

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.10 OF 2011

Ambernath Sahakari Samudayik Shetki  
Society Limited, Ambernath, Dist.Thane.

Appellant

versus

1. The State of Maharashtra
2. The Commissioner, Konkan Revenue Division,  
Mumbai.
3. The Additional Commissioner,  
Konkan Revenue Division, Mumbai.
4. The Collector, Thane.
5. The Tehsildar, Ulhasnagar, Dist.Thane.
6. Kalyan Dombivali Municipal Corporation.
7. vijay Shivaji More, R/o.Ulhasnagar.
8. Shivaji Mahadeo Shingote, R/o.Ambernath.

Respondents

WITH  
INTERIM APPLICATION NO.11554 OF 2025  
IN  
LETTERS PATENT APPEAL NO.10 OF 2011

Ambernath Sahakari Samudayik Shetki Society Ltd.

Applicant

versus

The State of Maharashtra and others

Respondents

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Mr.Atul G.Damle, Senior Advocate with Mr.Rupesh Lanjekar for Appellant.

Mr.Ashutosh A.Kumbhakoni, Senior Advocate, with Ms.Neha Bhide, Govt.

Pleader with Mr.P.G.Sawant, AGP for Respondent no.1 State.

Mr.B.D.Joshi for Respondent no.6.

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CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.

Date of Reserving the Judgment : 20<sup>th</sup> November 2025  
Date of Pronouncing the Judgment : 28<sup>th</sup> January 2026

**JUDGMENT (Per : Aarti Sathe, J.) :-**

1. This Letters Patent Appeal is directed against the judgment and order dated 28<sup>th</sup> January 2010 (hereinafter referred to as the “impugned order of resumption of land”) passed by the learned Single Judge, whereby Writ Petition No. 2267 of 1990 filed by the Appellant Society was dismissed and Respondent No. 1-State Government was allowed to resume all the lands which were not under cultivation.

2. This Letters Patent Appeal gives rise to a rather interesting and peculiar litigation wherein, on or about the year 1961, a vast tract of land belonging to the Respondent No. 1-State Government was given away to the Appellant Society, more in the nature of a largesse, which, to our mind, is rather perplexing, however, subject to the fulfillment of certain conditions. The non-fulfillment of conditions for the use of land by the Appellant was to result in the resumption of such land by Respondent No. 1-State Government. It is such action of the resumption, which has aggrieved the Appellant, giving rise to the litigation before the learned Single Judge.

3. Briefly the facts are: -

(i) The Appellant was formed in 1961 as a farming society under the then Bombay Co-operative Societies Act, 1925 and as such deemed to be registered under the Maharashtra Co-operative Societies Act, 1960. The Appellant was

registered on 21<sup>st</sup> June 1962 and commenced with having only 20 agriculturist members, but presently the society has more than 200 members who are purported to be collectively cultivating the land admeasuring 210 Acres, 32 Gunthas, 12 Anna from Survey No. 166 of Ambernath, Tal. Ulhasnagar, Dist. Thane (hereinafter referred to as the "Subject Land"). Respondent No. 1- State Government by letter dated 12<sup>th</sup> October 1961 informed the Conservator of Forest, Thane Circle, Thane, that the Respondent No. 1- State Government had taken a decision to grant certain forest land which otherwise was lying fallow to the Appellant for agricultural purpose and the land which could not be used for agricultural purpose was given to be used for planting trees such as cashew nuts, matchwood, etc.

(ii) On 15<sup>th</sup> January 1963, Respondent No. 1- State Government informed the Appellant by a letter of even date that directions have been issued to Respondent No. 4, i.e., Collector, Thane to allot the subject land to the Appellant (hereinafter referred to as the "grant"). It was specifically mentioned in the said letter that no permission was required to be obtained for the purpose of erecting godowns, poultry farms or farmhouses for the use of agricultural purposes/activities.

(iii) An order dated 21<sup>st</sup> October 1964 being an order for allotment of the subject land, was issued by Respondent no.4 in favour of Appellant subject to the conditions mentioned therein. The terms and conditions on which the aforesaid allotment was made were as follows:

*"a) The society shall pay no occupancy price for the grant.*

b) *The land shall be brought under cultivation within one year from the date of handing over possession and the grant shall be liable to be cancelled if the land is left fallow or neglected without valid reasons.*

c) *The society shall provide access to the cultivators and other persons who possess the land in the said survey number.*

d) *The society shall execute a Sanad in usual format before Mamlatdar Kalyan within 3 months*

e) *The village record should be corrected accordingly.”*

(iv) It is the Appellant’s case that the letter dated 21<sup>st</sup> October 1964 needs to be read alongwith the grant dated 15<sup>th</sup> January 1963 which categorically stated that such part of the land which cannot be cultivated should be utilized for cultivating trees such as cashew nuts, matchwood, etc. It is Appellant’s contention that the subject land allotted to the Appellant Society is a forest land and hence it was not possible to bring the same land under cultivation. Also a large portion of subject land was occupied by a Nalla running through the said land and certain other portions of the subject land were rocky and hilly and could not be brought under cultivation. Respondent No. 1-State Government wanted the Appellant to develop the subject land for agricultural purposes and hence they were assisted by the Soil Conservation Department, by which a substantial portion of land was brought under cultivation. However, the Soil Conservation Department informed the Appellant that it was not possible for them to bring the entire land under cultivation in as much as the other parts of the land were hilly and rocky areas and were submerged under the Nalla. The Appellant with the help of its members and labourers brought the remaining land capable of cultivation to its optimum usage. It is hence Appellant’s contention that all terms and conditions of the grant dated 15<sup>th</sup> January 1963, and the letter/order dated 21<sup>st</sup> October 1964 passed by the

Respondent No. 4 were complied with by the Appellant.

