

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9384 OF 2014

WITH

INTERIM APPLICATION NO.10178 OF 2022

IN

WRIT PETITION NO.9384 OF 2014

SHABNOOR
AYUB
PATHAN

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SHABNOOR AYUB
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Date: 2025.12.19
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Uday Bhanudas Gujar,

Age 65 years, Occu.: Agriculturist,

R/at: 10, Dhanashree Society,

Karve Nagar, Pune 411 052

... Petitioner

V/s.

1. Madan Yeshwant Diwan,

Age : Adult, Occupation: Business

2. Alka @ Mithila Madan Diwan,

Age : Adult, Occupation: Business,

Both Nos.1 and 2 above R/at Survey

No.9/2/2, 'Deepashri', Near Mhatre

Bridge, Erandwane, Pune

3. The Deputy Collector (Rehabilitation),

Pune

4. The Sub Divisional Officer,

Bhor Division, Pune

5. The Divisional Commissioner,

Pune Division, Pune

6. Sahebrao Tatyaba Barke,

Age : Adult, Occupation: Agriculture,

R/at Wadgaon Dal, Taluka Bhor,

District Pune

... Respondents

Mr. Tejas D. Deshmukh a/w Mr. Ronak Utagikar, Mr. Onkar V. Somvanshi, for the Petitioner.

Ms. Sonali Kunekar, for Respondent Nos.1 and 2.

Mr. Aseem Naphade, 'B' Panel Advocate a/w Ms. M. S. Bane, AGP for the State – Respondent Nos. 3 to 5.

CORAM : AMIT BORKAR, J.

RESERVED ON : DECEMBER 4, 2025

PRONOUNCED ON : DECEMBER 19, 2025

JUDGMENT:

1. The challenge in this petition arises from the order dated 1 August 2014 passed by the Divisional Commissioner, Pune. By the said order, a purported appeal was entertained, and the sale permission dated 13 December 2010 granted in favour of the petitioner's vendor, respondent No.6, under Section 12 of the Maharashtra Rehabilitation Act, 1999 was revoked. This permission had already been acted upon by execution of a registered sale deed in favour of the petitioner. The subject land forms part of Gat No.36, which was originally owned by respondent No.6 as on 8 May 1995. Respondent No.6 had executed an agreement to sell in favour of one Satish Tanksale on that date. Satish Tanksale has, till date, not filed any suit for specific performance. On 15 July 2010, respondent No.6 applied to respondent No.4 under Section 12 of the Rehabilitation Act seeking permission to transfer the land to the petitioner. On 13 December 2010, respondent No.4 granted such permission. Pursuant thereto, on 31 March 2011, respondent No.6 executed a registered sale deed in favour of the petitioner and handed over

possession. On 25 April 2011, the petitioner's name was entered in the revenue record by mutation entry No.1579. Thereafter, on 19 April 2011, Satish Tanksale executed an agreement in favour of respondent Nos.1 and 2, on the basis of which they claim rights allegedly flowing from the agreement to sell dated 8 May 1995.

2. Respondent Nos.1 and 2 thereafter started interfering with the petitioner's possession over the land. The petitioner, therefore, filed Special Civil Suit No.1736 of 2011 on 30 August 2011 seeking an injunction to restrain respondent Nos.1 and 2 from disturbing his possession. The Trial Court granted the injunction on 10 May 2012. The said order was confirmed by the District Court.

3. On 9 November 2011, respondent Nos.1 and 2 filed Appeal No.44 of 2011 challenging the sale permission dated 13 December 2010 along with an application for condonation of delay. The petitioner filed his reply to the delay condonation application on 6 March 2012. On the same day, the petitioner also raised a specific objection regarding the maintainability of the appeal.

4. On 1 August 2014, respondent No.5 proceeded to hear the purported appeal on merits without first condoning the delay. Respondent No.5 cancelled the sale permission dated 13 December 2010 solely on the ground that respondent No.4 was not informed about the agreement dated 8 May 1995 and that Satish Tanksale was neither informed nor heard before grant of permission. Aggrieved thereby, the petitioner has approached this Court.

