SAYALI DEEPAK UPASANI
Digitally signed by SAYALI DEEPAK UPASANI
Date: 2026.11.02 17:06:02 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5707 OF 2017

Samasth Gavkari Mandal, Rithe (AOP) Thr. Its Authorised Representative and Another … Petitioners

V/s.

Krishna Tukaram Teli (Shelkar) Since Deceased Thr. His Lrs and Others … Respondents

Mr. Chaitanya B. Nikte with Prajit S. and Mr. Vishal L. Tiwari, for Petitioners.

Mr. Aniruddha A. Garge, for Respondent nos. 2 to 6 for State- B Panel Counsel.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 02, 2026

P.C.:

1. The Petitioners have challenged the Judgment and Order dated 28.04.2014 passed by Respondent No. 5, the Minister. According to the Petitioners, the Minister had no jurisdiction or authority under any provision of law to pass such an order. By the impugned order, the Minister converted the suit land from Devsthan Inam Class III to Class I Old Tenure. The Minister further directed Respondent No. 3, the Tahasildar, to declare Respondent Nos. 1(a) to 1(d) as owners of the suit land under Section 32-G read with Section 70-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (BTAL Act). Permission was also granted under Section 43 of the BTAL Act for transferring the

Uploaded on - - Downloaded on - 03/11/2026 22:30:06

said land. Apart from this, the Minister directed the Tahasildar to start the necessary proceedings within three months, remove the name of Bhairavdev from the 7/12 extract and enter the names of Respondent Nos. 1(a) to 1(d) as owners of the suit land. The Petitioners contend that all these directions were issued without any authority of law.

2. The suit lands were granted on 21 May 1862 by the then Government to Shri Bhairavdev, the deity, through its manager, Govinda Bin Ramji Koli, as Class III Inam Land. This grant was recorded in the Alienation Register at Serial No. 1440. Accordingly, the name of Shri Bhairavdev Devsthan was entered in the 7/12 extract of the suit land. The revenue records show that the name of the deity has continued to appear in the 7/12 extract from a period prior to 1929 till date. The villagers of village Rihe have been looking after and maintaining the temple of Bhairavdev for a long period. Subsequently, the Petitioners also continued to look after the said temple. The villagers are devotees of Shri Bhairavdev and, according to the Petitioners, the villagers, acting through the Gram Sabha, are deemed to be the trustees of the deity and its property.

3. Thereafter, Respondent Nos. 1(a) to 1(d), through their power of attorney holder, approached Respondent No. 5, the Minister, by filing an application. They requested that the suit land should be converted from Devsthan Inam Class III to Old Tenure Class I. They also sought a declaration that they were the owners of the suit land under Section 32-G read with Section 70-

Uploaded on - - Downloaded on - 03/11/2026 22:30:06

B of the BTAL Act. Further, they requested that permission under Section 43 of the BTAL Act should be granted to transfer the land. By the impugned Judgment and Order, the Minister allowed the application bearing No. Dev/014/PK/347/1-4. The date of the impugned order is stated to be 22 August 2014. Thereafter, on 14 October 2016, this Court passed an order directing the Tahsildar to implement clause (2) of the impugned order within three months from 21 November 2016, subject to the Tahsildar first satisfying himself whether the order dated 22 August 2014 passed by the Minister was still in force. This Court, however, made it clear that it had not examined the legality or validity of the Minister's order. The question regarding the validity of the said order was specifically kept open. The Petitioners have, therefore, filed the present Petition challenging the legality of the Minister's order.

4. Mr. Chaitanya B. Nikte, learned Advocate appearing for the Petitioners, submitted that the Minister had no jurisdiction to pass the impugned order. According to him, there is no provision of law which gives the Minister power to convert Devsthan Inam Class III land into Class I land. He further submitted that the Minister could not have directed the Tahsildar to declare Respondent Nos. 1(a) to 1(d) as owners under Sections 32-G and 70-B of the BTAL Act. The power to decide such matters is given to the statutory authority under the Act. The Minister also could not have directly granted permission for sale of the suit land or directed deletion of the existing revenue entry in the name of Bhairavdev. According to the learned Advocate, these directions

Uploaded on - - Downloaded on - 03/11/2026 22:30:06

are beyond the powers of the Minister and are, therefore, without jurisdiction.

5. Though service of notice is complete, none has appeared on behalf of the Respondents. It is true that an Advocate has filed an appearance on their behalf. However, no one appeared for the Respondents on the earlier date or even today. In these circumstances, this Court has no option but to consider the challenge raised by the Petitioners and decide the present Petition on its merits on the basis of the material available on record.

6. The question regarding the power of Respondent No. 5 to direct conversion of Devsthan Inam Class III land into Class I land has already been considered by this Court in the case of *Suvarna Appasaheb Kshirsagar and Others Vs. State of Maharashtra and Others (2025) 3 High Court Cases (Bom) 39*. In the said judgment, this Court, in paragraph 42(iv), held that the State Government has no power to grant exemption from the prohibition on transfer of Devsthan Inam land imposed under Section 8(3) of the Exemptions from Land Revenue (No.1) Act, 1863. The relevant portion of the judgment reads as under:

> *"…_. 45.(iv) The State Government does not have any power to grant exemption from the prohibition on transfer imposed by Section 8(3) of the Exemptions from Land Revenue (No.1) Act, 1863. Section 8(3) imposes a statutory and absolute bar against the transfer or alienation of Devasthan Inam lands. The 1863 Act does not empower the State Government to waive, relax, or dilute this prohibition at its discretion. The only lawful method to defeat the protection afforded by Section 8(3) is by formal adjudication in appropriate legal proceedings, where it is proved by clear and cogent evidence that the land was never a Devasthan grant. Unless such a finding is recorded*