(v) It is the Appellant's contention that it also intimated to Respondent No. 4 that an area of 97 acres could not be brought under cultivation for several reasons. However, this 97 acres which could not be brought under cultivation was utilized by the Appellant for planting trees such as cashew nut, matchwood, etc. and hence the conditions of the grant dated 15<sup>th</sup> January 1963, and the letter/order dated 21<sup>st</sup> October 1964 were duly complied by the Appellant.

(vi) On 23<sup>rd</sup> November 1971, a show-cause notice was issued by Respondent No. 4 to the Appellant Society alleging that out of the total area of 210 acres of the subject land, only an area of 95 acres was brought under cultivation and therefore there was a violation of terms and conditions of the allotment letter/order dated 21<sup>st</sup> October 1964.

(vii) The Appellant by letter dated 10<sup>th</sup> October 1972 denied all the allegations made in the aforesaid show-cause notice. It is the Appellant's contention that the explanation provided by it in its reply dated 10<sup>th</sup> October 1972 was accepted by Respondent No. 1- State Government and resultantly the aforesaid show-cause notice was dropped.

(viii) On 5<sup>th</sup> June 1980, the Appellant received a second show-cause notice wherein allegations were made that out of the entire land of 210 acres, area of 97 acres, 16 gunthas and 12 annas was not brought under cultivation. It was further alleged that the Appellant without obtaining any permissions had changed the user of the land by constructing godowns, farmhouses and poultry farms on the subject land. It is the Appellant's case that one can draw an inference from the said show-

cause notice that an area of 113 acres was brought under cultivation, in as much as Respondent No. 4 has issued a show cause notice only in respect of 97 acres, 16 Gunthas and 12 Annas.

(ix) On 30<sup>th</sup> June 1980, the Appellant filed a detailed reply to the aforesaid show-cause notice inter alia, submitting that since there was no dispute regarding 113 acres which have been brought under cultivation by the Appellant on the part of Respondent No. 4, in so far as the balance 97 acres are concerned, the Appellant was willing to give up 35 acres of land which was not suitable for cultivation.

(x) On 15<sup>th</sup> April 1983, Respondent No. 4, without considering the reply and submissions of the Appellant passed an order for resumption of the entire subject land. Simultaneously, another order of even date was passed by Respondent No. 4 granting an annual lease of 50 Acres of land out of Survey no. 166 to the Appellant on the terms and conditions set out therein.

(xi) Being aggrieved by the aforesaid order of Respondent No. 4, the Appellant filed W.P. No. 1773 of 1983 before this Court, which was admitted and interim reliefs were granted in respect thereof. By virtue of this order passed in W.P. No. 1773 of 1983, the Appellant was able to retain the possession of the subject land.

(xii) On 26<sup>th</sup> June 1987, this Court by an order of even date disposed of W.P. No. 1773 of 1983 and set aside the order of resumption dated 15<sup>th</sup> April 1983 passed by Respondent No. 4 and remanded the matter back for fresh consideration after giving hearing to the Appellant. In such order, the Division Bench recorded a

finding that the Appellant had tried to cultivate the subject land which was not cultivable and it was only by their efforts that a larger part of the land has come under cultivation.

(xiii) On 19<sup>th</sup> August 1987, a third show-cause notice was issued by Respondent No. 4 calling upon the Appellant to give a detailed reply on the issue relating to resumption of the entire subject land. The litigation in the present Letters Patent Appeal has its genesis in the said show-cause notice.

(xiv) On 25<sup>th</sup> December 1987, a detailed reply was submitted by the Appellant in response to the aforesaid show cause notice and it was once again submitted that out of the 210 acres of the subject land, the Appellant Society had brought 175 acres of land under cultivation and the possession of 35 acres of land should be taken by Respondent No. 1 - State Government.

(xv) The Appellant with reference to the show-cause notice dated 19<sup>th</sup> August 1987 and the reply dated 25<sup>th</sup> December 1987, submitted another reply dated 18<sup>th</sup> October, 1988 providing reasons as to why 97 acres of the subject land could not be cultivated, and how the presence of a stream and scattered rocky terrain made a portion of the subject land unproductive.

(xvi) On 9<sup>th</sup> October 1989, Respondent No. 4 passed an order of resumption of entire subject land relying upon the site inspection report of the Tehsildar Ulhasnagar in which it was noted that the land admeasuring 132 acres was not put to use at all by the Appellant for the purpose for which the subject land was granted. It is Appellant's contention that such order is a non-speaking order and passed without considering the directions given by this Court in its order dated

26<sup>th</sup> June 1987. Being aggrieved by the aforesaid order, the Appellant Society filed an appeal before the Revenue Commissioner, Bombay.

