IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1484 OF 1992

Smt. Saraswati Shamrao Dhere .. Petitioner
vs.
Khutub Babu Malani & Ors. .. Respondents

Mr. N. J. Patil for Petitioner.
Ms S. A. Mudbidri for Respondent No. 1.
Mr. Surel Shah for Respondent Nos. 3(a) to 3(d).

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 15 January 2015.
Date of Pronouncing the Judgment : 05 February 2015

JUDGMENT :-

1] This petition is directed against the judgment and order dated 9 August 1990 made by the Maharashtra Revenue Tribunal (MRT) setting aside the orders made by the Tahsildar declaring as invalid the sale of the suit property by respondent Nos. 2 and 3 in favour of respondent No.1.

2] This petition concerns the following property situate at Shiroli, Kolhapur :

Gat No.	**H.A.**	**Assessment**
131	1-17	15-00
43/1	1-52	18-06
43/2	0-02	00-19

3] The petitioner was the tenant in respect of the half portion of the aforesaid property and respondent Nos. 2 and 3 were the tenants in respect of the other half. By resort to the provisions contained in Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (said Act), the petitioner and respondent Nos. 1 and 2 purchased respective one half portion of the aforesaid property. This petition concerns the one half portion purchased by respondent nos. 2 and 3 and therefore it shall be referred to as '*the said property*'.

4] By an instrument of transfer dated 13 December 1983, respondent Nos.2 and 3 transfered the said property to Khutub Malani (original respondent No.1). Upon demise of said Khutub Malani, his legal heirs are now brought on record. There is no serious dispute that at the time of execution of instrument dated 13 December 1983, no previous sanction as contemplated by Section 43 of the said Act had been obtained from the Collector. Accordingly, the petitioner instituted Tenancy Case No.10 of 1984 before the Tahsildar, *inter alia,* seeking declaration that the transfer or alienation of the said property was invalid and the said property ought to be disposed of in terms of Section 84C of the said Act.

5] The Tahsildar, by order dated 2 September 1985, declared the transfer as invalid and directed action under Section 84C of the said Act. The appeal against such order was dismissed by the Assistant

Collector on 8 August 1988. Mr. Khutub Malani, then preferred revision petitions to the Maharashtra Revenue Tribunal (MRT), which has since been allowed by the impugned judgment and order dated 9 August 1990. The MRT, in its impugned order, has mainly relied upon sanction accorded by the Sub-Divisional Officer on 17 July 1984 as constituting '*regularisation*' of the transfer effected by the instrument dated 13 December 1983.

6] Mr. M. J. Patil, the learned counsel for the petitioner submitted that Section 43 of the said Act contemplates '*previous sanction*' in the matter of transfer of property purchased by a tenant under the said Act. In this case, admittedly there was no such previous sanction and the transfer was in breach of of Section 43 of the said Act. There is no provision for regularization of such invalid transfer and the only option open was to proceed under Section 84C of the said Act. In this regard, reliance was placed by Mr. Patil upon the following decisions:

(i) *Ashok Baburao Ingavale & Ors. vs. Pralhad Hari Bhate & Ors.*[1];

(ii) *Dadu Rau Yelavade (dead) by his heirs and Lrs vs. Himmat Rasul Patel*[2]; and

(ii) *Chandrabhan Chunnilal Gour vs. Shravan Kumar Khunnolal Gour & Anr*.[3]

1 2005(1) Mh.L.J. 446
2 AIR 1992 SCC 1093
3 1980 Mh.L.J. 690

7] Ms Mudbidri, learned counsel appeared for legal heirs of respondent No.1, only to state that they have taken away the papers from her. In such circumstances, learned counsel expressed inability to make any submissions in the matter, although due opportunity was duly afforded to her.

8] Mr. Surel Shah, the learned counsel appearing for respondent Nos. 3(a) to 3(d), defended the impugned order by making the following submissions:

(A) That under Section 84C of the said Act, Tahsildar can exercise jurisdiction either *suo motu* or on application of any person interested in the land which is alleged to have been transferred in breach of any of the provisions of the said Act. The present case, is not a case of exercise of *suo motu* jurisdiction. The petitioner cannot be regarded as '*person interested*'. Therefore, the very invocation of jurisdiction under Section 84C was infirm ;

(B) The obtaining of '*previous sanction*' under Section 43 of the said Act is not a mandatory requirement. The obtaining of *post-facto* sanction constitutes substantial compliance. In this regard, reliance was placed upon the decision in case of

Shri Deu Rudreshwar Temple Arvalem, Sanquelim, Bicholim, Bardez vs. Shri Dinkar Vassant Budkule & Anr[4];

