IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1188 OF 2016

Pramod Chandrakant Shedge
Age about 37 years, Occ: Agriculture,
Residing at Nivaje, Taluka Kudal,
District Sindhudurg ...Petitioner

Versus

1. The State of Maharashtra
(Notice to be served on the Secretary,
Department of Revenue and Forest)

2. The Collector Sindhudurg,
District - Sindhudurg. ...Respondents

Mr. S. G. Deshmukh a/w Mr. Nikhil Dharmadhikari i/by Mr. Rakesh Sharad Patil, for the Petitioner.

Mr. Priybhushan P. Kakade, Addl. G.P. a/w Mr. R.P. Kadam, 'B' Panel Counsel for the Respondent Nos.1 and 2 -State.

Mr. Sachin A. Patil, Tahsildar, Kudal, present in Court.

CORAM : SHARMILA U. DESHMUKH &
ABHAY J. MANTRI, JJ.

RESERVED ON : OCTOBER 26, 2026
PRONOUNCED ON : OCTOBER 28, 2026

JUDGMENT : [*PER : SHARMILA U. DESHMUKH, J.*]

1. **Rule.** Rule made returnable forthwith and with consent taken up for final disposal.

2. By this Petition, the Petitioner seeks implementation of the order dated 25th July 2014 passed by this Court in Writ Petition No. 6419 of

2011 and order dated 6th April 2015 passed in Writ Petition No.95 of 2015 in respect of Akarpad lands from Mangaon Khore of the erstwhile State of Sawantwadi, now from the Sindhudurg District, and the implementation of the Government Resolution ["**GR**"] dated 29th September 1987.

3. The Petition pleads that in 1918, due to an epidemic, the villagers who were residing in various villages from the area known as Mangaon Khore, Taluka Kudal, District Sindhudurg, relocated to other areas. As a consequence, no land revenue was paid in respect of their lands, which were then shown as Akarpad. During the period 1930 to 1940, the villagers were encouraged by the State of Sawantwadi to come back and cultivate their lands with an incentive that they would not be required to pay any taxes or cess for the first five years. The villagers started cultivating the lands which were known as Akarpad. During the period 1957 to 1958, all the lands were again surveyed on the basis of evidence of actual occupation and the names of the actual occupants were recorded as owners in the 7/12 extract, whereas in respect of the remaining lands, they continued to be shown as Akarpad lands. However, the occupation and cultivation by the persons concerned continued.

4. The State Government appointed Special Project Officer for distribution of Government land and for the said purpose conducted an

inquiry. In 15 villages from Mangaon Khore, actual possession and cultivation of 1144 occupants were found. The occupation of 349 occupants was regularized and the remaining 795 applications remained undecided. In the year 1980, the record of rights were again examined and there was confusion about distribution of land. It was revealed that in 27 villages, several hectares of land were Government Akarpad. However, as the distribution was not done according to the claims by the occupants on the basis of their actual possession, the claims remained pending. In the year 1987, the factual position was considered at the Government level and Resolution dated 29th September 1987 was issued by the Government by which Respondent No.1 took a decision to allot the lands to the actual occupants from Sawantwadi, Kudal and Kankawli Taluka of Sindhudurg District on the ground that they had perfected their title by adverse possession. In June, 1983 sample survey showed encroachments on Akarpad lands.

5. As there was non-implementation of the Government Resolution of 1987, Writ Petition No.6419 of 2011 was filed in this Court and by Judgment dated 25th July 2014, the Petition came to be allowed. Despite the order of this Court, the Respondents completed the work of allotment of land according to their own whims and fancies in violation of the Government Resolution of 29th September 1987 and the Judgment and order dated 25th July 2014. Hence, the present Petition

came to be filed.

6. The Respondents have filed various affidavits. In the reply affidavits dated 21st March, 2018 and 11th October, 2018, the statistics of the claims adjudicated are set out and in the additional affidavit dated 4th November, 2019, it is stated that 41 claims were taken up for review to correct the errors and claims have been rejected. It is stated that SDO have completed the work of passing order in 974 cases and all claims have been rejected. In the affidavit dated 1st April, 2021, it is stated that Divisional Commissioner has forwarded fresh proposal to State Government on 10th March, 2021 to consder allotment pursuant to GR dated 29th September, 1987 and to consider the deemed date of 29th September, 1987.

