

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9003 OF 2014

Ravindra Savaliram Wagh, Since deceased,
through his L.Rs. (i)Smita Ravindra Wagh and
Ors.

.. Petitioners

Versus

State of Maharashtra

.. Respondent

-
- Ms. Indrayani Koparkar, Advocate for Petitioners.
 - Ms. Mamta Srivastava, AGP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 01, 2026.

P.C.:

1. Heard Ms. Koparkar, learned Advocate for Petitioners and Ms. Srivastava, learned AGP for Respondent – State. By consent Petition is taken up for final hearing.

2. Petition challenges Judgment dated 29.03.2014 passed by Maharashtra Revenue Tribunal (for short “MRT”) in Revision proceedings under the Maharashtra Tenancy Agricultural Land Act 1948 (for short “said Act”). By virtue of the said Judgment, Revision Application No. TNC/REV/303/B/20211 is dismissed and order dated 27.07.2011 passed by Sub – Divisional Officer and order dated 31.10.2010 passed by Tahsildar are confirmed.

3. Necessary relevant facts for deciding present Writ Petition are as follows:-

3.1. Sometime in 1960 – 1961, 24 acres of land and two houses belonging to Original Petitioner and his family was acquired by the State Government for Girna (Panzan) Dam Project and in lieu thereof Original Petitioner was given compensation of Rs.30,000/-. Original Petitioner represented to the State Government for grant of alternate land and further compensation as per market value. Original Petitioner was landless until 1988 when subject land in village Bhagyagaon bearing Gat No. 212 belonging to one Mohanlal Verma was purchased by the Petitioner. Original Petitioner purchased the land by registered Agreement for sale dated 13.07.1989 and paid the appropriate stamp duty. He cultivated the land for 6 years thereafter but had to give up cultivation due to natural calamities and nuisance of animals and theft. He thereafter decided to make layout on the subject land for construction of houses, but since said land was of new tenure permission to subdivide the land and make layout was rejected and he was directed to obtain permission from the Divisional Commissioner. He then made application for survey and measurement of the subject land and applied for separate copy of 7/12 extract. Ultimately, on 27.02.2008 subject land was surveyed and separate 7/12 extract was prepared. It took almost more than 12 years for the aforesaid exercise after which procedure for sub – division and layout commenced. On

20.09.2008 tentative layout was sanctioned by the State Government. By letter dated 07.06.2009 Collector Nasik called upon the Original Petitioner to pay Nazrana amount to the extent of 75% of the unearned amount for using the subject land for NA purpose and for conversion of the same from old tenure to New Tenure. Since he was unable to afford payment of Nazrana amount, he filed Writ Petition No.5041 of 2010 in this Court seeking exemption from payment of Nazrana amount. During pendency of the said Writ Petition Tahsildar informed Court that by order dated 31.10.2010, subject land belonging to original Petitioner was resumed, acquired and taken over by government. Therefore this Court passed order dated 18.11.2010 holding that since the land was already taken over by Government it would be open for original Petitioners to ask for compensation from the Government as per law. He thereafter challenged Order dated 31.10.2010 passed by Tahsildar before the Sub-Divisional Officer (for short 'SDO'). By order dated 27.07.2011 the challenge failed. On 29.03.2014 challenge to order dated 27.07.2011 was rejected by holding that once this Court passed order dated 18.11.2010, it was not appropriate for MRT to interfere with that order hence Petitioners was directed to approach this Court for his grievance. Petitioners therefore filed present Petition to challenge order dated 29.03.2014.

4. Learned Advocate Ms. Koparkar would submit that during pendency of the Petition, original Petitioner expired sometime in 2019

and now Petition is prosecuted by his legal heirs. She would submit that since 1961 Petitioners and their family members are awaiting justice due to acquisition of their original land for public purpose. She would submit that Petitioners' predecessors were initially awarded compensation which was thoroughly inadequate. She would submit that Petitioners sought alternate land for cultivation which was never given by Government. She would submit that in 1989 by virtue of a registered Agreement to Sale Petitioners purchased the subject land rather by way of Exchange with Mohanlal Verma the erstwhile land owner. She would submit that the subject land admeasuring 2 acres was allowed to be purchased by Petitioners vide order dated 15.06.1989 subject to the condition that the tenure of the subject land would remain the same. She would submit that Petitioners and said Mohanlal Verma applied to Collector jointly for permission to exchange their respective lands and pursuant to above order Petitioners exchanged their land holding being GAT No.197 with land holding of Shri Mohanlal Verma being Gat No.212.