(xvii) On 14<sup>th</sup> May 1990, the Appellate Authority/Commissioner, Bombay partially modified the order passed by Respondent No. 4 which reads thus: -

*“a) The land reserved for various public purposes shall be resumed by the Collector and handed over to KMC within three months.*

*b) The KMC shall pay a reasonable amount of compensation for the trees planted on the area of reservation and also for the authorized structures to the society.*

*c) The farm houses removed from the reservation site will be considered by the Collector for re-allotment of site on land which will be allowed to be retained to the society.*

*d) The collector shall re-calculate the area under cultivation and consider allowing the society to continue with this land considering their efforts to develop this land for last 30 years.”*

(xviii) The Appellant filed Writ Petition No.2267 of 1990 against the aforesaid order passed by the Commissioner, Bombay.

(xix) On 25<sup>th</sup> July 2005, a development plan with Excluded Portions (EP) were sanctioned by the Mumbai Metropolitan Regional Development Authority (MMRDA). The excluded portions sanctioned with certain modifications were brought into force with effect 1<sup>st</sup> September 2008 in terms of which various portions of the subject land have been reserved for various public purposes including construction of a government medical college attached with a Government Hospital.

(xx) On 13<sup>th</sup> February 2009, the Municipal Corporation passed a resolution in respect of various reservations made in the Development Plan which was sanctioned in the year 2005. It is pertinent to note that all these events happened prior to the dismissal of W.P. No. 2267 of 1990 filed by the Appellant.

(xxi) On 15<sup>th</sup> February 2010, the Tehsildar, Ambernath issued a letter to DILR to carry out measurement of the area under cultivation, out of the subject land and submit a report along with the map. On 7<sup>th</sup> October 2010, the DILR Ambernath submitted his report along with the map reporting the actual status of the land which was under cultivation and its user out of the subject land.

(xxii) On 9<sup>th</sup> November 2010 the Tehsildar Ambernath submitted a report to Respondent No. 4 wherein it was submitted that the Appellant had brought only 7.68.9 H (19 acre and 8 Gunthas) of the subject land under cultivation by planting some trees which were also being neglected and not looked after by the Appellant. Therefore, Respondent No. 4 requested the Tehsildar Ambernath to resume the remaining land admeasuring 85.28 H (213 Acre) land.

(xxiii) The Writ Petition No.2267 of 1990 came to be dismissed by the impugned order of resumption of land dated 28<sup>th</sup> January 2010 passed by the learned Single Judge, which is in challenge in the present Letters Patent Appeal.

(xxiv) The Appellant filed the Letters Patent Appeal on 4<sup>th</sup> March 2010 under Stamp No. 5826 of 2010 along with civil application, i.e. CA No. 1443 of 2010 for the stay of the impugned order of resumption of land. The aforesaid Letters Patent Appeal was dismissed by the order dated 7<sup>th</sup> May 2010, on account of non-removal of office objections. The Appellant thereafter filed a CA No. 354 of 2010 for restoration of the Letters Patent Appeal.

(xxv) On 3<sup>rd</sup> January 2011, Respondent No. 4 passed an order resuming 77.59.1 H (194 acres) land and further directed the Sub-Divisional Officer, Ulhasnagar to conduct a fresh inquiry as to whether any cultivation on the balance

land is being carried out. The aforesaid order passed by Respondent No. 4 has been challenged on 13<sup>th</sup> February 2015 by the Appellant through a revision filed before the Revenue Minister, Maharashtra. However, no order has been passed in this regard so far.

(xxvi) On 10<sup>th</sup> January 2011, the Circle Officer took over and obviously an ex-parte possession of the 77.59.1 H (194 Acre) land since despite notice, the representative of the Appellant did not remain present. On 11<sup>th</sup> January 2011, the fact of taking over of actual possession was communicated by the Tehsildar, Ambernath to Respondent No. 4.

(xxvii) In the meantime, on 11<sup>th</sup> January 2011, this court by two separate orders of the same date restored the Letter Patent Appeal (present appeal) and also granted ad-interim reliefs in terms of prayer clause (c) as prayed for in the CA. No. 1443 of 2010. Prayer Clause (c) in the aforesaid application reads thus:-

*“c. Pending the hearing and final disposal of the appeal this Hon’ble Court be pleased to issue an order of injunction restraining the Respondent Nos. 1 to 6 from disturbing the possession of the Applicant in respect of 210 acres, 32 gunthas, and 12 annas of land out of Survey No. 166 of Ambernath in Ulhasnagar Taluka, District Thane;”*

This Letters Patent Appeal was also admitted.

(xxviii) In the year 2012, Ambernath Municipal Council filed Civil Application No. 227 of 2012 seeking permission to develop the reservation site/plot as per the reservation shown and described in the sanctioned development plan. The said Civil Application came to be dismissed by this Court by an order dated 24<sup>th</sup> August 2012, on the ground that without due adjudication of the issue involved in the present appeal, the permission sought by Ambernath Municipal

Council cannot be granted.