7. The additional affidavit of Respondent No.2, Sub-Divisional Officer, dated 21st September 2021 states that on 28th June, 2021, the State Government has decided the cut off date of regularising possession for implementation of GR dated 29th September, 1987. It is stated that the the claims of Petitioner and other applicants already decided previously by the SDO have to be reopened for review under Section 258 of the Maharashtra Land Revenue Code, 1966, ["**MLRC**"] and the District Collector, Sindhudurg has made an application before the Divisional Commissioner, Konkan Division for permission to decide the claims afresh by considering the cut-off date of

possession/occupation as per the policy of the Government envisaged under Government Resolution dated 28th June 2021.

8. Mr. Deshmukh, learned counsel appearing for the Petitioner, would point out the GR of 29th September 1987 and would contend that the GR specifically provides that the present land holders of the Akarpad land would be considered as persons in possession and necessary entries would be made in the revenue records. He submits that as per the GR, the relevant date would be the date of the Resolution, i.e. 29th September 1987, and the occupants of the concerned land as on 29th September 1987 would have to be determined and their names mutated in the revenue records. He would further submit that though the affidavit-in-reply of 21st September 2021 shows willingness to consider the claims afresh, the affidavit makes a reference to the Government Resolution/communication of 28th June 2021. Pointing out to the communication of 28th June 2021, which is annexed at page 199 of the Petition, he submits that the direction given to the Divisional Commissioner is to decide the occupation on the deemed date of 29th September 1957 by taking into consideration Section 25 and Article 112 of the Limitation Act, 1963. He submits that the Respondents have proceeded on an erroneous basis that the provisions pertaining to adverse possession are required to be applied, whereas the GR is clear and specific and the occupation as on the date

of the Government Resolution is required to be considered.

9. *Per contra,* the learned AGP would submit that the Respondent Government has shown willingness to review the orders passed by the earlier SDO under Section 258 of the MLRC. He submits that the total number of previously decided claims are 1015 in number and certain time will be required to decide the claims. He submits that the communication/order dated 28th June 2021 of the State Government directs the Divisional Commissioner to consider the deemed date of 29th September 1957, which is binding on the Divisional Commissioner, and accordingly the claims will be decided.

10. We have considered the submissions and perused the record.

11. This is the second round of litigation seeking implementation of GR dated 29th September, 1987 and the Petitioner and other cultivators of Akarpad lands are still awaiting allotment of land in their favour even after lapse of about 39 years.

12. In the earlier round of litigation, this Court considered the issue of allotment of lands in implementation of the GR dated 29th September, 1987. Before the Court, reliance was placed on GR dated 19th January, 2009 and this Court vide Judgment dated 25th July 2014 passed in Writ Petition No. 6419 of 2011, held that the second GR of 2009 is not applicable to the occupants of the Akarpad lands covered by the first GR and that the occupants of Akarpad land in the villages in

three talukas will be governed by the first GR of 29th September 1987. This Court directed the Petitioners or their representatives to appear before the District Collector, who shall then ascertain the eligibility as per the conditions laid down in the first GR and to complete the exercise before the end of February 2015.

13. The reply affidavit dated 21st September, 2021 demonstrates willingness to review the orders passed as regards allotment of lands in implementation of GR dated 29th September, 1987. The difficulty is that review is sought to be undertaken based on the directions contained in the communication/order dated 28th June, 2021, which prescribes cut off date of 29th September, 1957 as the date on which possession is to be established i.e. 30 years prior to the GR dated 29th September, 1987. The Sub-Divisional Officer, being bound by the directions issued by the State Government dated 28th June 2021, has averred that the claims will be decided on production of evidence of date of possession on or before the cut-off date, i.e. 29th September 1957.

14. We have minutely perused the GR dated 29th September, 1987. The GR traces the history of Akarpad land and sets out that the local inquiry revealed that the Akarpad lands were initially recorded as Government land and upon re-survey it was found that revenue entires were made in favour of certain persons on the ground of possession. There was no inquiry as to whether such lands were Government lands

and no inquiry was conducted while mutating the names. The decision taken by the said GR as evident from Clause 5 is that the persons presently found in possession of Akarpad lands shall be declared as holders of the respective lands and necessary entries will be made in revenue records.

