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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9484 OF 2023

Shashikant Vishwanath Deshpande
Since Deceased Through Legal Heirs
& Ors. … Petitioners

V/s.

Sub-Divisional Officer & Ors. … Respondents

Mr. Drupad S. Patil with Namitkumar Pansare for the petitioners.

Ms. V. S. Nimbalkar, AGP for the State-respondent Nos.1 and 2.

Mr. Nitin P. Deshpande for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 31, 2025

P.C.:

1. Challenge in this writ petition under Articles 226 and 227 of the Constitution of India is to the order passed by the Sub-Divisional Officer, Malshiras Division, Akluj, District Solapur, rejecting the application filed by the petitioners under Section 28-1AA of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as “the Act, 1961”). The impugned order, which denies the petitioners’ statutory right to reclaim surplus lands, raises substantial questions of law pertaining to the interpretation of Section 28-1AA of the Act, 1961, particularly the scope of the proviso prescribing the time limit for exercising such rights. The petitioners contend that the statutory framework under Section 28-1AA confers an indefeasible right upon the landowner to seek restoration of surplus lands, provided the application is filed within the stipulated period of 90 days, which the petitioners assert was duly adhered to. The core dispute hinges on whether the authority erred in disregarding the petitioners' locus standi as lawful owners and misapplied the provisions of the Act, 1961, while favoring the third-party entity, Walchandnagar Industries Ltd.

2. The facts, as disclosed in the writ petition, are delineated hereunder with material particulars:

3. Gat No. 478, situated at village Gursale, Malshiras, District Solapur, and Gat No. 389, situated at Morochi, Malshiras, District Solapur, were originally owned and possessed by the Deshpande family, namely Yashwant Deshpande, Vasant R. Deshpande, Balkrushna N. Deshpande, and Vishwanath N. Deshpande. These lands were leased to Markland Price and Company Ltd. (later known as Walchandnagar Industries Ltd.) on 3 January 1940, under a registered lease arrangement.

4. In 1953, Mutation Entry No. 1161, which initially reflected the petitioners' predecessors-in-title, was expunged from the revenue records, and the Government's name was entered. However, vide Mutation Entry No. 1389 dated 26 February 1953, the Collector, exercising powers under Sections 4(1) and 4(2) of the Maharashtra Pargana Kulkarni Watans (Abolition) Act, 1950, restored the names of Vinayak Yashwant Deshpande and others upon payment of the requisite occupancy price, thereby conclusively reaffirming their lawful ownership.

5. The enactment of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, on 26 January 1962, introduced a statutory regime to impose ceilings on agricultural landholdings. Pursuant to Section 14 of the Act, 1961, an inquiry was conducted on 28 March 1963, culminating in the declaration of the subject lands as “surplus lands” in favour of Walchandnagar Industries Ltd. Consequently, Mutation Entry No. 1898 of 1970 was recorded, categorizing the lands as surplus.

6. On 13 August 1970, the surplus lands were allotted to Maharashtra State Farming Corporation Ltd. under terms stipulated in the Government Order, purportedly in furtherance of agrarian reforms.

7. The petitioners, asserting their hereditary rights, submitted a representation dated 22 February 2006 to the Sub-Divisional Officer (SDO), Baramati Division, Baramati, seeking restoration of the lands under Section 19 of the Act, 1961. This was followed by a formal application on 4 January 2012. However, the Tahsildar, Malshiras, vide communication dated 7 January 2012, rejected the petitioners’ claim, opining that restoration could not be ratified.

8. Upon the amendment of Section 28 of the Act, 1961, which introduced a statutory window of 90 days for filing restoration applications, the petitioners promptly availed this remedy within the prescribed period. During the inquiry, the Tahsildar submitted a report corroborating the petitioners' ownership claims based on historical revenue entries and the 1953 mutation restoration. Despite this, the Sub-Divisional Officer, Malshiras, in the impugned order dated 17 March 2023, dismissed the application, erroneously holding Walchandnagar Industries Ltd. as the "real owner" without reconciling this finding with the pre-1953 title documents or the statutory restoration under the Watans Abolition Act. Such dismissal, being patently contrary to the evidentiary record and the mandate of Section 28-1AA, constitutes a jurisdictional error warranting judicial intervention.

