
(2023) 03 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 5710, 6270, 6279 Of 2014, 2312 Of 2015, Civil
Application No. 982 Of 2016 In Writ Petition No. 6279 Of 2014

Bhausahab And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 16-03-2023

Acts Referred:

Maharashtra Agricultural Lands (Ceilings On Holdings) Act, 1961 — Section 28,
28(1)AA, 28(1)AA(3), 28(1)AA(3A)(3), 28(1)(4)
Maharashtra Regional And Town Planning Act, 1966 — Section 22
Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965
— Section 2(24)
Bombay Provincial Municipal Corporations Act, 1949 — Section 3(2)
City Nagpur Corporation Act, 1949 — Section 2(10)

Citation : (2023) 03 BOM CK 0039

Hon'ble Judges : Mangesh S. Patil, J;S.G. Chapalgaonkar, J

Bench : Division Bench

Advocate : A.B. Kale, B.K. Pawar, P.S. Dighe, V.R. Dhorde, S.B. Yawalka, Sanket
S. Kulkarni

Final Decision : Dismissed/Disposed Of

Judgement

Mangesh S. Patil, J

1. Though these are different petitions since all these petitions raise common questions those have been heard together and are being disposed of by this common judgment.

2. Rule in all the petitions. Made returnable forthwith. Learned AGP and the learned advocates for the respective respondents waive service. At the joint request of the parties, the matters are heard and are being disposed of finally at the stage of admission.

3. The questions that arise for determination are as to whether the original agriculturists whose lands vested in the State government under the provisions

of section 28 of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961 (hereinafter referred to as the Ceiling Act) are entitled under section 28-1 AA(3) to claim grant of any specific land or their land/s.

4. Learned advocate Mr. Kale h/f. Mr. Pawar for the petitioners in all these petitions would submit that the petitioners being the persons who had previously leased their lands to an undertaking and which were subsequently vested in the State by virtue of the provisions of the Ceiling Act, are entitled to grant of such lands for personal cultivation to the extent of the ceiling area or the actual area of the land leased by such person to the undertaking which have been their lands. In view of such specific and clear wordings of sub-section (3) of section 28-1 AA, the petitioners were insisting the respondent - Collector for grant of their specific lands which they had leased out to an undertaking but subsequently vested with the State government and later on granted in favour of the Maharashtra State Farming Corporation Ltd. (hereinafter referred to as the MSFC) by virtue of an order passed under section 28-1 AA, namely, the Maharashtra Agricultural Lands (Ceiling on Holdings) Grant of Surplus Lands taken over from Industrial Undertakings Order, 1970 (hereinafter referred to as the Order of 1970).

He would submit that though the surplus lands were subsequently granted to MSFC, latter has no right to retain a specific portion of their lands granted to it. It has no locus standi to oppose the petitioners' request for allotment of their lands taken over by the State by operation of law. It is the prerogative of the State under the provisions of section 28-1 AA(3) to grant the land back to the persons who had previously leased their lands to the undertaking, for personal cultivation.

He would submit that it would be logical that once having taken over the surplus lands from the undertaking if the persons who had leased those lands have been made entitled to re-grant, they are granted it for personal cultivation the same land which originally belonged to them. Defying such logic the respondents are illegally refusing to allot the petitioners' respective lands under the provision.

5. Mr. Kale would further submit that on the one hand the MSFC is opposing the petitioners' request but at the same time, contrary to the object of preserving integrity of the lands, it is transferring the lands and such actions are even politically motivated. Huge chunk of land at one go has been granted to specific individuals contrary to the aims and object of the Ceiling Act.

6. The learned AGP Mr. Yawalkar would submit that the petitioners have no such right for grant of a specific land. Even a plain reading of sub-section (3) of section 28-1AA does not indicate that the persons like the petitioners who had previously leased out their lands to the undertaking but were found to be surplus with such undertaking and vested with the State government by virtue of the provisions of the Ceiling Act. The petitioners do not have any vested right irrespective of the fact that they may have some emotional attachment and

intent to possess the selfsame land which they had earlier leased out to the undertaking. Rather entertaining such requests by different farmers would be contrary to the intention of the legislature of maintaining integrity of the surplus land in one or more compact blocks. Allotment of such lands to different persons on the ground that it was at some point of time owned by them would adversely affect the integrity of the lands. He would therefore submit that apart from the fact that sub-section (3) of section 28-1AA does not specifically make the persons who had leased the land to an undertaking entitled to grant of land for personal cultivation, accepting their claim would result in disintegration as the different persons would be possessing different portion in bits and pieces impacting the integrity.