15. The GR of 29th September 1987 does not prescribe any cut-off date, which is now sought to be prescribed by the communication dated 28th June, 2021. Clause 2 of the Government Resolution of 1987 states that in respect of 15 villages in Mangaon area, there are 1144 encroachments out of which 349 encroachments have been regularized. However, the survey work could not be completed, and out of 48 villages, survey of 33 villages could not be completed in which there may be more than 2,000 encroachments. It further states that in June 1983, sample survey was conducted in which it was revealed that out of the encroachments, 40% of the encroachers do not have alternate ownership land, 25% of encroachers have ownership land of 2 hectares, 20% of encroachers have ownership land of 2 to 6 hectares, and 5% of encroachers have land in excess of 6 hectares. Clause 3 of the Government Resolution sets out that the encroachments are from the year 1940 and the Government has considered whether these encroachers can be granted ownership rights on the basis of adverse possession. It further sets out the ingredients necessary for establishing

the aspect of adverse possession. Clause 3 of the GR makes it evident that the Government based its decision to allot the lands on the doctrine of ownership by adverse possession.

16. Clause 4 states that the inquiry conducted accordingly, revealed that from 1940, the lands are in continuous possession of the encroachers and the encroachers have asserted a title hostile to the owner of the land. Clause 5 states that the conclusion is that the ingredients of conferring ownership by adverse possession stand satisfied, and sub-clause (1) of Clause 5 directs that the present land holders' names be mutated in the revenue records, being the persons in possession.

17. The communication dated 28th June 2021 attempts to answer the aspect of adverse possession as set out in Clause 3 of the said GR without noticing the recording of satisfaction of the ingredients of establishing title by adverse possession in Clause 4 and Clause 5 of the Government Resolution and the specific direction to declare the present holders of the land who are in possession as the owners and to mutate their names in the revenue records. In view of the Government Resolution of 1987, there was nothing further to be done except ascertaining the possession of the land holders on the date of issuance of the GR dated 29th September 1987. The GR of 1987 does not declare any cut-off date and specifically directs the present land holders' names

to be mutated in the revenue records. It was therefore not open for State Government by way of communication dated 28th June, 2021 to prescribe the cut off date of 29th September, 1957 by applying the provisions of Section 25 and Article 112 of the Limitation Act, 1963 as the date on which the possession is required to be demonstrated. The provisions of Section 25 of the Limitation Act deals with the acquisition of easements by prescription, and Article 112 provides for the period of limitation of 30 years for filing of a suit by or on behalf of the Central Government or State Government. The said provisions are clearly inapplicable, and there is no basis for fixing the cut off date as 29th September, 1957 i.e. 30 years prior to issuance of GR dated 29th September, 1987 for implementation of the said GR.

18. The cut-off date, even otherwise has been decided erroneously, as neither the provisions of Section 25 nor Article 112 of the Limitation Act have any application to the facts of the present case. All that is required to be done is the implementation of the GR of 29th September 1987 by recording the names of the present land holders in the revenue records, and the documentary evidence which is required to be produced is as regards the possession of the concerned land on the date of issuance of the GR, i.e. 29th September 1987.

19. The Respondent's affidavit dated 21st September, 2021 shows willingness to review the claims of the persons who are entitled under

the Government Resolution of 29th September 1987. Though the present Petition has been filed by one Petitioner, it is pleaded that the Petition has been filed in representative capacity. In any event, the State Government has shown willingess to review all earlier claims and therefore this Court is inclined to extend the benefit of present order to all land holders of Akarpad lands of Taluka Sawantwadi, Kudal and Kankavali of District Sindudurg. Accepting the said statement made in the reply Affidavit, the Petition is allowed by directing that the power of review under Section 258 of the MLRC to be exercised for reviewing the claims of the land holders of Akarpad land of Taluka Sawantwadi, Kudal and Kankavli of District Sindhudurg. In the light of the above discussion, the following order is passed:

ORDER

(a) The Petition is allowed.

(b) The State Government to exercise the power of review under Section 258 of MLRC and review all claims previously decided in light of observations made in present order.

(c) The land holders in possession of Akarpad lands on the date of issuance of GR dated 29th September, 1987 be declared as holders of the respective lands and their names be mutated accordingly in the revenue records.

(d) The communication dated 28th June, 2021 prescribing cut off date of 29th September, 1957 is unsustainable.

(e) It is open for the concerned officer to seek production of necessary documents from the land holders of Akarpad lands showing possession as on date of issuance of GR i.e 29th September, 1987.

(f) The entire exercise to be carried out within a period of eight months from today.

20. Rule is made absolute in above terms.

[ABHAY J. MANTRI, J.] **[SHARMILA U. DESHMUKH, J.]**