(xxix) On 27<sup>th</sup> February 2014, another Civil Application No. 2 of 2014 seeking an identical relief was filed by the Ambernath Municipal Council, which was subsequently dismissed/rejected. In the said Civil Application, it was the contention of the Ambernath Municipal Council that the Appellant Society had given NOC to them to take possession of the subject land, which is under reservation. The Appellant rebutted this contention of Ambernath Municipal Council stating that the said NOC given by the Appellant stood cancelled vide Special General Body Meeting dated 12<sup>th</sup> January 2014.

(xxx) It is the Appellant's contention that pending the hearing of the present appeal, the Respondents have tried to take possession of the subject land from the Appellant and therefore the Appellant filed a Contempt Petition bearing Stamp No. 3811 of 2024 in this Court.

(xxxi) On 28<sup>th</sup> February 2023 the District Deputy Registrar, Cooperative Societies, Thane, after conducting various inquiries into the affairs of the Appellant under Sections 83 and 88 of the Maharashtra Cooperative Societies Act, 1960 passed an order for conducting test audit on the subject land of the Appellant, since various illegalities have been found in the conduct of the affairs of the Appellant.

In the said order the following illegalities have been listed out:-

- a) *Not conducting any activity at all relating to agriculture.*
- b) *Large encroachments have taken place on that portion of the land, which is butting main road.*
- c) *Using the land for unauthorized construction of chawls, illegally selling the rooms therefrom.*
- d) *Unauthorized Construction of shops and either letting them out or selling them.*
- e) *Enrolling rich and non-agriculturist persons as members of the Society,*

*while removing/terminating the membership of the original agriculturist, the founder members.*

*f) Transfer of plots allotted to the original members to such newly enrolled non-agriculturist members, by corruption.”*

4. It is in the backdrop of this chequered history that the issue which has fallen for consideration before this Court is whether the impugned order of resumption of land passed in the present appeal allowing the resumption of land in the hands of Respondent No. 1-State Government, has been passed on a correct appreciation of the facts.

5. Respondent No. 1-State Government has filed their affidavit dated 9<sup>th</sup> January 2025, bringing on record all the developments which have taken place post filing of the present Letters Patent Appeal. In the said affidavit, the State has annexed letters issued by the respective authorities in Ambernath. Also a copy of the Panchnama conducted by the Tehsildar, Ambernath on 26<sup>th</sup> October 2010, a copy of the report dated 9<sup>th</sup> November 2010 from the Tehsildar, Ambernath to Respondent No. 4, and copy of the letter dated 11<sup>th</sup> January 2011 from the Tehsildar Ambernath to Respodnent No. 4 along with Panchnama and possession receipt of the Circle Officer are annexed. The aforesaid affidavit has been served to the Appellant, however, there is no rejoinder filed by the Appellant to the aforesaid affidavit.

6. We have perused the records, the impugned order of resumption of land.

7. We have heard learned counsel Mr. Atul G. Damle, Senior Advocate, along with Mr. Rupesh Lanjekar for the Appellant and learned counsel Mr. Ashutosh Kumbhkoni, Senior Advocate along with Ms. Neha Bhide on behalf of Respondent

No. 1-State Government. The contentions of both the parties have been heard at length, and we have given our anxious consideration to the issue at hand, considering the peculiar facts of the present case.

**SUBMISSIONS :**

8. Mr. Atul Damle, learned Senior Advocate, on behalf of the Appellant has submitted that the impugned order of resumption of land has been passed on a misappreciation of the facts of the case and is therefore liable to be quashed and set aside. His submissions can be summarised as follows-

(i) The impugned order of resumption of land has failed to take into consideration that by way of the grant dated 15<sup>th</sup> January 1963 read along with the letter/order of Respondent No. 4 dated 21<sup>st</sup> October 1964, wherein conditions were stipulated by Respondent No. 4 for the use of the subject land were fulfilled by the Appellant, hence there was no justification to resume the subject land by Respondent No. 1 - State Government.

(ii) The impugned order of resumption of land failed to take into consideration that the first order of resumption dated 15<sup>th</sup> April 1983 passed by Respondent No. 4 was set aside by a Division Bench of this court in W.P. 1773 of 1983 and the matter was remanded back for fresh consideration after giving a hearing to the Appellant. It is the Appellant's contention that the Division Bench recorded a finding in the aforesaid order that the Appellant has tried to cultivate land that was not cultivable and had, by their efforts, brought large area of land under cultivation.

(iii) The impugned order of resumption of land also failed to take into

consideration that post remand of the proceedings, a fresh show-cause notice dated 19<sup>th</sup> August 1987 was primarily issued only in respect of 97 acres of land and not the entire 210 acres of land, which has been sought to be resumed by Respondent No. 1-State Government. It is his submission, therefore, that it needs to be presumed that since the show-cause notice has been issued only for 97 acres of land, the remaining 130 acres of land was cultivated as per the conditions stipulated in the grant dated 15<sup>th</sup> January 1963 read with the conditions in the allotment letter/order dated 21<sup>st</sup> October 1964.

(iv) The impugned order of resumption of land further does not take into consideration the circumstances under which the Appellant could not bring the 97 acres of land under cultivation, for which show-cause notice has been issued in spite of detailed replies given by the Appellant. It was submitted that since the said 97 acres of land was not cultivable, the same was used for the purposes of horticulture, including planting of trees such as cashew nut, matchwood, etc; as was permitted by Respondent No. 1 by the letter/ order dated 15<sup>th</sup> January, 1963.