9. Mr. Patil, learned counsel for the petitioners, strenuously contended that the petitioners' ownership of the subject lands stands conclusively established through the registered lease deed dated 3 January 1940, executed in favor of Markland Price and Company Ltd. (now Walchandnagar Industries Ltd.). He emphasized that under Section 17 of the Indian Registration Act, 1908, a registered instrument operates as conclusive proof of its terms and the rights created thereunder, unless rebutted by evidence of fraud or coercion. The authority's failure to accord due evidentiary weight to this registered document, while relying solely on the unilateral assertion of Respondent No.3 (Maharashtra State Farming Corporation Ltd.), constitutes a manifest error apparent on the face of the record. The authority, in contravention of settled principles of evidence under Section 35 of the Indian Evidence Act, 1872, disregarded the sanctity of the registered lease deed, which explicitly identifies the petitioners' predecessors as lessors and unequivocally negates the lessee's claim of ownership.

Such reliance on extraneous and unsubstantiated communications, devoid of documentary corroboration, renders the impugned order legally unsustainable.

10. Conversely, Mr. Deshpande, learned counsel for Respondent No.3, sought to uphold the impugned order, contending that the authority's findings are predicated on a holistic appreciation of the material on record, including the subsequent mutation entries and the State's allotment of surplus lands to Maharashtra State Farming Corporation Ltd. in 1970. He argued that the petitioners' claim, being inconsistent with the revenue records post-1953, fails to meet the threshold of Section 28-1AA of the Act, 1961.

11. The rival contentions necessitate a meticulous examination of the statutory framework, evidentiary matrix, and the authority's adherence to jurisdictional parameters under the Act, 1961.

12. Upon a conjoint reading of the registered lease deed dated 3 January 1940, the mutation entries post-1953, and the statutory regime under the Maharashtra Pargana Kulkarni Watans (Abolition) Act, 1950, it is irrefutable that the petitioners' predecessors-in-title retained ownership despite the lease arrangement. The authority's conclusion that Walchandnagar Industries Ltd. acquired ownership through the lease deed is a patent misinterpretation of the law, as a leasehold interest, by definition under Section 105 of the Transfer of Property Act, 1882, does not extinguish the lessor's title. This error is compounded by the authority's failure to reconcile its findings with the 1953 mutation restoration under the Watans Abolition Act, which unequivocally reaffirmed the petitioners' ownership. The finding of lower authority overlooks the jurisprudential imperative under **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana (2012) 1 SCC 656**, wherein the Supreme Court underscored that registered documents hold presumptive validity and must form the bedrock of title determination unless conclusively invalidated. Consequently, the matter warrants remittance to the authority for fresh consideration, strictly in accordance with the statutory provisions extant at the time of the petitioners' application and the evidentiary primacy of the registered lease deed.

13. The authority's ancillary rationale—that the petitioners, not being "lessees" (खंडकरी), are ineligible for restoration—betrays a fundamental misconstruction of Section 28-1AA(3) of the Act, 1961. For clarity, the provision is extracted hereinbelow:

> "The State Government may, subject to the provisions of sub-section (4), after ascertaining the views of the persons interested in the land referred to in sub-section (1), also grant such land to a person who had previously leased his land to the undertaking, who (not being a public trust), requires that land for his personal cultivation, to the extent of the ceiling area as stipulated in the Act, or the actual area of the land leased by such person to the undertaking, whichever is less, subject to such other terms and conditions as may be specified in this behalf."

> "...a person who had not applied for grant of such land within the period of 90 days from the date of

commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2001, or who has applied for grant of such land after the said period, shall be eligible for grant of such land if he applies... within 90 days from the commencement of the 2011 Amendment Act."

14. A plain reading of sub-section (3) reveals that the beneficiary is the lessor (i.e., the person who "previously leased his land"), not the lessee (खंडकरी). The authority's conflation of "lessor" and "lessee" subverts the legislative intent, which explicitly prioritizes restoration to original landowners who leased their holdings to undertakings. This interpretation aligns with the doctrine of ut res magis valeat quam pereat (it is better for a thing to have effect than to be destroyed), mandating that statutory provisions be construed to advance their remedial purpose. The petitioners, being lessors, squarely fall within the ambit of Section 28-1AA(3), and the authority's contrary finding is devoid of legal foundation.

15. In light of the foregoing, the impugned order dated 17 March 2023 is quashed and set aside. The authority is directed to re-adjudicate the petitioners' application within three months, strictly in accordance with the mandate of Section 28-1AA(3), the evidentiary sanctity of the registered lease deed, and the petitioners' status as lessors. The authority shall eschew reliance on the erroneous grounds of ownership or the misconceived "lessee" criterion.

16. The writ petition is disposed of in the above terms. No order as to costs.

17. It is unequivocally clarified that the petitioners' application shall not be rejected on the specious grounds of ownership or alleged status as lessees (खंडकरी), as such grounds stand vitiated by the findings herein. The authority shall pass a reasoned order, ensuring compliance with the principles of natural justice and the statutory timeline.

(AMIT BORKAR, J.)