Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4909 OF 2025

Usha Manohar Shah … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

Ms. Preeti Walimbe a/w Vaishnavi Nagargoje for petitioner.

Mr. Sanjay Patil for respondent Nos.2 to 6.

Mr. Hamid D. Mulla, AGP for State – respondent Nos.1 and 7 to 11.

CORAM : AMIT BORKAR, J.

DATED : APRIL 29, 2025

P.C.:

1. **Rule.** Rule is made returnable forthwith.

2. Challenge in this petition, filed under Articles 226 and 227 of the Constitution of India, is directed against the order dated 8th January 2025 passed by the Additional Collector. By the said order, the Additional Collector has set aside the judgment and order dated 16th July 2024 passed by the Sub-Divisional Officer, Ulhasnagar, in proceeding No.23 of 2022. The proceedings were purportedly initiated under Section 5(2) of the Maharashtra Personal Inams Abolition Act, 1952 (hereinafter referred to as "the said Act").

3. The brief facts and circumstances leading to the filing of the present petition are as follows:

4. The dispute revolves around a property bearing Survey No.50, Hissa No.1, admeasuring 3.30 hectares, situated at Mauje Rahatoli, Taluka Ambernath, District Thane. The petitioner claims to be the legal heir of the person who was holding the said property on the date when the Maharashtra Personal Inams Abolition Act, 1952 came into force in the year 1955. Based on this claim, the petitioner filed an application before the State Government invoking powers under the Explanation to Section 2(e) of the said Act. Under this provision, the State Government is empowered to decide the question whether a particular grant is a personal inam, and such a decision is conferred finality under the Act. It appears from the record that the application filed by the petitioner was decided by the State Government by an order dated 23rd June 2022, whereby the State Government directed the Sub-Divisional Officer to hold an inquiry to determine whether the predecessors of the petitioner were the holders of the said land on the date of the coming into force of the said Act.

5. **5.** In compliance with the order dated 23rd June 2022, the Sub-Divisional Officer conducted an inquiry and, by the order dated 16th July 2024, held that the petitioner's predecessors were indeed the holders of the land on the relevant date, i.e., the date of coming into force of the said Act. Consequently, the Sub-Divisional Officer declared that the petitioner was entitled to be recognized as the holder of the said land, exercising the powers purportedly under Section 5 of the said Act.

6. Being aggrieved by the said decision of the Sub-Divisional Officer, the respondents preferred an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short, "the Code"). The Additional Collector, by the impugned order dated 8th January 2025, partly allowed the said appeal. By the said order, the Additional Collector set aside the order dated 16th July 2024 passed by the Sub-Divisional Officer and directed a fresh inquiry to be held into the matter, specifically to ascertain as to who was the holder of the land on the date of the coming into force of the said Act. It is this order dated 8th January 2025, passed by the Additional Collector, that is the subject matter of challenge in the present writ petition.

7. For properly deciding the remedy available to the respondents, it is necessary to first refer to the relevant provisions of the Maharashtra Personal Inams Abolition Act, 1952 , which are reproduced below:

> “(2)(e) “personal inam” means,—
>
> (i) a grant of a village, portion of a village, 6[land (including any share in the revenues of a village or any portion thereof or land) or] total or partial exemption from the payment of land revenue entered as personal inam in the alienation register kept under section 53 of the code ;
>
> (ii) a grant of money or land revenue including anything payable as a cash allowance on the part of the State Government in respect of any right, privilege, perquisite or office and entered as class I, II, III, IV or V in the records kept under the rules made under the Pensions Act, 1871 (XXIII of

1871).

Explanation.— If any question arises whether any grant is a personal inam, such question shall be referred to the State Government and the decision of the State Government shall be final [and the entry, if any, in respect of such grant in the alienation register kept under section 53 of the Code shall be deemed to have been amended accordingly] ;

(f) “prescribed” means prescribed by rules made under this Act ;

(g) “Schedule” means a Schedule appended to this Act.

5. Liability of inam village or inam land to payment of land revenue and Inamdar and permanent holder to be occupant. —

(2) (a) An inamdar in respect of the inam land in his actual possession or in possession of a person holding from him other than an inferior holder, referred to in clause (b) below, or

(b) an inferior holder holding inam land on payment of annual assessment only, shall primarily be liable to the State Government for the payment of land revenue due in respect of such land held by him and shall be entitled to all the rights and shall be liable to all obligations in respect of such land as an occupant under the Code or the rules made thereunder or any other law for the time being in force.”

8. A conjoint reading of Section 5 and the Explanation to Section 2(e) of the said Act clearly shows that once the inam lands vest in the State Government, they become subject to land revenue assessments as per the Maharashtra Land Revenue Code, 1966 ("the Code"). The legislative intention underlying Section 5 is to integrate these erstwhile inam lands into the general land management system of the State, subjecting them to the same provisions, rules, and obligations as applicable to unalienated lands under the Code. This statutory assimilation means that all incidents attached to "unalienated land"—such as assessment, management, appeal, and revision procedures under the Code—mutatis mutandis (with necessary changes) apply also to inam lands. Thus, the lands, which were earlier governed by special rules applicable to inam lands, are now fully governed by the general framework of the Maharashtra Land Revenue Code.

9. The principal question that arises for consideration in the present petition is whether the Sub-Divisional Officer could have exercised the power that is exclusively conferred on the State Government under the Explanation to Section 2(e) of the said Act. A plain reading of the Explanation shows that if any doubt arises whether a grant is a personal inam, the authority to decide that question is exclusively vested in the State Government. Moreover, the decision made by the State Government under this provision is final and binding.

10. It is a settled principle of law that quasi-judicial powers specifically vested in a particular authority cannot be delegated unless the statute explicitly permits such delegation. Since the said Act does not contain any provision empowering the State Government to delegate its quasi-judicial power to any subordinate officer like the Sub-Divisional Officer, such delegation would be impermissible in law.

11. On a perusal of the order dated 23rd June 2022 passed by the State Government, it is clear that the State Government, instead of itself deciding the issue, directed the Sub-Divisional Officer to conduct an inquiry regarding whether the petitioner's predecessors were holders of the land on the date of coming into force of the said Act. In effect, the State Government delegated its quasi-judicial function to the Sub-Divisional Officer, which is not permitted under the scheme of the Act.

12. Therefore, even though the Sub-Divisional Officer in his order dated 16th July 2024 referred to the exercise of power under Section 5 of the said Act, the real nature of the inquiry and adjudication undertaken was in relation to the determination of "holder" status under the Explanation to Section 2(e). Thus, the source of the Sub-Divisional Officer’s power in the present case is traceable only to Section 2(e) Explanation of the said Act and not to Section 5 directly.

13. Once the Sub-Divisional Officer exercised quasi-judicial power traceable under the said Act, and not under the Code, the remedy of appeal provided under Section 247 of the Maharashtra Land Revenue Code was not available to the respondents.

14. In this regard, useful reference may be made to the judgment of the Hon’ble Supreme Court in ***Fulchand Bhagwandas Gugale v. State of Maharashtra,*** **(2005) 1 SCC 193**, where it was held that when an officer, although designated under the Land Revenue Code, exercises powers under a different statute (in that case the Land Acquisition Act), the remedy provided under the Code would not be applicable.

15. Applying the same analogy to the facts of the present case, even though the Sub-Divisional Officer is a revenue authority under the Code, he was acting under the delegated power (illegally delegated) referable to Section 2(e) of the Maharashtra Personal Inams Abolition Act, 1952. Therefore, the Additional Collector had no jurisdiction to entertain an appeal under Section 247 of the Code against the order passed by the Sub-Divisional Officer in exercise of powers traceable to the said Act. However, it is clarified that the respondents would not be left without remedy. They would be at liberty to challenge the legality and correctness of the order passed by the Sub-Divisional Officer, either before a competent civil court or by taking such remedy as may be permissible in law.

16. For the reasons stated above, Rule is made absolute in terms of prayer clause (b).

17. The writ petition stands disposed of in above terms. There shall be no order as to costs.

18. Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)