(v) It is also his submission that order dated 14<sup>th</sup> May 1990 which modified Respondent No. 4's order dated 15<sup>th</sup> April 1983 was not challenged by Respondent No. 1-State Government and therefore it can be presumed that Respondent No. 1-State Government has accepted the said order. In view thereof, he submitted that the impugned order of resumption of land cannot be sustained and deserves to be quashed.

9. Mr. Ashutosh Kumbhkoni, learned Senior Advocate, along with Ms. Bhide, Govt.Pleader on behalf of Respondent No.1-State Government has primarily

adopted the submissions made in the affidavit in reply dated 9<sup>th</sup> January 2025 and submitted that the Appellant has completely contravened the conditions as stipulated in the grant dated 15<sup>th</sup> January 1963 along with the letter/order of Respondent No. 4 dated 21<sup>st</sup> October 1964. He submitted that the very fact that the Appellant did not use the subject land for the purpose for which it was granted, i.e., agricultural purpose should be the sole ground on which the resumption of the subject land by the Respondents should be held to be justifiable. He submitted that the subject land was given on a non-occupancy price to the Appellant on the principles of encouraging farmers to jointly do farming and was based on a co-operative movement model. Respondent No. 1-State Government had given this land to the Appellant to encourage group farming and hence categorically put a condition that the land should be brought under cultivation within 1 year from the date of possession of the grant and the same shall, be liable to be cancelled if the land is left fallow or neglected without valid reasons. He submitted that it was rather unfortunate that the Appellant had not cultivated a single crop or utilised the subject land for agriculture inspite of the specific conditions in the said grant.

10. The relevant submissions made in the affidavit in reply dated 9<sup>th</sup> January 2025 filed by Respondent No. 1-State Government are reproduced below, which brings out on record events which transpired post passing of the impugned order of resumption of land -

*“a) Pursuant to the Order dated 28.1.2010, the Tahsildar, Ambernath, informed the Deputy Superintendent of Land Records, Ambernath, vide his letter dated 15.02.2010 to carry out measurement of the area under cultivation and to submit report along with a map. Hereto annexed and marked as Exhibit- I is a copy of the letter dated 15.02.2010.*

b) *I say that, accordingly, the Deputy Superintendent of Land Records, Ambernath, carried out survey and submitted his report dated 07.10.2010 alongwith measurement map to the Tahsildar. In the said report, it is stated that out of total area admeasuring 85-28-0 HR, area admeasuring 7-68-09 only used by the Petitioner for plantation of Teak (Sag) and fruits Trees. Hereto annexed and marked as Exhibit- 2 is a copy of the letter dated 07.10.2010 alongwith measurement map.*

c) *I say that, thereafter, panchanama was carried out by the the Tahsildar, Ambernath, in presence of five panchas and representative of the Petitioner. Hereto annexed and marked as Exhibit-3 is a copy of the Panchanama conducted by the Tahsildar, Ambernath, on 26.10.2010. I say that, thereafter, a report was submitted by the Tahsildar Ambernath to the Collector, Thane. In the said report, it is mentioned that only 7.68 Hectare land is used for plantation of Teak (Sag), Mango, Coconut Trees and on the rest of the land, there are Homes, Chawl being constructed illegally or without permissions of the authorities in that regard. Hereto annexed and marked as Exhibit-4 is a copy of the report dated 09.11.2010 from the Tahsildar, Ambernath to the Collector, Thane.*

d) *I say that, thereafter, the survey report and measurement map from the Deputy Superintendent of Land Records, Ambernath, Panchanama and site report from the Tahsildar, Ambernath, was submitted to the Collector, Thane, to take appropriate decision and pass an Order as per the Order passed by the Additional Commissioner, Konkan Division and confirmed by the Hon'ble Court in the Order dated 28.01.2010.*

e) *I say that, the Collector, Thane, after considering all the relevant documents, passed detailed Order on 03.01.2011, thereby holding that out of total land admeasuring area 85-28-0 HR only land admeasuring 7-68-9 HR was being used for plantation of Teak/Sag and Fruit Trees. Therefore, the Collector after recording the detailed reasons resumed the land 77-59-1 HR to the State Government. I say that, the Collector, Thane, in the said Order further directed the Sub Divisional Officer, Ulhasnagar, to find out the whether remaining land admeasuring 7-68-9 HR is used for agriculture purpose or otherwise? Hereto annexed and marked as Exhibit-5 is a copy of the Order dated 03.01.2011 passed by the Collector, Thane along with acknowledgment of service on the Appellant on 07.01.2011.*

f) *The Order dated 03.01.2011, passed by the Colector, Thane was served on Shri. Vishwas Vasant Mhaske President of the Appellant Society through Circle Officer, Ambernath on 7th January, 2011. Thereafter, on 10.01.2011, Circle Officer, went to take physical possession of the uncultivated land admeasuring 77-59-1 HR, however, the office of the Petitioner Society was locked and neither the president of the Appellant Society nor its members were present, therefore, the Circle Officer made panchnama and took ex-parte possession of the said land, in the presence of two panchas. I say that, thereafter exparte possession receipt and panchanama was prepared and the said uncultivated land admeasuring 77-59-01*

*HR was taken into the possession. I say that on the same day, after taking exparte possession of the said land, the same was intimated by the Circle Officer to the Tahsildar, Ambernath. I say that, thereafter, the Tahsildar, Ambernath, by his letter dated 11.01.2011, further informed the Collector, Thane about the said facts. Hereto annexed and marked as Exhibit-6 (Colly) are the copies of the letter dated 11.01.2011 issued by the Tahsildar, Ambernath to the Collector, Thane, alongwith Panchanama and exparte possession receipt.”*

11. Mr. Ashutosh Kumbhkoni, learned Senior Advocate, therefore submitted that considering the facts and the documents on record, coupled with the non-compliant conduct of the Appellant, this was a fit case where resumption of the subject land was rightly undertaken by the Respondents.

