2026:BHC-AUG:40490

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

District: Jalgaon

WRIT PETITION NO.12611 OF 2023

Vilas S/o. Baliram Koli,
Age: 65 years, Occu. Agril,
R/o. Gut No.80/1, Plot No.25,
Behind Asha Baba Nagar, Shiv Colony,
Jalgaon, Tq. & Dist. Jalgaon.

.....PETITIONER
(Orig. Respondent)

VERSUS

Kadu S/o. Lahanu Koli,
Since deceased through Heirs,
and Legal Representatives.

1. Bhaulal S/o. Kadu Koli,
Age: 62, Occu: Agril.

2. Bhika S/o. Kadu Koli,
Age: 40, Occu: Labour,

Both R/o. Dhamangaon,
Tq.& District Jalgaon.

3. Shobha Ravindra Koli,
Age: 57, Occ: Household,
R/o. Sunasgaon, Tq. Bhusawal,
District: Jalgaon.

4. Bharati Gorakh Solankhe,
Age: 52 years, Occu: Household,
R/o. Lolnhavi, Tq. Yawal,
District: Jalgaon.

.....RESPONDENTS
(Orig appellants/plaintiffs)

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Mr. L. V. Sangit, Advocate for the petitioner
Mr. P. N. Kutti, Advocate for respondent nos.1, 3 and 4

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : 02ND SEPTEMBER, 2026
PRONOUNCED ON : 04TH SEPTEMBER, 2026

JUDGMENT :- (Per Court)

1. Introduction:

The Writ Petition contains an objection by a judgment debtor against the execution petition questioning the jurisdiction of Civil Court to pass the Decree itself. Although not a single objection to the Civil Court's jurisdiction was raised at any point before the Trial Court till the High Court, at the fag end of the execution proceedings, an application u/s 47 of the Civil Procedure Code 1908 is filed to question the Decree itself. There is no dispute that the decree can be challenged in the execution proceeding in the peculiar circumstances like decree against dead person, inherent lack of jurisdiction, nullity etc. However, Petitioner relies upon jurisdiction of the District Collector to decide the controversy in the suit.

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2. To substantiate the objection, the Petitioner relies upon Section 3 and 9 of the Maharashtra Inferior Village Watans Abolition Act 1959 (‘the Act of 1959’ for brevity); and contends that jurisdiction of the Civil Court to entertain the suit itself was barred. That the consequential execution also can not be concluded on account of exclusion of the jurisdiction.

3. Rule. Rule made returnable forthwith. Considering the controversy and the long standing litigation i.e. since 2001, I deem it appropriate to hear the respective parties for final disposal of the Writ Petition.

4. **Brief facts** : Since the core issues is recorded as above, I recite the facts in short as follows:

4.1 Plaintiff i.e. deceased Kadu Koli acquired title to the 'suit property' under re-grant being Koli Inamdar on paying the occupancy price.

4.2 The 'suit property' was a Koli Inam land. On enactment of the Act of 1959, plaintiff’s right as Inamdar were cancelled, the land was restored to the Government, and was lastly re-granted to Kadu Koli on payment of the occupancy price.

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4.3 That taking undue advantage of ill habits of the plaintiff, the defendant i.e. present petitioner inducted himself in the 'suit property'. Hence the suit was filed for declaration of title and possession (Regular Civil Suit No.534 of 2001).

4.4 The suit was defended on a numerous counts, except any objection to the jurisdiction of the Civil Court.

4.5 The suit was decreed. An appeal filed against the Judgment and Decree was turned down. Challenge to the Judgment and Order passed by the Appellate Court could not survive in the High Court. As such the decree attained finality.

4.6 The decree holder set the execution proceedings in motion. Sons of the judgment debtor sought intervention in the execution proceedings and challenged its maintainability on account of jurisdiction. The said challenge was rejected.

4.7 The intervenors challenged rejection of their objection before the District Court in an appeal, which came to be turned down.

4.8 Second appeal filed by Judgment Debtor’s sons also came to be dismissed by this Court.

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4.9 In the light of above, the judgment debtor/present Petitioner lodged his application u/s 47 of the Civil Procedure Code 1908 before the executing court. Contending that as per section 3 (1) of the Act of 1959 r/w its section 9, the Civil Court had no jurisdiction to try the suit. As such, the execution proceeding too, could not be maintainable.

4.10 Legal representatives of the deceased Plaintiff, who stepped into the proceedings as decree holders opposed the application.

4.11 Upon hearing the parties, the Executing Court pleased to dismiss the objection vide impugned order dated 17.11.2022. Hence this Writ Petition.

