IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4023 OF 1995

KISAN KONDIBA GHUNGARDE
VERSUS
PANDURANG DEOSTHAN CHAS AND OTHERS

***

Advocate for the Petitioner : Mr. Prashant R. Nangare
AGP for Respondents-State : Mr. V. M. Jaware
Advocate for Respondents No. 3 to 11 : Mr. S. D. Jaybhar h/f Mr. D. R. Jaybhar
Advocate for Respondents No. 12A to 12C : Mr. Deepak B. Rasve

***

WITH
CIVIL APPLICATION NO. 9426 OF 2025
IN WP/4023/1995

PANDURANG DEOSTHAN CHAS THROUGH ITS TRUSTEE
VERSUS
KISAN KONDIBA GHUNGARDE

***

Advocate for Applicant : Mr. S. D. Jaybhar h/f Mr. D. R. Jaybhar

***

CORAM : SACHIN S. DESHMUKH, J.

Date : 23rd October, 2026

JUDGMENT :-

1. The petitioner raises challenge to the order dated 19.06.1995 rendered by the Additional Chief Secretary and Officer on Special Duty (Appeals), Revenue and Forest Department,

Bombay, in Revision Application No. TNC-3390/1468/L9/CR-179/95-A & R, dismissing the petitioner's revision application and endorsing the Exemption Certificate granted to the respondent-Trust under Section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The petitioner’s father was an agriculturalist who was in possession and cultivation of the disputed agricultural land, bearing Survey No. 245 and later assigned Block No. 509 (Gat No. 509), admeasuring 11H-89A, situated at Village Chas, Taluka Nagar, District Ahmednagar. The petitioner's father claimed the status of protected tenant over the land since 1940. Following the demise of father, the petitioner succeeded to the tenancy rights, possession and has continued to cultivate the land.

3. The dispute arose following the registration of Respondent No. 1 Shri Pandurang Deosthan Trust, under the Bombay Public Trusts Act, 1950 on 21.01.1954. Relying on the registration, the Trustees of the respondent - Trust presented an application under Section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948, seeking an exemption certificate for the suit land. The application was registered as Tenancy Application

No. 03/1987 before the Sub-Divisional Officer, Nagar Division, Ahmednagar. The Sub-Divisional Officer allowed the application and granted the Section 88-B Exemption Certificate in favour of the respondent – Trust on 08.08.1989. On the strength of the exemption certificate, the respondent-Trust instituted a civil suit for possession, registered as Regular Civil Suit No. 780/1989, before the Civil Judge Senior Division, Ahmednagar.

4. Aggrieved by the grant of the exemption certificate, the petitioner preferred a revision application before the Officer on Special Duty and Secretary (Appeals and Revision), Revenue and Forest Department, State of Maharashtra. By an order dated 31.03.1992, the revisional authority allowed the petitioner's proceeding, set aside the Sub-Divisional Officer's order and cancelled the exemption certificate.

5. Raising an exception to the same, the respondent - Trust approached this Court by way of Writ Petition No. 512/1993. On 14.10.1994, this Court allowed the writ petition and set aside the cancellation order on the ground that the revisional authority had not extended a necessary and adequate opportunity of a hearing to the respondent – Trust and remanded the matter back

to the State Government for a fresh decision on merits within six months.

6. After remand, the Additional Chief Secretary and Officer on Special Duty (Appeals), Revenue and Forest Department, heard the parties and dismissed the revision application presented by the petitioner and restored the validity of the exemption certificate. Aggrieved by the same, the petitioner has approached this Court under Article 227 of the Constitution of India.

7. Mr. Nangare, the learned counsel for the petitioner submitted that the registration of the respondent - Trust on 21.01.1954 was a colourable exercise, effected with the solitary aim of defeating the lawful entitlement of the petitioner's father, who was in continuous possession and cultivation of the subject land on the relevant statutory date, being the "Tillers' Day" on 01.04.1957. As the petitioner's father was protected tenant since 1940, had already become the deemed purchaser of the land under Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948, before the Trust could assert any right to claim the benefit of an exemption, if any, available under the applicable provisions.

8. The learned counsel for petitioner further submitted that the authorities below lost sight of the mandatory scope of an enquiry under Section 88-B of the Act. Since a certificate under Section 88-B confers an exemption that effectively takes away a tenant of statutory rights, the statutory enquiry has to be complied with in its letter and spirit. Any departure from this mandatory process invalidates the enquiry and vitiates the consequential grant of the exemption certificate.

9. The learned counsel highlighted that the respondent trust failed to satisfy the essential prerequisite of Section 88-B, which mandates proof that the entire income derived from such land is appropriated for the purposes of the trust. Although the respondents while initiating proceeding before competent authority has admitted income from trust however, perusal of the application presented by the respondents reveals a absence of specific pleadings or details. The Counsel pointed out that Rule 52 of the Bombay Tenancy and Agricultural Lands Rules, 1956, prescribes a rigorous procedure ensuring full, transparent disclosure by the applicant regarding the utilization of the agricultural income. While ignoring same, the Sub-Divisional Officer and the Revisional Authority committed a error of law and jurisdiction. As such, prayed that the writ petition be allowed.