**ANALYSIS :**

12. After hearing the contentions canvassed by both the parties and from the perusal of the record, we are not persuaded to accept the contentions as urged on behalf of the Appellant. The following discussions would aid our conclusion.

13. On perusal of the record it definitely appears to be gross violation of the conditions stipulated in the grant dated 15<sup>th</sup> January 1963 and the letter/order dated 21<sup>st</sup> October 1964 by the Appellant. We doubt that the Appellant was ever conscious whether there is any rule of law considering the manner in which the land in question, a State largesse, was used by the Appellant at any point of time. This view also gets fortified considering the developments that have taken place post filing of the present Letters Patent Appeal, inasmuch as the Panchnama dated 26<sup>th</sup> October 2010 drawn by the Tehsildar, Ambernath on the basis of the report sent to him by Deputy Superintendent of Land Records, Ambernath, very categorically mentions that only 7.68 hectare (19 acres and 8 Gunthas) land out of the total 213 acres of land was used for plantation of teak (sal), mango, coconut

trees and on the rest of the land there are in fact homes, chawls which are being constructed illegally or without permission of the relevant authorities. The relevant portion of the Panchnama is reproduced below (translated version from Marathi) :-

*“We, the undersigned Panch Witnesses, residing at - Ambernath, give the Panchanama in writing as under :*

*We are called at the land, bearing S. No. 166 - part, admeasuring 85-28-0 Hecter Are, situated at Village-Ambernath, allotted to Ambernath Sahakari Samudayik Shetki Society Ltd., Ambernath. The Tahsildar Ambernath, Deputy Superintendent, Land Records, Administrator of the Shetki Society, the Circle Officer, Ambernath and Talathi, Ambernath are present at the said place at the time of drawing up of the panchanama.*

*The survey of the land allotted to the said Society is personally carried out in the presence of us, the Panch Witnesses. The said land is spread over from Shiv Ganga Nagar, Govind bridge to Shiv Temple and also from Navare Nagar to the boundaries of Morivali. The said land is situated in the heart of Ambernath City. The said land is allotted to the said Society for the purpose of carrying out collective farming. However, at the time of survey, it is found that no farming activity is carried out at the said place. The said land excluding some of its area allotted to the Society is fit for cultivation. The entire land excluding the streamlet passing through the said land and also the rocky land on the north -eastern side of the land is fit for cultivation. However, it is found that the Society has kept some land uncultivated and has allotted the said land to its members. Further, it is found that the said members have kept the said land uncultivated without carrying out any cultivation therein. Some of members have build houses, chawls and erected sheds at various places, unauthorisedly. Similarly, poultry sheds, stables have been erected at some places but the same are not in use. From out of the said land, area admeasuring 7.68 Hecter is seen covered with the plantation of teak wood trees and fruit trees and the same appear to have been planted many years ago. However, it is seen that the Society is not maintaining those trees. Grass, shrubs, and wild trees are seen grown naturally everywhere on the said land. Overall, it is seen that the Society is not carrying out any agricultural activity in the said land.*

*It is seen that besides the unauthorised structures constructed by the members of the Society without obtaining any permission therefor, approximately 400 to 500 encroachments are seen on the south-west and also on the north-east side of the said land. Thus, the said land is being used for other development purpose and commercial purpose other than farming.*

*The state of affairs as mentioned hereinabove are seen personally. And accordingly, the Panchanama is given in writing.”*

14. Further an order dated 3<sup>rd</sup> January 2011 was passed by Respondent No.4 which was post the passing of the impugned order of resumption of land and after considering all the documents, which held that out of the land admeasuring 200

Acres, only a very small part of the land was being cultivated. This order was, in fact, passed after obtaining a report of the ground realities as made by the Tehsildar, Ambernath in his Panchnama conducted on 26<sup>th</sup> October 2010, followed by a report dated 9<sup>th</sup> November 2010. The relevant findings in the aforesaid order are reproduced below (translated version from marathi) :-