5. Submissions:

5.1 Mr. L. V. Sangit, learned advocate for the Petitioner submits that if the Civil Court had no jurisdiction to try the suit, the execution is also not permissible.

5.2 That, Section 3 (1) and 9 of the Act of 1959 abundantly forbid jurisdiction of the Civil Court. And hence, the execution must be struck down.

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5.3 He would submit that in terms of Section 47 of the Civil Procedure Code 1908, a challenge to the decree is also maintainable in the execution proceedings. That, the Executing Court erringly held that it can not look behind the decree.

With this, Mr. Sangeet prays to allow the Writ Petition.

5.4 Mr. P. N. Kutti, learned advocate for the decree holders would stand by the findings rendered by the Executing Court. He would submit that at no point of time the Petitioner raised any objection to the Civil Court's jurisdiction until the execution reached to his doorsteps.

5.5 That, the same objection has already been discarded by this Court while dismissing the Second Appeal filed by Petitioner's sons. Hence, the Petitioner can not take the same objection for reconsideration.

With this, Mr. P. N. Kutti prays to dismiss the Writ Petition.

6. Consideration and discussion:

6.1 As quoted above, now the only issue for consideration is, 'whether if the execution petition is maintainable in the light of Section 3 (1) and 9 of the Act of 1959'. This issue

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needs to be read conjointly with Section 9 of the Civil Procedure Code 1908, which reads thus:

> *PART I*
>
> ***9. Courts to try all civil suits unless barred.—****The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*
>
> *[Explanation I].—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*
>
> *[Explanation II].—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]*

6.2 As such, excluding the suits of which cognizance is either expressly or impliedly barred, Civil Courts have jurisdiction to try all suits.

6.3 In view of above, it would be required to see what rider is created in the Act of 1959 as regards to jurisdiction.

6.4 For the sake of convenience, Section 3 and 9 of the Act of 1959 are reproduced for ready reference:

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Section 3:-

3. Powers of Collector to decide certain questions and appeal. *–(1) If any question arises,—*

(a) whether any land is watan land,

(b) whether any person is a watandar,

(c) whether any person is an unauthorised holder,

the Collector shall, after giving the party affected an opportunity to be heard and after holding an inquiry, decide the question.

(2) Any person aggrieved by such decision may file an appeal to the State Government within ninety days of such decision.

(3) The decision of the Collector, subject to an appeal under sub-section (2) and the decision of the State Government in appeal under sub-section (2), shall be final.

Section 9:-

Eviction of unauthorised holder and regrant of watan land to him in certain circumstances and disposal of land not regranted. –

(1) Where any watan land resumed under section 4 is in the possession of an unauthorized holder, such unauthorised holder shall be summarily evicted therefrom by the Collector in accordance with the provisions of the Code : Provided that where in the case of any unauthorised holder, the State Government is of opinion that in view of the investment made by such holder in the development of the land or in the non-agricultural use of the land or otherwise, the eviction of such holder from the land will involve undue hardship to him, it may direct the Collector to regrant the land to such holder on payment of such amount and subject to such terms and conditions as the State Government may determine and the Collector shall regrant the land to such holder accordingly.

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> *(2) Watan land which is not regranted under sub-section (1) shall be disposed of in accordance with the provisions of the Code and the rules made thereunder applicable to the disposal of unoccupied unalienated land.*

6.5 Going *litera legis* the provision, it is clear that only in three contingencies, a proceeding can be taken up by and before the District Collector. The contingencies are mentioned at Clauses (a),(b) and (c) of Section 3 (1) of the Act of 1959.

6.6 Let us now test Petitioner's case on the three parameters on which his objection rests in terms of Section 3 (1) of the Act of 1959.

6.7 In view of the pleadings of the parties, it is not in dispute that the 'suit property' is a Watan Land. Hence clause (a) of Section 3 (1) is not attracted;

6.8 There is also not a dispute as to the status of the deceased Kadu Koli as a Watandar. Hence, clause (b) of the Section 3 (1) can not be made applicable to the case;

6.9 The decree of possession is passed by the Trial Court which is brought into execution. Clause 2 (x) of the Act of 1959 defines 'unauthorised holder' as follows:

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> *(x) "unauthorised holder" means a person in possession of a watan land without any right or under a lease, mortgage, sale, gift or any other kind of alienation thereof which is null and void under the existing watan law ;*

It is an evident fact that the Watan of the 'suit property' was already abolished, and the land was re-granted to the deceased Kadu Koli on payment of the occupancy price. The 'suit property' no more remained Watan land. In view of this, it is abundantly clear that the judgment debtor can not take shelter of clause (c) of the Section 3 (1), Act of 1959.