4.1. She would submit that admittedly Petitioners' land holding was of old tenure whereas Mohanlal Verma's land holding was of new tenure. She would submit that though Petitioners acquired the subject land for agricultural purpose which was of new tenure and the Government demanded payment of Nazrana for granting exemption to Petitioners to use the land for Non Agricultural purpose, according to

the government if Petitioners desired to use the land for NA purpose they would be required to pay Nazrana amount as calculated and equal to 75% of the differential market value including improvements made thereon. She would submit that despite the above fact the Government has unilaterally issued Show Cause Notice dated 04.06.2010 to the Petitioners for resumption of subject land under Section 65 of said Act on the ground of non cultivation of said land for more than 12 years. She would submit that on 31.10.2010 Tahsildar passed order for resumption of the subject land from Petitioners by holding that since the land is not cultivated by Petitioner, it seemed that Petitioners were not interested and therefore the land be resumed by the Government. She would submit that no further steps are admittedly taken by the Government thereafter. She would submit that order of Tahsildar was challenged before the Sub Divisional Officer who by Order dated 27.07.2011 rejected the Appeal. She would submit that order of Sub Divisional Officer was further upheld by MRT by virtue of impugned order. She would submit that in the interregnum Petitioners made application to the Tahsildar who in turn recommended the case of the Petitioners to the State Government.

4.2. She would submit that on 04.07.2012, State Government by order dated 10.08.2014 rejected the application of Petitioners on the basis of earlier orders passed by Tahsildar and Sub Divisional Officer and challenge to the same made before this Court in Writ Jurisdiction

also failed. In the above facts she would vehemently submit that since possession of the subject land is with the Petitioners and their family till today and Government not having taken any steps for acquisition of the subject land in furtherance of its alleged action under Section 65 of the said Act, judgment dated 29.03.2014 passed by MRT be dismissed. She would therefore persuade the Court to allow the Petition.

5. *PER CONTRA*, Ms. Mamta Shrivastava learned AGP, appearing for the State and its functionaries would draw my attention the two Affidavits in Reply filed on behalf of State dated 17.10.2016 and 21.02.2026 to contend that Order dated 31.08.2010 passed by Tahsildar resuming subject land is a correct order pursuant to which the subject land has vested in the State Government. She would submit that the subject land was not cultivated for more than 2 years by Petitioner. She would submit that between 1996 and 2009 Petitioners did not cultivate the subject land but kept the same as fallow land leading to issuance of Show Cause Notice and passing of Order dated 31.10.2010. She would submit that aforesaid fact is undisputed and is contained in Talathi's report filed in respect thereof. She would submit that in that view of the matter, impugned order dated 29.03.2014 is correctly passed by learned MRT since the land has vested in the Government. Hence she would submit that Petitioners are not entitled to any relief whatsoever and Petition be dismissed.

6. I have heard the learned Advocates at the bar. Submissions made by both sides have received due consideration of the Court.

7. It is an admitted position that subject land is in possession and custody of Petitioners as on today. Petitioner's grievance is that revenue record pertaining to the said subject land was mutated in the name of the State Government by virtue of the order dated 31.10.2010 passed by the Tahsildar which was upheld by the MRT.