*“AND WHEREAS, the Applicant Society did not agree to the aforesaid Order and therefore, it had filed Petition No.2267/1990 before the Hon'ble Bombay High Court and in the said Petition, the Hon'ble Court declared decision on the date 28.01.2010, thereby rejected the Petition filed by the Applicant Society and confirmed the Order dated 09.10.1989 referred to hereinabove at Sr. No. 5 under the Caption READ in the Preface. Pursuant to the said Order, the Tahasildar, Ambernath, Circle Officer and the Surveyor of the Office of the City Survey Office carried out inspection of actual site alongwith the representatives of the Samudayik Shetki Society Ltd. During the course of the said site inspection, it was found that the trees of teak/mango/coconut etc. have been planted on the area admeasuring 7-68-9 hectare-Are from out of the total allotted area admeasuring 85-28-0 Hectare-Are (210 acres, 33 gunthas and 12 annas) of the said Society. The plantation of the said fruit bearing trees and other trees is in a neglected state at sporadic places and they were planted many years ago and the Tahasildar, Ambernath, in his Report has mentioned that no cultivation or maintenance thereof is being carried out at present.*

*The land allotted to the Society is mostly fit for agriculture and as per the conditions of the Allotment Order, the Society was required to use the said land only for agriculture purpose. However, after completion of the site inspection, it is found that the Society has not fully utilized the land as intended in accordance with the terms of the Allotment Order. It was expected from the society to try to increase agricultural income by farming collectively. However, the area allotted to the Society is found to have been distributed by the Society/ Members and many members have constructed their houses, chawls, sheds unauthorizedly, without obtaining necessary permissions therefor. None of the members have kept continued the agricultural use of the said plot of land got distributed unauthorizedly. Thus, overall, it becomes clear that the Society has committed breach of the Order of the Government for allotment of the Land.*

*The Members only have carried out unauthorized construction works on a large scale on the land allotted to the Society as mentioned hereinabove. Similarly, encroachments have been made on a large scale towards the North-East and South-west sides of the said land. As a matter of fact, it was their first duty to protect the land allotted to them, from encroachments. However, it is found that the Society has never taken any preventive action in that regard. Due to all these reasons also, the Society has committed breach of conditions.*

*The Society has not taken any permission from this Office before increasing or making change in the number of its members. Moreover, on perusing the correspondence available with the Office of the Assistant Registrar, Co-operative Societies and also the Audit Report of the Society, it is found that there are many lapses in the affairs of the said society.*

*Therefore, considering all the aforesaid facts, it is found that the Society has not utilized the area allotted to the Society for the purpose for which the same has been allotted and thus, have committed breach of the conditions of the allotment of the said land. The said land is located in the central part within the limits of the Ambernath Municipality area and allowing the land located at such an important and prime place to remain unproductive, is a waste of government property.*

*On carrying out site inspection of the Society's land pursuant to the directions given in the Order of the Additional Commissioner, Konkan Division and also of the Hon'ble Bombay High Court, Mumbai in this matter, it is necessary to take into consideration the area brought under cultivation while taking action in respect of commission of breach of conditions.*

*On perusing the Report submitted by the Tahasildar, Ambernath referred to hereinabove at Sr. No. 8 under the caption 'Read', in the Preface and the Site-Inspection Map, it is found that the society has planted the fruit bearing trees like Teak, Mangos, Coconut etc. and other trees on the land admeasuring 7-68-9 H. Are from out of the total area. The Tahasildar, in his Report, has mentioned that the said trees were planted many years ago and that the same are not being maintained. However, it is necessary to comply with the Point No. 4 of the Order of the Additional Commissioner, Konkan Division in Appeal No. LNA 55/89 dated 14.05.1990. Therefore, the Sub-Divisional Officer along with the Taluka Agricultural Officer, should carry out re-inspection as to whether the said area admeasuring 7-68-9 H. Are from out of the total area is under cultivation and should take final decision in respect of the said area. Moreover, as the Ambernath Sahakari Samudayik Shetki Society Limited has not carried out any cultivation on the remaining area of the said land and carried out construction works on the said plot of land unauthorizedly instead and thus, committed breach of conditions and therefore, it is necessary to forfeit the said remaining plot of land to the Government.*

*THEREFORE, considering the entire above-mentioned facts, I, the Collector, Thane, in exercise of the powers delegated to me, pass the Order, as under.*

*1. Ambernath Sahakari Samudayik Shetki Society Limited is directed to surrender to the Government, the area admeasuring 77-59-1 H. Are not brought under cultivation, from out of the area admeasuring 85-28-0 H. Are of the land bearing Survey No. 166 situated at Village Ambernath, Taluka Ambernath, District Thane.*

*2. Directions are given to the Sub-Divisional Officer, Ulhasnagar, to carry out re-inspection along with the Agricultural Officer to find out as to whether the remaining area admeasuring 7-68-9 H. Are is under cultivation and thereafter, to take final decision in respect thereof.*

*3. This Decision should be intimated to all the Parties concerned.”*

15. Pursuant to the aforesaid order dated 3<sup>rd</sup> January 2011 passed by Respondent No. 4, the Tehsildar, Ambernath has taken possession of 77.59.01 H (194 acres) area of land, inasmuch as none of the office-bearers of the Appellant remained present when the Tehsildar Ambernath took possession of the subject land, inspite of the service of the order dated 3<sup>rd</sup> January 2011 on them. We have thus a grave doubt whether the Appellant in the legal character (whatever it was) as it originally existed continues to be so to take the benefit of the original grant at all survives. Further, as noted in paragraph 5 above, there is no rejoinder filed to the affidavit dated 9<sup>th</sup> January 2025 filed by Respondent No. 1.