6.10 In view of above findings, there is no occasion to invoke provision u/s 9 of the Act of 1959 which speaks about 'unauthorized holder'.

6.11 Thus, there is no scenario where interference of the District Collector u/s 3 of the Act of 1959 was warranted.

6.12 There is one more provision in the Act of 1959 which entrusts jurisdiction to the District Collector and Tribunal i.e. u/s 10 and 12 of the Act of 1959, respectively. However, the provision is regarding compensation to the Watandar. Except this, there is no other provision in the Act of 1959 whereby jurisdiction of the Civil Court is expressly or impliedly barred.

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At the most it could be said that in so far as situations enumerated at clauses (a) to (c) of the Section 3 (1) of the Act of 1959 and Section 10 and 12, Civil Court won't entertain such issues. But such is not the case in hand, as observed descriptively supra.

6.13 The subject-matter land was re-granted to the Decreeholder on payment of full occupancy price. Section 5 of the Act of 1959 speaks about regrant of watan land. In terms of the scheme u/s 5, the subject-matter land no more remained Watan land.

6.14 In view of this, I find that Petitioner's objection that the Decree itself was without jurisdiction is incorrect.

6.15 The suit is of the year 2001. The decree is for possession. Now the original decree holder is already passed away during the pendency of these proceedings, and missed to enjoy the fruits of his litigation despite having succeeded. Petitioner's objection to the jurisdiction of Civil Court is apparently mischievous for the reason that the objection raised by his sons is already turned down by this Court. The said order is not challenged by anybody.

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6.16 The executing Court rightly referred paragraph No.15 of the order dated 07.03.2022 passed by this Court in the Second Appeal No.14 of 2019 wherein this Court has dismissed the objection giving reference to applicability of Section 3 (1) of the Act of 1959.

6.17 Apparently, the Petitioner is misinterpreting the order passed by this Court in the Second Appeal (supra), wherein reference to legal position is marked. The Petitioner is conveniently ignoring the later part of the observations.

7. Conclusion:

7.1 For the reasons recorded in the above discussion part, I find that (i) Collector's jurisdiction under the Act of 1959 is confined only to the situations mentioned in clauses (a) to (c) of Section 3 (1) of the 1959 Act; (ii) once a land is re-granted after abolition of Watan and upon payment of full occupancy price, it no more remains Watan land; (iii) After re-grant of land u/s 5 of the Act of 1959, an unauthorized occupant in such re-granted land is not covered by the definition of 'unauthorised holder' within the meaning of Section 2 (x) of the Act of 1959.

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7.2 There was no jurisdictional error in the original Decree in Regular Civil Suit No.534 of 2001. There is no express nor even implied bar under the Act of 1959 so far as the cause taken up by the plaintiff against the defendants in his Civil Suit. Execution proceedings were filed in 2015. Despite service of notice, the Petitioner opted not to appear to respond the execution petition. Executing Court was constrained to proceed further observing that the judgment debtor is served. On the other hand, in 2017 a proxy objection was raised at the behest of Petitioner's sons. The said objection and attempt of intervention was disallowed by the Executing Court, and was confirmed by this Court. Later, in 2022 an application u/s 47 of the Civil Procedure Code 1908 was filed by the Petitioner while the execution has reached to the stage of handing over possession.

7.3 The sequence of facts observed above clearly show that Petitioner's objection as to the jurisdiction of the Trial Court and the Executing Court is not only misconceived, but apparently it is an abuse of process. The Honorable Supreme Court in the matter of ***Emph. Challani Ginning and Pressing Factory Vs. Kamal reported at 2026 SCC OnLine SC 718*** has

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recently come down heavily on frivolous attempts in execution proceedings to halt the execution. The case in hand is no more different from the case in which the Honorable Supreme Court has criticized the delaying tactics of the judgment debtors to avoid the execution of decree.

7.4 For the reasons recorded above, the Writ Petition is liable to be dismissed with exemplary costs. Hence I pass following order.

ORDER

I. The Writ Petition stands dismissed with cost of Rs.15,000/- to be deposited in the Executing Court by the Petitioner within a period of Four weeks from today;

II. If the cost is not deposited within the given time, the consequences to follow.

III The executing machinery shall execute the possession warrant within a period of Four weeks from today. The Petitioner shall peacefully handover the possession of suit property to the respondents. No separate notice shall be required to the Petitioner for handing over possession.

IV. Rule discharged.

(AJIT B. KADETHANKAR, J.)

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