(C) The said Act has been amended by Maharashtra Act No. I of 2014, which introduced an additional proviso after the existing proviso to Section 43(1). This amendment provides that no *previous sanction* shall be necessary for transfer of land, in respect of which ten years have elapsed from the date of purchase or sale of land under the said Act, subject to certain conditions. Such amendment, will clearly apply to the transaction in question and this is an additional reason not to interfere with the impugned order made by the MRT. In this regard, reliance was placed upon the decisions in cases of *K. C. Mukerjee, Official Receiver vs. Mr. Ramratan Kuer & Ors.*[5], *Dahiben (widow of Ranchhodji Jivani) vs. Vasanji Kevalbhai (dead) & Ors.*[6], and *Ishverlal Thakorelal Almaula (Deceased) after him his heirs and legal representatives vs. Motibhai Nagjibhai*[7].

9] The rival contentions, now fall for my determination.

4 1999(4) ALL MR 35
5 AIR 1936 Privy Council 49
6 1995 Supp (2) SCC 295
7 AIR 1966 SC 459

10] Section 43 of the said Act, reads thus:

> *"43. Restriction on transfers of land purchased or sold under this Act.- (1) No land purchased by a tenant under sections 32, 32F [32I, 32O, [33C or 43ID]] or sold to any person under section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment <u>without the previous sanction</u> of the Collector, such sanction shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government:*
>
> *Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, for raising a loan for effecting of any improvement of such land.*
>
> *(2) Any transfer of land in contravention of sub-section(1) shall be invalid."*
>
> *(emphasis supplied)*

11] Rule 25-A of the Bombay Tenancy and Agricultural Lands Rules, 1956 (said Rules), deal with the circumstances in which and conditions subject to which sanction shall be given by the Collector under Section 43 for transfer. The same reads thus:

> *"25-A. Circumstances in which and conditions subject to which sanction shall be given by the Collector under Section 43 for transfer --- (1) Under section 43, the Collector may give sanction for transfer of land in any of the following circumstances, namely:-*
>
> *(a) that the land is required for an agricultural purpose by industrial or commercial undertaking in connection with any industrial or commercial operations carried on by such-undertaking;*
>
> *(b) that the transfer is for the benefit of any educational or charitable institution;*

(c) that the land is required by a cooperative farming society;

(d) that the land is being sold in execution of a decree of a civil court or for the recovery of arrears of land revenue under the provisions of the Code;

(e) that the land is being sold bona fide for any non-agricultural purpose;

(f) that the land is being sold by a landowner on the ground that –

(i) he is permanently giving up the profession of agriculturalist, or

(ii) he is permanently rendered incapable of cultivating the land personally;

(g) that the land is being gifted in favour of -

(i) the bodies or institutions mentioned in section 88 A and clauses (a) and (b) of section 88 B, or

(ii) a member of the landowner's family;

(h) that the land is being exchanged -

(i) with land of equal or nearly equal value owned and cultivated personally by a member of the same family, or

(ii) with land of equal or nearly equal value situate in the same village owned and cultivated personally by another landowner with a view to forming a compact block of his holding or with a view to having better management of the land;

Provided that the total land held and cultivated personally by any of the parties to the exchange whether as owner or tenant or partly as owner and partly as tenant does not exceed the ceiling area as a result of the exchange;

(i) that the land is being leased by a landowner who is a minor, or a widow, or a person subject to any physical or mental disability or a member of the

> *armed forces or among the landowners holding the land jointly;*
>
> *(j) that the land is being partitioned among the heirs or survivors of the deceased landowner.*
>
> *[(k) that the land is being mortgaged in favour of a society registered or deemed to be registered under the Maharashtra Cooperative Societies Act, 1960, for raising a loan for paying the purchase price of such land;*
>
> *(l) that the land is being transferred to a person who by reason acquisition of his land for any development project, has been displaced and requires to be resettled.]*
>
> *(2) (a) Where the sanction for sale of land is given in the circumstances specified in clause (a), (b), (c), (e) of sub-rule (1), it shall be subject to the condition of the landowner paying to the State Government a Nazrana equal to 40 times the assessment of the land;*
>
> *(b) In the case of partition sanctioned under clause (j) of sub-rule (1), it shall be subject to the condition that the area allotted to each sharer shall not be less than the unit specified by the State Government under clause (c) of sub-section (1) of section 27.*

12] The conjoint reading of provisions under Section 43 of the said Act and Rule 25A of the said Rules, makes it clear that the sanction contemplated by the provisions, is indeed '*previous sanction*' of the Collector or the competent authority as may be prescribed. Further, it is also clear that the provisions contained in Section 43 (1) of the said Act are mandatory and any non-compliance would render the transfer of land invalid.