16. We are further inclined to accept the submissions made by Mr. Ashutosh Kumbhkoni on behalf of the State Government, to the effect that the State Government, has proceeded to take steps for the resumption of the subject land post dismissal of W.P. No. 2267 of 1990 filed by the Appellant in this Court. Thus, the submission made by Mr. Damle in rejoinder that the show-cause notice dated 19<sup>th</sup> August 1987 was issued only in respect of 97 acres which was sought to be assumed and that the remaining 113 acres was cultivated, hence, not a subject-matter of resumption, does not impress us, inasmuch as, both the Panchnama dated 26<sup>th</sup> October 2010 and the order dated 3<sup>rd</sup> January 2011 categorically record that the land was not used for the purpose of cultivation as mandated in the grant dated 15<sup>th</sup> January 1963 and the letter/order dated 21<sup>st</sup> October 1964. This, to our mind,

is a complete violation of the terms and conditions of the grant, which has been perpetrated by the Appellant, especially in view of the fact that the subject land was granted to the Appellant on a gratis basis/purely exgratia and de hors the normal method of allotment of State largesee. Such a large tract of land was granted to the Appellant, specifically for the purpose of cultivation, although not as per the rules and regulations, that would *stricto sensu* govern allotment of public lands, as otherwise would be done, only making a glaring exception, disregarding that the public land could have been used for any larger public good. However, unfortunately the Appellant completely and wholesomely flouted all the conditions and let the land to be encroached/misutilized by affluent people and exploited the same for farmhouses, commercial purposes etc by breaching the conditions with impunity under which the land was allotted to them. It is this illegality which would prevail, is likely to be recognized if we accept the Appellant's contention.

17. We are also informed by the learned counsel for Respondent No. 1-State Government Mr. Ashutosh Kumbhkoni, Senior Advocate, that even as of date there is not a single crop which is standing on the subject land. In fact, it is his submission that illegal houses/ farmhouses and other structures have come up on the subject land and the original owners/ farmers to whom the subject land was given are nowhere in the picture anymore. Learned Counsel for the Appellant, Mr. Atul G. Damle, Senior Advocate was unable to rebut this submission made on behalf of Respondent No. 1-State Government muchless on any material. We are therefore inclined to accept the submission of Respondent No. 1-State Government that the resumption of the subject land has been rightly made. This

resumption becomes more crucial now inasmuch as parts of the subject land as per the Development plans sanctioned in 2005, have been reserved for public purposes which now need to be implemented.

18. Further in our view it is important to note that at the time when the subject land was granted to the Appellant, the value thereof would be a modest figure, and with the passage of time its value has increased substantially. It is therefore rather unfortunate that the subject land which was granted to the Petitioner with certain end-use conditions i.e. primarily for agricultural purposes has been neglected and in fact breached with impunity for commercial exploitation which was never the intention of the grant. In fact, such large tracts of land can be beneficially used for public purposes and therefore the conduct of the Appellant in not putting it to the right use has deprived the public at large of a prime parcel of land.

19. Learned Single Judge has appropriately considered the glaring facts of the case and has recorded findings which are completely supported by the record to the effect that the Appellant did not use the subject land as per the conditions stipulated in the grant read with the order dated 21st October 1964. Further, the crucial condition of the order dated 21st October 1964 was that the subject land had to be used for cultivation and the same has not been used by the Appellant for the said purpose. The relevant observations as made by the learned Single Judge are required to be noted :-

*“13. This forms only a small part of the land leased in 1962. In the remainder of the lands, cultivation is essentially not seen. The Petitioner's own Replies show that a large part of the lands has not been brought under cultivation as required under the lease. The brick kiln, store rooms/godowns, Society's office etc. illustrate non-agricultural user. Further lands are also not*

*asked for agriculture and brought under cultivation on the ground that they are rocky and used for cattle grazing. No land has been returned to the Collector or refused to be accepted on the ground of its unsuitability being rocky land. No notice to the Collector has been given since 1962, showing that rocky lands would not be able to be used for agriculture/cultivation or for permission to graze cattle. Hence the Petitioners are bound to follow the condition of lease in the absence of any allowance or permission or taking out of the purview of the lease any land found unsuitable or in the absence of any other novation of their contract of lease.*

*14. Clause 4 of the impugned order has directed the Collector to recalculate the area which is under cultivation. That order cannot be faulted. For the remainder of the lands, the Collector's order stands. Such part of the lands as are found to be not agricultural upon inspection by the Collector must be reverted to the State. The State shall be entitled to resume all the lands not under cultivation.*

*15. Consequently, the impugned order cannot be faulted. No irregularity is seen therein. The Writ Petition is, therefore, dismissed. Rule is discharged accordingly."*

20. We are accordingly in complete agreement with the observations as made by the learned Single Judge. The entire conduct of the Appellant Society has been far from being compliant, and this to our mind cannot be protected under any provision of law. The State Government has passed the order dated 15<sup>th</sup> April 1983 of resumption of land which is completely in accordance with law. Consequently, Respondent No.1-State Government is directed to resume the entire area of the subject land in accordance with law within a period of three months from today. Further action in respect of any illegal encroachments on the subject land may also be taken in accordance with law within such period.

21. In the light of the above discussion, the present Letters Patent Appeal is devoid of merits. It is accordingly dismissed. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)