10. Per contra, Mr. Jaybhar, the learned counsel on behalf of Respondents No. 3 to 11 and Mr. Rasve, the learned counsel for respondents No. 12A to 12C along with Mr. Jaware, the AGP supported the orders under challenge submitting that following the order of remand rendered by this Court in Writ Petition No. 512/1993 on 14.10.1994, the Revisional Authority extended opportunity of hearing to both parties. The competent authority rightly rendered a concurrent finding of fact validating the exemption. The public trust was registered as early as 21.01.1954, prior to the "Tillers' Day" of 01.04.1957.

11. The learned counsel further submitted that by operation of law under Section 88-B of the Act, the provisions governing the deemed purchase of land by tenants do not apply to the suit property. As such, submitted that the petitioner cannot question the status of the trust after such an inordinate delay. Hence, prayed for the dismissal of the writ petition.

12. In support of his contentions, Mr. Jaybhar, the learned counsel for Respondent placed reliance upon the judgment of Co-ordinate Bench of this Court in the case of **Dattatraya Sakharam**

Yeole Vs. Hafeez Munoroddin Haji and Ors. [2005(2) Mh.L.J. 813].

13. Having heard the learned counsel for the respective sides and perused the material on record, at the outset, there is no dispute that the petitioner succeeded late father, who was in actual physical possession and continuous cultivation of the subject land on the relevant statutory date, i.e., the "Tillers' Day" on 01.04.1957. It is also undisputed that the respondent Trust was registered under the Public Trusts Act on 21.01.1954, whereas the application seeking an exemption certificate under Section 88-B of the Act was presented by the trustees much later, in the year 1987.

14. Perusal of the application and the orders under challenge reveals a jurisdictional defect. The statutory scheme of Section 88-B(1)(b) of the Act contains a strict mandate. Under the proviso to Section 88-B(1)(b)(ii), it is unequivocally required that the entire income derived from such land must be applied / appropriated and utilized solely for the purposes of the trust property. The statute provides a detailed manner of enquiry since an exemption under this section has the effect of overriding and

extinguishing the valuable statutory rights of cultivating tenants. Therefore, it is a prerequisite for the applicant - Trust to plead and substantiate these essential details with precision.

15. In the present case, there is a absence of pleading in the entire application regarding the specific income derived from the subject land and its manner appropriated for the purposes of the trust. While the petitioner has placed material indicating the income received by the trust, failed to provide the specific details mandated by the proviso to Section 88-B(1)(b)(ii).

16. Apart from the mandate of the statute, Rule 52 of the Bombay Tenancy and Agricultural Lands Rules, 1956, read in coherence with Section 88-B, makes the procedure further mandatory. Rule 52 demands that the trustees must state in their application the manner in which the income from the specific land belonging to the trust is generated and applied. This must be coupled with the necessary annexures, including verified accounts or a balance sheet certified by a registered auditor.

17. Only upon satisfying these disclosure requirements a valid statutory enquiry can be conducted. Regrettably, both the

authorities below ignored this vital non-compliance on the part of the respondent Trust.

18. In the case of **Ramchandra Keshav Adke (Dead) by Lrs. v. Govind Joti Chavare and Others [(1975) 1 SCC 559]**, wherein the Hon'ble Apex Court held that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden

19. The statutory provisions of the Act are express, mandatory and unambiguous. It is a well-settled principle of law that if a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Municipal Corporation of Greater Mumbai Vs. Abhilash Lal and Others (Civil Appeal No. 6350 of 2019, decided on 15.11.2019)**.

20. A perusal of the proceedings initiated before the Authority reveals that while income from the trust property was indicated, the specific details mandated under Rule 52 of the Rules

were omitted. The Authority failed to address this non-compliance and abdicated the duty to conduct a proper inquiry in this regard, which is a strict statutory requirement under Section 88(4) of the Act. Consequently, the reliance placed by the respondent on the verdict of **Dattatraya Sakharam Yeole Vs. Hafeez Munoroddin Haji and Ors (supra)** does not lend any support.

21. In view of the above, since both the Authorities below acted without addressing the mandatory legal and factual prerequisites, the findings are vitiated by an error of law apparent on the face of the record. However, since this turns on an omission of proper statutory enquiry and an absence of adequate details, it is appropriate to quash the impugned orders and relegate the parties back to the competent authority to undertake the exercise afresh in accordance with the law.

22. In view of the aforesaid findings, the Writ Petition is **partly allowed**.

23. The impugned judgment and order dated 19.06.1995 rendered by the Additional Chief Secretary and Officer on Special Duty (Appeals), Revenue and Forest Department, Bombay, as well

as the order dated 08.08.1989 rendered by the Sub-Divisional Officer, Nagar Division, Ahmednagar, are quashed and set aside.

24. The matter is remanded back to the concerned Sub-Divisional Officer, Ahmednagar, for a fresh decision on merits.

25. The concerned authority shall decide the proceedings strictly in accordance with the mandate of Section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948, and the procedural requirements of Rule 52 of the Rules, 1956, after giving opportunity to respective parties.

26. Since these proceedings have been pending for a long period, the concerned authority is requested to make endeavor to decide the proceedings as expeditiously as possible.

27. Rule is made **absolute** in the aforesaid terms.

27. Pending Civil Applications, if any, shall stand disposed of accordingly. No order as to costs.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi