

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11205 OF 2024

Ashok Anna Gat and Ors.

...*Petitioners*

V/s.

The State of Maharashtra and Ors.

...*Respondents*

Mr. M.L. Patil *for the Petitioners.*

Mr. Nitin Gaware Patil *with Mr. Jay Salunke for Respondent No.6.*

Ms. Snehal Jadhav, AGP *for Respondent Nos.1 to 5.*

CORAM: SANDEEP V. MARNE, J.

Dated: 2 April 2025.

P.C.:

1) Petition challenges order dated 7 December 2023 passed by the Additional Collector, Kolhapur, rejecting the application seeking restoration of the appeal, which was dismissed vide order dated 14 June 2023 for non-prosecution. The said RTS Appeal No.414 of 2022 was filed by the Petitioners challenging orders passed by the Sub Divisional Officer, Ichalkaranji Sub Division, Ichalkaranji (**SDO**) on 7 September 2022, by which the names of the Petitioners are directed to be deleted from 'other rights' column and the land was directed to be taken out from possession of the Petitioners, for being given in possession in favour of Respondent No.6-Trust.

2) It appears that the Petitioners have filed appeal before the Additional Divisional Commissioner (Appeal No.16 of 2024) challenging decision of Additional Collector refusing to restore the appeal. During pendency of the appeal before the Additional Divisional Commissioner, the Petitioners were required to rush before this Court on account of steps taken by Respondent No.6 and the Revenue Authorities to implement the order passed by the SDO by taking away possession of the land from Petitioners on 12 June 2024. Therefore during pendency of their appeal before the Additional Divisional Commissioner, Petitioners have filed the present Petition directly challenging the order passed by the Additional Collector refusing to restore the appeal as well as order passed by the SDO on 7 September 2022.

3) This Court entertained the present Petition despite noticing pendency of appeal before the Additional Divisional Commissioner and passed following order on 13 August 2024:

Heard.

2. The learned counsel for the Petitioner submits that the Petitioners are tenant in respect of the land bearing Gut No.978 admeasuring 2H 59R. It is his submission that the name of the original tenant as well as the present Petitioner being legal heirs of the tenants are already recorded in the revenue record indicating them to be tenants of the said land. It is submitted that, the Respondent-Trust came into existence in the year 1960. It is his further contention that, in any case on the tenants being the petitioners have become deemed purchasers of the land. According to him on the basis of the circular issued by the Government of Maharashtra, order came to be passed by the Sub- Divisional Officer, and a direction is given for handing over the suit land to the Trust. This order is challenged in the Appeal before the Collector, which came to be dismissed in default. However, an Application is filed for restoration thereof which is also dismissed. Against this order, revision is filed before the Divisional Commissioner which is pending decision.

3. It is his further submission that in spite of this fact, panchnamma was drawn on 12 th June 2024, indicating that the possession of the land in question was handed over to the Trust, he contends that possession thereof is with Petitioners. He drew attention of the Court to the statement made by the Petitioners on oath in paragraph No.22 of the Petition that the Petitioners are in actual possession and cultivation of the said land and have grown sugarcane in the said land and the said sugarcane crops is standing therein. This statement being on oath is accepted.
3. Having regard to the aforesaid facts, arguable case has been made out by Petitioner. It would be in the interest of justice the Respondents concerned are restrained from interfering into the possession of the Petitioners over Gut No.978 admeasuring 2H 59R situated at Village-Hupari, Taluka-Hatkanangale, District-Kolhapur, till next date of the hearing.
4. Issue notice to the Respondents, returnable on 10 th September 2024.
5. Ms.Snehal Jadhav, learned AGP, waives service for Respondent Nos.1 to 5.

4) Mr. Gaware-Patil, the learned counsel appearing for Respondent No.6 would question the maintainability of the present Petition by contending that Petitioners' appeal challenging the order passed by the Additional Collector is pending before the Additional Divisional Commissioner and that therefore Petitioners cannot file the present petition.

5) In ordinary course what Mr. Gaware contends would have been correct as this Court would be loath in entertaining the Petition challenging the order against which a substantive appeal is already pending before the higher revenue authority. The case however presents a unique conundrum, which is noted below.

6) Petitioners claim that they have been cultivating the land in question as tenants prior to the year 1950 and became deemed purchaser of the land under Section 32 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**the Act**). It is the contention of the Petitioners that the exemption certificate issued under Section 88B of the Act on account of owner being a Trust, would not affect deeming fiction of purchase of the land by them on 1 April 1957. Respondent No.6-Trust, who is armed with exemption certificate under the provisions of Section 88B of the Act, apparently did not take any step for deletion of names of Petitioners from 'other rights' column as tenant or for seeking possession of the land. At the same time, Petitioners also did not file any proceedings for fixation of purchase price of the land under Section 32G of the Act. It appears that Government Resolution dated 30 July 2010 was issued giving various instructions for return of land to the Trust, which were found to have been illegally transferred. Initially, in the GR dated 30 July 2010 it was directed that "देवस्थान इनाम जमिनीला कूळकायदा लागू नसल्याने त्यास कूळ लावून जमीन कूळाला देता येत नाही". However, by Corrigendum dated 29 June 2011 the said direction has been deleted from GR dated 30 July 2010.