7. Mr. Yawalkar would further submit that some of the petitioners have consciously accepted the grant of different lands and are estopped from putting up any claim for any specific land. He would also submit that since the lands vest with the State government, in the absence of any specific provision in the Ceiling Act, such grant under sub-section (3) is a matter of policy decision of the government which cannot be questioned in writ jurisdiction.

8. As can be appreciated, there is no dispute regarding the material facts and one can safely proceed on the premise that the petitioners are the persons who had leased out their lands to the undertaking and were found surplus with such undertaking and were resumed and vested in the State by virtue of the provisions of the Ceiling Act. It is also a common ground that all these lands were subsequently granted to the MSFC under the Order of 1970. The only question, as is formulated herein-above is whether the petitioners have any right to claim grant of lands which once upon a time were owned by them but they had leased it to the undertaking, by virtue of the provisions of section 28-1 AA(3).

9. The relevant portion of section 28-1 AA reads as under:-

"28-1 AA.

(1) The State Government may, by notification in the Official Gazette, not later than ninety days from the commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1970, grant the surplus land taken over from the industrial undertakings and referred to in section 28 and which is being cultivated by one or more corporations, (including a company) owned and controlled by the State to such corporation or corporations, as the case may be, subject to such terms and conditions, including in particular, the condition of maintaining the integrity of the surplus land, in one or more corporations as aforesaid the provisions of section 28 so far as they provide for setting up of joint farming societies shall not apply in relation to such surplus land.

(2) The State Government may provide that, -

(a) for the breach of any term of condition referred to in sub-section (1), or

(b) if it considers after such inquiry as it thinks fit, that the production of raw material is not maintained at the level or in the manner which, with proper and efficient management it ought to be maintained, or

(b-1) it is considered necessary by the State Government for any public purpose to take away all or part of the land presently vested in the Corporation (including a company), or

(c) for any other reason it is undesirable in the interest of the full and efficient cultivation of the land, that the corporation (including a company) should continue to cultivate the land, the grant shall, after giving three month's notice of termination thereof and after giving the corporation reasonable opportunity of showing cause, be terminated, and the land resumed. Thereafter, the State Government may itself take steps by running or managing one or more farms for the proper cultivation of the land and maintenance of the production of raw material or may dispose of the land in the manner as provided in sub-sections (3) and (3A).

(3) 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 :

Provided that ...

.....

.....

3(A) Notwithstanding anything contained in sub-section (3), the State Government may dispose of the lands vested in Maharashtra State Farming Corporation Limited, for a public purpose, and when such disposal is to the institution other than the Government or Semi-Government institutions, such allotment will be made at the market rate fixed under the Bombay Stamp (Determination of the Market Value of Property) Rules, 1995 framed under the Bombay Stamp Act, 1958 or by public auction on such terms and conditions as may be specified by the State Government, by special or general order issued in this behalf.

Explanation – For the purposes of this sub-section, the expression “dispose of the lands for the public purpose” means disposal of land, for a public purpose in favour of an educational, medical or public health institution, or social welfare and cultural institution or for any other purpose mentioned in the Development Plan under section 22 of the Maharashtra Regional and Town Planning Act, 1966, or for any other public purpose included in clause (f) of section 3 of the Land

Acquisition Act, 1894, situated within the vicinity of five kilometres from the municipal area of a Council or Nagar Panchayat as defined in clause (24) of section 2 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, larger urban area specified under sub-section (2) of section 3 of the Bombay Provincial Municipal Corporations Act, 1949 and clause (10) of section 2 of the City Nagpur Corporation Act, 1949.

(4) The particulars of land to be granted under sub-section (3) shall be such as the State Government may, having due regard to the need to maintain the integrity of the farm in one or more compact blocks, by order in writing, specify."

10. A plain reading of sub-section (3) would clearly indicate that the grant of land to a person who had previously leased out his land to the undertaking requiring that land for his personal cultivation does not specifically indicate that it should be the same land which he had leased out to the undertaking.