5. This Court, by order dated 26 February 2018, issued Rule in the present petition.

6. Mr. Deshmukh, learned Advocate for the petitioner, submitted that the Rehabilitation Act does not provide for any appeal against an order granting permission for transfer. He contended that the appellate order is therefore without jurisdiction. He submitted that an order granting permission does not amount to a decision or order under Section 247 of the Maharashtra Land Revenue Code, as it does not adjudicate any right, title, or interest. According to him, the expression order must be read in the context of the preceding word decision, which contemplates adjudication of rights. He further submitted that the reasons recorded in the impugned order relate to alleged civil disputes, which respondent No.5 was not competent to examine. He submitted that under Section 12(2) of the Rehabilitation Act, permission can be refused only if the proposed transfer defeats the object or provisions of the Act. He further submitted that respondent Nos.1 and 2 are not aggrieved persons and lack locus to challenge the grant of permission. According to him, Satish Tanksale acquired no right, title, or interest under the agreement dated 8 May 1995. Consequently, he could not have transferred any such right in favour of respondent Nos.1 and 2 by the deed dated 9 April 2011. He emphasized that Satish Tanksale never instituted a suit for specific performance. He submitted that once the permission was acted upon, the sale deed was executed, and possession was delivered, the authority under the Act had no power to cancel the permission.

7. Ms. Sonali Kunekar, learned Advocate for respondent Nos.1 and 2, submitted that respondent No.6 had entered into a registered agreement to sell with Satish Tanksale on 8 May 1995, which required disclosure while seeking sale permission. She submitted that respondent No.5 has passed a reasoned order holding that respondent No.6 suppressed the material fact of the existence of the registered agreement dated 8 May 1995. On that basis, respondent No.5 directed the petitioner to have his rights adjudicated by a competent Civil Court. She submitted that respondent No.5, being the controlling authority under Section 3 of the Rehabilitation Act, was justified in cancelling the permission after granting hearing to all parties. She contended that the petitioner obtained the permission by suppressing material facts, amounting to fraud on respondent Nos.4 and 5, and that the permission was contrary to the provisions of the Rehabilitation Act. On these grounds, she prayed for dismissal of the petition.

8. Mr. Naphade, learned Advocate for respondent Nos.4 and 5, submitted that the impugned order passed by respondent No.5 is appealable to the State Government under Section 248 of the Maharashtra Land Revenue Code, 1966. Alternatively, the petitioner could have invoked revisional jurisdiction under Section 257(4) of the said Code. He submitted that by the impugned order, the matter has been remanded to respondent No.4 for reconsideration. He invited attention to Section 247 of the Maharashtra Land Revenue Code and submitted that an appeal lies from any decision or order passed under the Code or under any other law for the time being in force. He submitted that Section 12

of the Rehabilitation Act does not exclude the application of Section 247 of the Code. He further submitted that although the appeal was filed before the Divisional Commissioner instead of the Collector, respondent No.5 still possessed revisional powers under Section 257 of the Code to examine the order dated 13 December 2010 passed by respondent No.4. According to him, the impugned order represents a bona fide exercise of statutory power. It does not disclose any deliberate recklessness, negligence, or misconduct as contemplated in paragraph 28 of the judgment of the Supreme Court in *Union of India v. K.K. Dhawan*, (1993) 2 SCC 56. Relying upon the decision in *P.C. Joshi v. State of Uttar Pradesh*, (2001) 6 SCC 491, he submitted that even if the order is erroneous, it does not justify any adverse action against the officer. He therefore prayed for dismissal of the petition.

9. The controversy before this Court is narrow in form but significant in consequence. It turns on a single core question. Whether the Divisional Commissioner possessed jurisdiction to entertain an appeal and cancel a sale permission granted under Section 12 of the Maharashtra Rehabilitation Act, 1999, after such permission had been acted upon and had culminated in a registered sale deed and transfer of possession.

10. The facts are largely undisputed. Respondent No.6, the original owner of the land, sought permission under Section 12 of the Rehabilitation Act to transfer the land to the petitioner. The competent authority, respondent No.4, granted such permission on 13 December 2010. Acting on that permission, a registered sale deed was executed on 31 March 2011. Possession was delivered.

Revenue entries were mutated. The transaction stood completed in the eyes of law.

11. Long thereafter, respondent Nos.1 and 2, who trace their claim to an un-enforced agreement to sell of the year 1995 executed in favour of one Satish Tanksale, approached the Divisional Commissioner by way of an appeal challenging the sale permission. That appeal was filed with delay. The delay was never condoned. Despite this, the Divisional Commissioner proceeded to examine the matter on merits and cancelled the sale permission on the ground of alleged suppression of the earlier agreement.