13] The said Act is a welfare legislation, enacted *inter alia* to prevent the exploitation of agricultural tenants as a class. The restriction in form of Section 43(1) of the said Act is necessary; as otherwise, it is possible that the tenants are exploited into effecting transfers, not merely to the detriment of their own interest, but also in the interest of agragrain reform. Further, under the provisions of the said Act, the tenants in cultivation on tiller's day, i.e., 1 April 1957 were vested with rights as deemed purchasers. The purchase price is to be determined by the prescribed authority under Section 32G of the said Act by applying the provisions under Section 32H of the said Act. There is no doubt that the purchase price so determined is a concessional one and may have no co-relation with the market price. Such beneficial provisions came to be enacted in furtherance of the vision of agragrain reform and not to enable the tenants to make commercial profits, by way of rampant sale of the property purchased under the provisions of said Act. If lands purchased by the tenants under the provisions of the said Act at concessional rates are permitted to be indiscriminately sold by such tenants for commercial gains, then the same would not be in furtherance of agragrain reforms. If therefore, the real intention of the Legislature as well as the whole scope of statute is to be kept in mind, then it is clear that the provisions of Section 43 are mandatory in nature. For the determination as to whether some provision is mandatory or directory, the language employed in the provisions is no doubt important. Further, it is necessary to consider the nature and design of the statute, the consequences which would follow from construing it one way or other; the impact of other provisions whereby the necessity of complying with the provisions in-question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; and above all, whether the object of the legislation will be defeated or furthered. Applying such tests, it has to be held that the provisions of Section 43 of the said Act bear a mandatory character.

14] In this case, Section 43 (2) of the said Act provides that a transfer in contravention of sub-section (1) shall be invalid. When consequences of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. Besides the provisions of Section 43(1) of the said Act provide that no land purchased by a tenant under specified sections of the said Act shall be transferred without previous sanction of the Collector. Thus the legislature has made use of negative words. One of the well known modes of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. *CRAWFORD*, on statutory construction has observed that prohibitive or negative words can rarely, if ever, be directory and this is so even though the statute provides no penalty for disobedience.

15] The provisions specifically makes reference to '*previous sanction*'. If the objective of said enactment is taken into consideration alongwith phraseology employed by the legislature, then the mandatory nature of the requirement contained in Section 43(1) cannot be diluted by permitting some *post-facto sanction* for a transfer in breach of Section 43(1) of the said Act. This would render the provisions of Section 43(2) as otiose. Accordingly, there is no merit in the contention that the provisions of Section 43 of the said Act are are only directory and that *post-facto* sanction constitutes substantial compliance.

16] In the case of *Ashok Baburao* (*supra*), this Court has held that even if portion of the land purchased by the tenant under the statutory provisions were to be transferred without obtaining previous sanction of the Collector under Section 43 of the said Act, that would tender such transaction invalid and the entire land will have to be resumed by the State Government in terms of Section 84-C(4) of the said Act, because Section 43 of the Act opens with the expression '*no land*' which would mean that even if portion of the land is transferred without previous sanction of the Collector, the entire land will have to be resumed and would vest in the State Government free from all encumbrances for disposal in terms of Section 84-C of the Act.

17] In case of *Dadu Rau Yelavade decd. by his heirs & Lrs.(supra),* the Supreme Court has held that where the sale by the landlord of his land was void in view of the provisions of Section 64(8), declaring that any transfer by a landlord after tiller's day would be void, the tenant would not acquire rights or title under the sale deed, even though subsequently, the proceedings under Section 32G were decided in favour of the tenant, the sale certificate issued in favour of tenant was regularised by ratifying the earlier transaction of sale. This is because, the sale of land by one of the tenant again would be invalid when it was effected prior to the date of the order of Revenue authorities under Section 32G, as on that date, the tenants would have no title of land in view of Section 64(8) of the said Act, which they could validly convey in favour of the purchasers. Further even if the subsequent conferment title on them by the order under Section 32G be treated to date back to the date of sale deed, still vendor being a tenant, who acquired title under the said Act, is sale his sale to purchaser will fail in view of the provisions of Section 43(2) of the said Act, providing restrictions on transfer of the land purchased under the said Act.

18] In case of *Chandrabhan Chunnilal Gour (supra)* in the context of Section 36(1) of the Bombay Public Trusts Act, 1950, this Court has held that the *previous sanction* is necessary to validate the transaction of transfer of trust property. *Ex-post facto* sanction cannot validate such a transaction. Section 36(1) of the Bombay Public Trust Act 1950, *inter alia* provided that no sale, exchange or gift or any immovable property and no lease for a period exceeding ten years in case of agricultural land and for a period exceeding three years in case of non agricultural land or building belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner. Sanction may be accorded subject to condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust. In this context, this Court has held that the use of the word '*previous*' before the word '*sanction*' in Section 36(1) means that sanction contemplated by sub-section (1) has to be obtained before the transaction is completed and not thereafter. *Ex-post facto* sanction cannot validate the transaction. Further, Section 36(1) is not merely procedural or technical and the provisions contained in Section 41E do not empower the Charity Commissioner to grant an *ex-post facto* sanction.