8. The State is relying upon the order of the Division Bench dated 18.11.2010 in Writ Petition No. 5041 of 2010 being the basis of impugned order. Copy of the said order is appended to the Petition at "Exhibit - B" on page No.18 . The said order records that land belonging to Petitioners is acquired under the said Act and since land is already acquired by the Government it will be open for Petitioners to ask for compensation. This statement which is recorded in the order is in my opinion not the correct position in law *qua* the facts of the Petitioners case and there is *prima facie* incorrect submission and position in law recorded by the Court in the said order. In this regard attention is drawn to the provisions of section 65 of the said Act which read thus:

“65:- Assumption of management of lands which remained uncultivated.— (1) If it appears to the ³ [State] Government that for any two consecutive years, any land has remained uncultivated ⁴ [or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control] the ⁵ [State] Government

may after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

(2) On the assumption of the management, such land shall vest in the⁶ [State] Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land:

⁷[Provided that the Manager may in suitable cases give such land on lease at rent even equal to the amount of its assessment:

Provided further that, if the Management of the land has been assumed under sub-section (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III, as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed.]”

9. Perusal of the above Section shows that it pertains to assumption of management of lands which remain uncultivated. Section 65(1) refers to a situation that if any land remains uncultivated for a third period of two years, State may after making such inquiry pass a declaration that management of such land shall be assumed if full and efficient use of the land is not made for the purpose of agriculture through the default of the holder or any other cause whatsoever not beyond his control. In the case of Petitioners save and except giving Show Cause Notice dated 04.06.2010 under Section 65 of the said Act, it is *prima facie* seen that no inquiry whatsoever has been held and without doing so Tahsildar has passed a declaration / order on 31.08.2010 summarily based on the Inspection report of the Talathi by not satisfactorily agreeing with the Petitioner's reply to the Show Cause Notice. The declaration has been passed but no further steps have been taken as contemplated under Sub - Section 2 of

Section 65 for management of the Petitioner's land holding under Chapter 4 of the said Act. This is an admitted position because all along subject land is in possession of Petitioners and his family members, thus there is a clear dereliction and non compliance of the enquiry under Sub - Section 1 and management of the subject land under Sub – Section 2 of Section 65. The issue does not rest at this. If it is the case of the State Government that the land is already acquired then the same is required to be confirmed by an appropriate Gazette Notification to be issued under Sub - Section 1 of Section 66 followed by publication of notification and statutory inquiry in the prescribed manner to determine value of the subject land which has been acquired followed by declaration of a statutory award. Section 66 in this regard plays a complimentary role along with Section 65 for vesting of such land in the State Government. For reference section 66 is reference below.

“66. Acquisition of estate or land under management or interest therein.— (1) If at any time it appears to the ⁸ [State] Government that any estate or land, the management of which has been assumed under the provisions of this Act or the interest of any other person in such estate or land should in the public interest, be compulsorily acquired, it shall be lawful for the ⁹ [State] Government to publish a notification to that effect in the Official Gazette. The notification so published shall be conclusive that the estate, land or interest is needed to be acquired in public interest.

(2) On the publication of the notification, the Collector shall cause publicity to be given to it at convenient places in the locality and also give notices to the holder of the estate, land or interest and to all persons known or believed to be interested therein.

(3) The Collector shall then make an inquiry in the prescribed manner to determine the value of the estate, land or interest which has been acquired. For the said purpose the Collector shall have the same

powers as are vested in courts, in respect of the following matters under the Code of Civil Procedure, 1908 (V of 1908), in trying a suit:

—

(a) proof of facts by affidavits;

(b) summoning and enforcing the attendance of any person and examining him on oath; and (c) compelling the production of documents.

(4) In determining the value the Collector shall take into consideration—

(a) the assessment payable in respect of the estate or land;

(b) the profits of agriculture and cultivation of the estate or land and of similar estates and lands in the locality;

(c) the price of crops and commodities in the locality;

(d) exemption from assessment and other privileges enjoyed by the holder and other persons interested in respect of the land, estate and interest;

(e) any other matter which may be prescribed.

(5) After determining the value of the estate, land or interest the Collector shall make an award which shall contain—

(a) the particulars of the estate, land or interest,

(b) the compensation which in his opinion should be allowed for the land,

(c) the apportionment of the compensation among all persons known, or believed to be interested.

(6) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence as between the Collector and persons interested whether they have respectively appeared before the Collector or not of all the particulars including area and value of the estate, land or interest and the apportionment of compensation.

(7) When the Collector has made an award, the estate, land or interest therein shall vest in [Government] free from all incumbrances."

10. If the aforesaid provision are seen then vesting of such land in the Government free from all encumbrances happens only when the Collector declares the statutory award as contemplated by Sub - Section 7.

11. Applying the aforesaid provisions of the facts of Petitioners case *prima facie* leaves no doubt in the mind that case of acquisition of Petitioner's subject land by State Government has never taken place. In the present case save and except issuance of Show Cause Notice and the declaration / order dated 31.08.2010 made by the Tahsildar no other steps contemplated by Sections 65 or 66 for assumption of management and acquisition of the subject land have been taken. Most importantly it is seen that the declaration / order dated 31.08.2010 is not passed after conducting the appropriate statutory inquiry by the Tahsildar. Thus when the foundation of the Government's case that the subject land has been acquired and stands vested in the Government cannot be proved neither can it be accepted by the Court by any stretch of imagination. In the twin Affidavit – in – Reply filed by the Government, its case merely rests with passing of the Order dated 31.10.2010 which in itself is vitiated as it is passed without undertaking any inquiry for the purpose of assumption. In view thereof, the order passed by the Sub Divisional Officer dated 27.07.2011 and Order passed by the MRT dated 29.04.2014 stand completely vitiated in the absence of non compliance with the statutory provisions of acquisition of Petitioner's subject land under Sections 65 and 66 of said Act and therefore the action taken on part of Government is clearly unsustainable in law. There is a completely misleading statement recorded by the Division Bench of this Court that

the Petitioners' land is already acquired. Vesting of land has to translate into acquisition by following the due process of law. Land is still in possession of Petitioners. Hence case of the Government, who are unable to show how acquisition has been completed, cannot be accepted merely on the basis of its purported pleadings.

12. In view of my aforesaid observations and findings the impugned order passed by the learned MRT dated 29.03.2014 in Revision Application filed by the Petitioners is quashed and set aside.

13. Resultantly order passed by Sub Divisional Officer, Malegaon in Tenancy Appeal No.131 of 2010 decided on 27.11.2011 and order passed by Tahsildar, Malegaon in Tenancy Case No.284 of 2010 decided on 31.10.2010 are also quashed and set aside.

14. In view of the above order, mutation of Petitioners' name in the revenue record of the subject land is directed to be mutated forthwith and deletion of name of the State Government be effected forthwith expeditiously and in any event within a period of 4 weeks from the date of this order by the Talathi / Tahsildar, Malegaon and / or Incharge Officer of the State on the basis of a server copy of this Order.

15. In view of the above, the Order dated 10.08.2014 passed by the State on the report filed by the Tahsildar dated 04.07.2012 also cannot be sustained and is therefore quashed and set aside. Though

there is no separate prayer made for setting aside the said order, the same cannot be allowed to be continued as it defeats the substantive right of the Petitioners in the subject land. The subject land is not equivalent to land allotted by the Government to the Petitioners with conditions. Section 65 and 66 are extremely drastic provisions which lead to vesting and acquisition after statutory inquiry which leads to extinguishment of right. Hence those provisions, if required to be followed are supposed to be followed to the hilt.

16. In so far as the issue of conversion of tenure of the Petitioners subject land into Non Agricultural land is concerned it appears that Petitioners made an application to the Collector prior to 07.06.2009 after the tentative layout was sanctioned by the Government on 20.09.2008. On Application made by the Petitioners, Collector Nasik issued letter dated 07.06.2009 calling upon Petitioners to pay amount equal to 75% of unearned amount as Nazrana for conversion. The said Application and case of Petitioners seeking conversion stands revived and Petitioners are at liberty to pursue the same with Competent Authority. If the Petitioners pursue the same then the date of initial application shall be considered by the Competent Authority for the purpose of computation of Nazrana amount in accordance with law and the Government Resolutions as applicable to the Petitioners' land. The above directions are necessary to be passed to do complete justice to the Petitioners case. The scope of

proceedings under Article 226 of the Constitution of India is very wide. Hence above directions are necessary once the MRT order dated 29.03.2014 is quashed and set aside on merits.

17. Writ Petition is allowed and disposed off in the aforementioned terms.

[MILIND N. JADHAV, J.]

Ajay

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