Uploaded on - - Downloaded on - 03/11/2026 22:30:06

*by a competent authority or court, the protection under Section 8(3) remains absolute. Any sale or transfer of Devasthan Inam land covered by Section 8(3) of Act 1863 by the manager or Vahiwatdar without such adjudication is void ab initio and has no legal effect…."***

7. In view of the above legal position, clause 2 of the impugned order, by which the Minister directed conversion of the suit land from Devsthan Inam Class III to Class I, is clearly without jurisdiction. The next question concerns clause 3 of the impugned order. By this clause, the Minister directed the statutory authority under the BTAL Act to exercise its powers under Sections 70-B and 32-G in a particular manner and to declare Respondent Nos. 1(a) to 1(d) as owners. The Minister could not have issued such a direction. The power to decide whether a person is entitled to be declared a tenant or purchaser under these provisions is vested in the authority appointed under the BTAL Act. That authority is required to examine the facts and evidence and then take a decision in accordance with law. The State Government cannot itself decide the matter or compel the statutory authority to reach a particular conclusion. No provision of the BTAL Act, the Maharashtra Land Revenue Code or any other State law has been pointed out which gives Respondent No. 5 such power. Therefore, clause 3 of the impugned order is also without jurisdiction and deserves to be set aside.

8. So far as clause 4 of the impugned order is concerned, the permission under Section 43 of the BTAL Act could be considered only by the authority empowered under the said Act. Such authority is required to follow the procedure prescribed by the

Uploaded on - - Downloaded on - 03/11/2026 22:30:06

Act and examine whether the conditions for granting such permission are satisfied. The Minister could not have granted such permission by bypassing the procedure prescribed under the Act.

9. The Minister could not have directed the authority under the BTAL Act to exercise its statutory discretion in a particular manner. The power to consider an application and decide whether permission should be granted is vested in the authority under the Act. Such power has to be exercised by that authority independently and in accordance with law. In this connection, the law laid down by the Supreme Court in *Chandrika Jha v. State of Bihar, (1984) 2 SCC 41*, is relevant. In paragraphs 12 to 14, the Supreme Court has explained that even the Chief Minister, who holds a high position in the Government and exercises general administrative control over the State, cannot take over or exercise the statutory powers which the law has entrusted to a particular authority. The relevant observations read as under:

> *"12. We fail to appreciate the propriety of the Chief Minister passing orders for extending the term of the first board of directors. Under the Cabinet system of Government the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information which is available to the Minister-in-charge of any department and may issue necessary directions for carrying on the general administration of the State Government. Presumably, the Chief Minister dealt with the question as if it were an executive function of the State Government and thereby clearly exceeded his powers in usurping the statutory functions of the Registrar under Bye-Law 29 in extending the term of the first board of directors from time to time. The executive power of the State vested in the Governor under Article 154(1) connotes the residual or governmental functions that remain after the legislative*

Uploaded on - - Downloaded on - 03/11/2026 22:30:06

and judicial functions are taken away. The executive power includes acts necessary for the carrying on or supervision of the general administration of the State including both a decision as to action and the carrying out of the decision. Some of the functions exercised under "executive powers" may include powers such as the supervisory jurisdiction of the State Government under Section 65-A of the Act. The Executive cannot, however, go against the provisions of the Constitution or of any law.

13. The action of the then Chief Minister cannot also be supported by the terms of Section 65-A of the Act which essentially confers revisional power on the State Government. There was no proceeding pending before the Registrar in relation to any of the matters specified in Section 65-A of the Act nor had the Registrar passed any order in respect thereto. In the absence of any such proceeding or such order, there was no occasion for the State Government to invoke its powers under Section 65-A of the Act. In our opinion, the State Government cannot for itself exercise the statutory functions of the Registrar under the Act or the Rules.

14. Neither the Chief Minister nor the Minister for Co-operation or Industries had the power to arrogate to himself the statutory functions of the Registrar under Bye-Law 29. The act of the then Chief Minister in extending the term of the committee of management from time to time was not within his power. Such action was violative of the provisions of the Rules and the bye-laws framed thereunder. The Act as amended from time to time was enacted for the purpose of making the co-operative societies broad-based and democratizing the institution rather than to allow them to be monopolized by a few persons. The action of the Chief Minister meant the very negation of the beneficial measures contemplated by the Act."

10. The principle laid down by the Supreme Court squarely applies to the present case. The Minister may exercise such administrative or supervisory powers as are permitted by law. However, he cannot take over the functions which the legislature has specifically entrusted to a statutory authority. The authority under the BTAL Act must independently consider the application

Uploaded on - - Downloaded on - 03/11/2026 22:30:06

for permission under Section 43 and decide the same in accordance with the provisions of the Act. The Minister could not have himself granted such permission or directed the authority to grant it. Therefore, clause 4 of the impugned order is also without jurisdiction and cannot be sustained.

11. Clause 5 of the impugned order directs the Tahsildar to implement the directions contained in clauses 2 and 3. Once this Court has found that clauses 2 and 3 themselves are without jurisdiction and are liable to be set aside, the consequential direction contained in clause 5 cannot independently survive. It has no separate legal basis and must also fall along with the earlier directions.

12. In view of the above discussion, clauses 2 to 5 of the impugned order are without jurisdiction and cannot be sustained in law. The same are accordingly quashed and set aside. The Petition is disposed of in the above terms.

(AMIT BORKAR, J.)

Uploaded on - - Downloaded on - 03/11/2026 22:30:06