7) After issuance of GR dated 30 July 2010, Respondent No.6 moved proceedings for deletion of names of Petitioners as tenants and for seeking possession of the land. The SDO allowed the application filed by Respondent No.6 directing deletion of names of Petitioners by order dated 14 March 2013. The appeal

and review filed by the Petitioners were rejected by the Additional Collector by orders dated 28 May 2014 and 5 December 2015 respectively. The Additional Collector however, allowed the revision application filed by the Petitioners by order dated 28 December 2017 and remanded the proceedings for fresh decision by the SDO.

8) In the remanded proceedings, SDO passed order dated 7 September 2022 directing deletion of names of Petitioners from 'other rights' column and directing handing over possession of the land to Respondent No.6. Petitioners preferred RTS Appeal No.414 of 2022 before the Additional Collector, but did not diligently prosecute the proceedings, hence the appeal came to be dismissed by order dated 14 June 2023. Petitioners filed application for restoration of the said Appeal, which was rejected by order dated 7 December 2023 on the ground of delay of five months. This is how Petitioners' appeal against the order passed by the SDO has not been decided on merits. As observed above, Petitioners have filed further appeal before the Additional Divisional Commissioner challenging the decision of the Additional Collector refusing to restore the appeal. However, during pendency of the said appeal, Petitioners' possession was sought to be disturbed on 12 June 2024 towards implementation of the SDO's order dated 7 September 2022, on account of which present Petition has been filed and entertained.

9) Several arguable issues arose for consideration in the present proceedings. One of the issues is whether deeming fiction

of purchase of tenanted land would occur in the present case under Section 32G of the Act on account of issuance of exemption certificate under Section 88B of the Act on 29 March 1959. Other issue for consideration would be whether the Trust was already formed and whether the land was property of the trust on the Tiller's Day. If the Trust was already formed and the land was trust property, provisions of Section 88-B would necessarily prevent operation of deeming fiction of purchase under Section 32-G. All these issues will have to be considered and decided by the Appellate Authority. In my view therefore, it would be appropriate that the appeal preferred by the Petitioners before the Additional Collector is decided on merits, so that correctness of findings recorded by SDO on 7 September 2022 can be considered by the higher appellate authority. As of now, SDO's order dated 7 September 2022 has gone unchallenged on account of dismissal of Petitioners' appeal for non-prosecution.

10) In the light of these unique facts and circumstances of the present case, I am of the view that instead of directing decision on pending appeal by the Additional Divisional Commissioner, it would be appropriate that Petitioners' appeal before the Additional Collector is decided on merits. This more so because the remit of enquiry before the Additional Divisional Commissioner is only with regard to correctness of order passed by the Additional Collector in refusing to restore the appeal. Instead of spending further time in deciding the issue as to whether Petitioners' negligent conduct in not diligently prosecuting the appeal can be condoned or not, it is appropriate

that appeal preferred by the Petitioners before the Additional Collector is restored by putting Petitioners to appropriate terms. Respondent No. 6 Trust can be adequately compensated by imposition of costs on Petitioners for their negligent conduct of not diligently prosecuting the appeal and in not applying for restoration within reasonable time.

11) The next issue for consideration is about the arrangement to be made in the interregnum. Both the parties claim possession of the land. It appears that towards implementation of SDO's order dated 7 September 2022, a panchanama was drawn on 12 June 2024 taking back possession of the land from Petitioners and handing it over to Respondent No.6. However, by virtue of ad-interim order passed by this Court on 13 August 2024, Respondent No. 6 has been restrained from disturbing Petitioners' possession and as of today, Petitioners are cultivating the land in question. They are doing so for the last several decades. The very fact that the SDO directed removal of possession of the land from the Petitioners and handing it over to Respondent No.6 itself shows that land was always in possession of the Petitioners. It would therefore be appropriate that their possession is continued during pendency of the appeal before the Additional Collector. This is however subject to condition that Petitioners shall not create third party rights /encumbrances or part with possession of the land during pendency of its appeal.

12) I accordingly proceed to pass the following order:

- (i) Orders dated 14 June 2023 and 7 December 2023 passed by the Additional Collector, Kolhapur are set aside.
- (ii) RTS Appeal No.414 of 2022 is restored on the file of Additional Collector, Kolhapur, who shall proceed to decide the same without being influenced by observations made by this Court in the present order.
- (iii) Petitioners shall pay to Respondent No.6 costs of Rs. 50,000/- within a period of four weeks.
- (iv) Additional Collector, Kolhapur, shall proceed to decide RTS Appeal No.414 of 2022 in an expeditious manner.
- (v) During pendency of RTS Appeal No. 414 of 2022, Petitioners shall be entitled to retain the possession of the land in question subject to the condition of non-creation of any third-party rights /encumbrances as well as non-parting of possession thereof.
- (vi) Additional Divisional Commissioner shall pass a formal order of closure of Appeal No.16 of 2024.

13) With the above directions, Writ Petition is partly allowed and disposed of.

[SANDEEP V. MARNE, J.]