11. The emphasis of the learned advocate Mr. Kale on the word 'that' between the words 'requires' and 'land' though appears attractive at the first blush, a plain reading of the entire sub-section (3) and particularly the further wording restricting such grant to the extent of the ceiling area stipulated under the Act or the actual area of the land by such person to the undertakings makes it abundantly clear that the word 'that' is referring to the extent of the land and not a specific land to which a person is entitled to a grant. Though a person had leased a specific land to an undertaking which has been subsequently found to be surplus with such undertaking and resumed and vested in the State, those individuals cannot be said to have any vested right to have a specific land which they were owning.

12. Even if for the sake of arguments such a stand of the petitioners is accepted on the interpretation sought to be placed on the wording of this sub-section (3), the interpretation would run afoul to the avowed object expressed at various places not only under the Ceiling Act but even in the Order of 1970 of maintaining the integrity of the land in one or more compact blocks. Such intention and object of the legislature is so expressly clear from the use of these words in sub-section (1) and even sub-section (4) of section 28-1 AA. Practically, if the persons like the petitioners are to be granted the lands which they had leased out to the undertaking, this would obviously lead to disintegration as all these persons would be claiming different portions from different lands. Therefore, even for this reason, harmonious interpretation would be necessary while assigning some meaning to the use of the word 'that' between the words 'requires' and 'land' in sub-section (3).

13. If the selfsame land or portion of the land is to be granted to an individual, such integrity cannot be maintained in compact blocks. We, therefore, have no hesitation in concluding that the persons like the petitioners have no right for grant of their erstwhile lands under sub-section (3) of section 28-1 AA.

14. In this connection, it is also necessary to note that by way of amendment,

some of these petitioners have put up a challenge to the clauses nos. 3.1.1 to 3.1.5 of the government resolution / circular dated 04-05-2012 on the ground that these guidelines are contrary to the statutory provisions contained in sub-sections (3) and sub section (3A) of section 28-1 AA.

15. The learned advocate Mr. Kale for the petitioners would submit that these guidelines were issued to streamline allotment / grant of lands to the erstwhile owners – farmers. These guidelines were framed pursuant to the Maharashtra Agricultural Lands (Ceilings on Holdings) (Amendment) Act, 2011. He would submit that contrary to the statutory provisions these guidelines restrict such grant or allotment under the guise of streamlining the process. Without there being any stipulation in the statutory provision, the grant of such lands to the erstwhile farmers excludes the category of lands described therein, as lands having non-agricultural use potential, the lands in the vicinity of the towns, the lands which are under water conservation or having such potential, lands included in the draft or final development plan under the Maharashtra Regional and Town Planning Act, 1966 and also the lands regarding which there is already a request for allotment by the public undertakings or other department of the State. He submits that carving out such exceptions supersedes the statutory provisions and the government by a subordinate legislation or departmental circular cannot supersede the statutory provision.

16. The submission is indeed attractive. However, a careful reading of the statutory provision and the scheme contemplated under section 28-1 AA and particularly sub-section 3 and 3-A would negate this submission. As we have indicated herein-above, the argument is based on the premise that sub-section 3 gives a right to the person who had previously leased out his land to the undertaking to a specific land demanded by him. We have demonstrated that they do not have any such right and the provision does not mandate allotment / grant of the selfsame land held by a person before it vested in the State government for allotment to him for personal cultivation. When the edifice on which the petitioners stand has been found to be unsustainable in law, the argument of Mr. Kale that these guidelines are inconsistent with the statutory provision contained in sub-section 3 of section 28-1 AA falls to the ground.

17. Rather, sub-section 3A of section 28-1 AA specifically enables the State government to dispose of the land vested in the MSFC for a public purpose. The provision is in the form of an exception to sub-section 3. As can be seen that it starts with a non obstante clause. In our considered view, clauses 3.1.1 to 3.1.5 of the government guidelines dated 04-05-2012 by no stretch of imagination run counter to sub-section 3. It is abundantly clear that these guidelines are in tune with the statutory provisions contained in sub-section 3-A of section 28-1 AA.

18. Apart from the above state-of-affair, some of the petitioners have consciously accepted the allotment of different lands and would be estopped from asserting any right seeking allotment of any specific lands.

19. In the light of the view which we are expressing, we do not intend to go into the aspects regarding the locus standi of the MSFC to oppose the petitions. Considering the reliefs being claimed, this Court even need not go into and examine the aspect regarding either the grant of some lands by the State government for any public purpose or transfer of some lands by the MSFC to specific individuals if that has taken place pursuant to the stipulations in the Order of 1970 under which the lands were granted to it.

20. All the petitions are dismissed and the pending civil applications are disposed of. Rule is discharged.