19] In case of *Shri Deu Rudreshwar Temple Arvalem, Sanquelim, Bicholim, Bardez (supra),* this Court was concerned with provisions under the Devasthan Regulations, which provided that a Devasthan cannot institute a suit without previous sanction of the Tribunal. In the context of the provisions of Devasthan Regulations and upon considering the scheme thereof, this Court held that the sanction contemplated was not necessarily previous sanction. The decision, cannot afford any assistance to the facts and circumstances of the present case.

20] The Section 84C of the said Act empowers a Mamlatdar to either *suo motu* or an application by a person interested to decide whether transfer or acquisition, made in contravention of any of the provisions of the said Act is or or is not invalid. In the present case, the Mamlatdar may not have exercised *suo moto* jurisdiction. The jurisdiction may have been exercised on basis of complaint by the petitioner. But, it may not be correct to accept that the petitioner is not at all the person interested in the property. Admittedly, the petitioner and respondent Nos. 1 and 2 purchased the said property under the provisions of the said Act. Section 83C(4) provides that once a transaction in respect of the land purchased and sold by a tenant is found to be invalid, such land shall vest in the State Government free from encumbrances. Thereafter it is for the Mamlatdar to determine the reasonable price and grant such land on new and impartible tenure in the prescribed manner and upon following order of priority. The priority list in this regard is contained in Section 32P(2)(c), which *inter alia* includes an agriculturist who holds either as owner or tenant or partly as owner and partly as tenant landless in area than an economic holding and who are artisans.

21] Taking into consideration such provisions, it cannot be said that the petitioner was not a person interested. Besides the phrase '*person interested*', in the context in which it finds place under Section 84C of the said Act has to be construed liberally. It is open to person to point out to the Mamlatdar that there has been a transfer of land in breach of the provisions of the said Act. Upon verifying the credibility of such information, if the Mamlatdar had reason to believe that the same is true, then it is for the Mamlatdar to initiate *suo motu* proceedings under Section 84C. In such circumstances, there is no merit in the contention of Mr. shah that the proceedings under Section 84C were without jurisdiction.

22] A similar objection was rejected by this Court in case of *Ashok Baburao* (*supra*), by holding that even though the persons referred to under Section 32P of the said Act may be the only '*interested persons*', the fact remains that *suo motu* proceedings can always be initiated by the authorities. Thus, even if, the complainant had no *locus standi,* this Court in exercise of writ jurisdiction will be justified in maintaining the order passed, if it was more than convinced that the reasons recorded were sound and tenable. Moreover, this Court would be loathe to exercise writ jurisdiction if erroneous order were to be restored. Accordingly, no merit was found in the objection based on doctrine of *locus standi.*

23] There is no necessity to go into the issue as to whether the amendment effected to Section 43 by the Maharashtra Act I of 2014 is retrospective in operation or not. This is because in the present case the transaction in question was effected on 13 December 1983 and the same was questioned by the petitioner soon thereafter, i.e., in the year 1984. At the date when the transfer was questioned, ten years had not lapsed from the date of purchase or sale of land under the sections mentioned in the sub section. This is also not a case where conditions specified in the amendment are alleged to have been complied with. Accordingly, amendment of 2014, even if the same is applied to the transaction in-question, the same does not save the transaction from being declared as invalid.

24] The rest of the decisions relied upon by Mr. Surel Shah were basically in the context of requirement taking cognizance of change in legal position. These decisions were referred in the context of the amendment effected to Section 43 by Maharashtra Act-I of 2014. As noted earlier, there is no necessity to go into this issue, because in the present case, the transaction in-question was effected on 13 December 1983 and the same was questioned soon thereafter, that is in the year 1984. In fact, the Tahasildar by order dated 2 September 1985 had declared the transaction as invalid. Accordingly, amendment of 2014, does not further the case of the respondents.

25] The Tahsildar and the Assistant Collector had rightly declared the transaction as invalid. The MRT was not right in observing that in the present case the requirement of previous sanction was not mandatory in character and that even a post facto sanction would suffice. Such view is contrary to the expressed provisions contained in Section 43 of the Act as also the decisions of this Court as well as the Supreme Court in the context of similar legislations.

26] For the aforesaid reasons, the impugned order is set aside and Rule is made absolute in terms of prayer clause (b). There shall be no order as to costs.

(M. S. SONAK, J.)