12. At the threshold, the submission of the petitioner that the very appeal was not maintainable deserves acceptance. The Rehabilitation Act does not provide any appellate remedy against an order granting permission under Section 12. The statute is self-contained. The authority granting permission acts as a designated authority under the special enactment. It does not act as a revenue officer exercising powers under the Maharashtra Land Revenue Code.

13. The law on this issue is no longer *res integra*. The Supreme Court in *Fulchand Bhagwandas Gugale v. State of Maharashtra (2005) 1 SCC 193* has authoritatively held that when an officer functions under a special statute, his powers are circumscribed by that statute alone. He does not act as a revenue officer under the Land Revenue Code merely because he also holds that office. Consequently, orders passed under the special statute do not automatically become amenable to appeal or revision under

Sections 247 or 257 of the Land Revenue Code.

14. Applying this principle, the order granting permission under Section 12 of the Rehabilitation Act cannot be treated as a decision or order under the Land Revenue Code. It does not adjudicate any civil rights. It merely grants statutory permission. Therefore, Section 247 of the Code has no application. The Divisional Commissioner could not assume appellate jurisdiction where none was conferred by law.

15. The submission on behalf of respondent Nos.4 and 5 that the Divisional Commissioner could still exercise revisional powers under Section 257 of the Code also cannot be accepted. Revisional power presupposes that the original order is one passed under the Code or under a law where the Code is made applicable. The Rehabilitation Act contains no such incorporation. The ratio of *Fulchand Gugale* squarely negatives this contention.

16. The further infirmity is procedural and fundamental. The appeal was filed beyond limitation. The application for condonation of delay was pending. Without deciding that application, the Divisional Commissioner could not have entered upon the merits. An authority cannot assume jurisdiction first and decide limitation later. Jurisdiction must precede adjudication. This alone vitiates the impugned order.

17. Even on merits, the reasoning adopted by the Divisional Commissioner is legally untenable. The existence of an agreement to sell does not create any right, title, or interest in immovable property. Satish Tanksale never sought specific performance for

over fifteen years. He conveyed no enforceable right to respondent Nos.1 and 2. A person without title cannot clothe another with title. Such parties cannot be treated as aggrieved persons under Section 12 of the Rehabilitation Act.

18. More importantly, the authority granting permission under Section 12 is not required to adjudicate private civil disputes. Section 12(2) permits refusal of permission only if the transfer defeats the object of the Act. The Act is concerned with rehabilitation and restrictions on transfer. It is not a forum for deciding rival contractual claims. The Divisional Commissioner cancelled the permission solely on grounds rooted in alleged civil disputes. That exercise travels far beyond the statutory limits.

19. Once the permission was acted upon and a registered sale deed came into existence, the statutory authority became functus officio. The Act does not confer any power of review or recall. Cancellation of a permission after it has fructified into a completed conveyance is wholly impermissible in the absence of express statutory authority.

20. The argument that the Divisional Commissioner acted bona fide or corrected a wrong cannot rescue the impugned order. As held in *Fulchand Gugale*, an authority cannot justify an illegal exercise of power on the ground that it produces a just result. Jurisdiction is not a matter of convenience. It is a matter of law. An order passed without jurisdiction remains invalid regardless of its perceived correctness.

21. The reliance on alternate remedies under Sections 248 or 257 of the Land Revenue Code is also misplaced. When the very assumption of jurisdiction is challenged, availability of an alternate remedy does not operate as a bar. The petitioner cannot be driven to a statutory remedy which itself is founded on an erroneous assumption of jurisdiction.

22. The submission regarding fraud is equally unsustainable. The alleged agreement of 1995 conferred no transferable interest. Non-disclosure of a legally irrelevant fact cannot amount to fraud. Fraud must relate to a fact which the law requires to be disclosed and which has a direct bearing on the statutory satisfaction. That is not the case here.

23. Viewed from any angle, the impugned order cannot be sustained. It suffers from lack of jurisdiction, procedural illegality, and substantive legal error. Upholding such an order would amount to permitting authorities to exercise powers not conferred by law. That course is impermissible.

24. Accordingly, the order dated 1 August 2014 passed by the Divisional Commissioner is set aside. The sale permission dated 13 December 2010 stands restored. The registered sale deed executed in favour of the petitioner remains valid and operative.

25. The petition is allowed in these terms. No order as to costs.

26. In view of the disposal of the writ petition, nothing remains to be adjudicated in the interim application. Hence, the interim application stands disposed of.

(AMIT BORKAR, J.)