nos. 1 to 3 for abolition of Inam by declaring them as a occupant and for issuance of occupancy certificate were dismissed.

13. It is pertinent to note that this order was not taken exception to before the Hon’ble Supreme Court in CC 21718/2013, dated 02.01.2014. However order passed in W.P.No. 4699 of 2012 dated 07.03.2013 was challenged before Supreme Court. The Supreme Court has not caused

interference in the said order but granted leave to the petitioner in W.P.No. 7671 of 2014 to move High Court. Though the present petition is filed thereafter, there is no specific challenge raised to the order passed by this Court dated 04.07.2008. This petition is not for review of the said order as no such prayer is found in the Petition. It is however argued that since the said order came to be passed against dead persons, the order itself will not survive in the eyes of law.

14. No doubt, any judgment / order against a dead person is not tenable being no order in eyes of law and such issue can be raised even in any ancillary proceeding. But question arises as to whether such order would be null and void qua dead persons or entire order will be held to *non est*. There can be no dispute about the legal position that ordinarily a proceeding would abate only in respect of dead person and can continue against others. Only in exceptional circumstance entire proceeding would be dismissed against all irrespective of fact of death of anyone of them. In this regard, it is pertinent to note that in a suit for partition, the abatement of proceedings against one of the party to the suit would result into complete dismissal of the proceeding due to this reason that on the dismissal of the proceeding against one party, there cannot be any different order in respect of others as the question of determination of shares of the parties involves therein. In other words, in case of dismissal of the

proceedings against one party, there cannot be determination of the shares of others excluding the deceased. This however would not be the issue / impediment in the instant case. Even if it is accepted that the order passed by this Court would not bind the deceased- respondents or their legal heirs, by that itself the entire order cannot be considered as illegal. Each respondent had independent claim in respect of the particular portion of the subject lands. Dismissal of the proceeding against anyone of them would not affect the rights and liabilities of other parties. In such circumstances, this Court finds no substance in the contention raised on behalf of the petitioners that since the Judgment was passed against some of the dead respondents, the entire judgment would be termed as not sustainable in law. Moreover, admittedly, restoration of proceeding has been filed by the petitioner therein, which is pending. Having regard to these facts this Court finds no reason to hold that on account of passing of the order by this Court rest of the parties are affected in any manner whatsoever.

15. Needless to say that it would not be open for this Court to consider the merit of the order passed by this Court in the said Writ Petition, since undertaking of any such exercise is impermissible in law. This Court cannot sit as an Appellate Court over its own Judgment and Order and set aside the same.

16. Though it is now sought to be contended on behalf of the petitioner that the petitioners were not party to the said petitions, however from the record it is clear that some of the petitioners were party to the proceeding under the Atiyat Enquiries Act before the Deputy Collector so also in the appeal before the Collector, Latur. They were appellant before the Collector, Latur. This order came to be challenged by some of the parties by filing Writ Petition No. 4699 of 2012. This Court by order dated 07.03.2013 dismissed the said petition. The said order passed by this Court is not set aside by the Hon'ble Supreme Court and therefore it would not be open for this Court to go into the correctness or otherwise of the said order. Suffice it to say that the order passed by this Court dated 04.07.2008 in Writ Petition No. 2462 of 1996 and 2464 of 1996 so also the order passed in Petition No. 4699 of 2012 have attained finality.

17. The challenge to the impugned order passed by the Deputy Collector, Atiyat and Collector of Latur are required to be considered independently. While deciding the correctness of the orders passed in said proceedings, it will have to be borne in mind that by Judgment and Order passed in the abovestated Writ Petitions challenge thereto has been negated by this Court. It is sought to be contended by the Petitioner that there is dispute with regard whether the Inam is Madatmash or Khidmatmash Inam. This Court in order dated 04.07.2007 has accepted

the case of the Inamdar that it is a Inam which is not governed by the abolition of Inam but it is one which is covered by the Atiyat Enquiries Act. The said findings recorded by this Court would not only be binding on the parties but also on this Court as it would not be open for this Court either directly or even indirectly set aside the said order. It is also sought to be contended that the Petitioners have derived interest in the subject land from the original tenants. By these aforestated Judgment, this Court has dismissed the Applications of respondents for abolition of Inam by declaring them as occupants and for issuance of occupancy certificates. This Judgment would bind the original parties to the said proceeding so also their successors.

18. The above discussion indicates that there is no merit in the Petitions. The impugned orders passed by the Authorities are in consonance with the provisions of law and justified in the facts of the case. For want of perversity therein no interference is caused in orders impugned. Notice dated 13.01.2014 is in pursuance to the said orders and hence the challenge to the said notice also must fail. In the result both petitions stand dismissed.

(R. M. JOSHI, J.)

19. At this stage, learned counsel for the petitioners seeks continuation of interim relief for a period of eight weeks. Learned counsel for

respondents opposed the said request.

20. Since interim relief is in force from the year 2014, the same stands extended for the period of eight weeks from today as prayed.

(R. M. JOSHI, J.)