

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2890/2014

1. Shivajirao Vitthal Dongre,
aged about 54 Yrs., Occu. Agriculturist.
2. Keshao Vitthal Dongre,
aged about 54 Yrs., Occu. Agriculturist.
3. Ramesh Vitthal Dongre,
aged about 52 Yrs., Occu. Agriculturist.
4. Balshankar Vitthal Dongre,
aged about 80 Yrs., Occu. Agriculturist.
5. Parvatibai Wd/o Vitthal Dongre,
aged about 80 Yrs., Occu. Household.

All R/o Shivaji Ward, Pusad,
Tah. Pusad, Distt. Yavatmal,
through power of attorney holder
Shirish Shivajirao Dongre,
aged about 33 Yrs., Occu. Agriculturist,
R/o Shivaji Ward, Pusad,
Tah. Pusad, Distt. Yavatmal.

..Petitioners.

..Versus..

1. State of Maharashtra,
through its Secretary,

Ministry of Revenue Department,
Mantralaya, Mumbai - 32.

2. The Sub-Divisional Officer,
Pusad.
3. Vitthal Baba Dudhe,
aged about 64 Yrs., Occu. Agriculturist,
R/o Pusad, Tah. Pusad, Distt. Yavatmal.

..Respondents.

Shri R.L. Khapre, Advocate for the petitioners.
Shri D.M. Kale, A.G.P. for respondents 1 and 2.
Shri C.A. Joshi, Advocate for respondent no.3.

CORAM : Z.A. HAQ, J.

DATE : 23.6.2015

ORAL JUDGMENT

1. Heard Shri R.L. Khapre, the learned advocate for the petitioners, Shri D.M. Kale, the learned A.G.P. for the respondents 1 and 2 and Shri C.A. Joshi, the learned advocate for the respondent no.3.

2. **Rule.** Rule is made returnable forthwith.

3. The petitioners have challenged the order passed by the Maharashtra Revenue Tribunal, allowing the revision filed by the respondent no.3, setting aside the order passed by the Sub-Divisional Officer under Section 57 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "Tenancy Act of 1958") and refusing permission to the petitioners to sell the suit field.

4. The respondent no.3 was the original owner of the suit field. The petitioners, being tenants of the suit field, had applied for conferral of statutory ownership under the provisions of Tenancy Act of 1958. The Authorities under the Tenancy Act of 1958 passed orders conferring the statutory ownership of the suit field on the petitioners and fixing the purchase price and this order was maintained upto the Hon'ble Supreme Court.

The petitioners sought permission from the Sub-Divisional Officer, under Section 57 of the Tenancy Act of 1958 for transferring the suit field. The petitioners, in their application filed before the Sub-Divisional Officer had stated that they intended to sell the suit field after converting it for non-agricultural

purposes. The learned Sub-Divisional Officer by the order dated 5th February, 2011 partly allowed the application filed by the petitioners and granted permission to the petitioners to sell the suit field with restriction that the petitioners will sell the suit field only for agricultural purposes and after the sell of the suit field, the occupant would get the Occupancy Class-II Rights in respect of the suit field.

The respondent no.3 claiming to be aggrieved by the order passed by the Sub-Divisional Officer filed revision before the Tribunal, which has been allowed by the impugned order. The petitioners being aggrieved in the matter, have filed this writ petition.

5. Shri Khapre, the learned advocate for the petitioners have submitted that the respondent no.3 has no *locus* to raise any challenge in the matter inasmuch as after the claim of the petitioners' for conferral of statutory ownership has been upheld and the petitioners have become owners of the suit field, the respondent no.3 has no right and interest in respect of the suit field and, therefore, he could not have filed and maintained revision before the Tribunal. It is further submitted

that the Tribunal has committed an error in setting aside the order passed by the learned Sub-Divisional Officer relying on the provisions of Rule 31-A(e) of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Rules, 1959 (for short "Rules of 1959"). It is submitted that the above referred Rules prescribe the specified procedure for transfer of agricultural lands for non-agricultural purposes and in the present case the learned Sub-Divisional Officer had granted permission to the petitioners to sell the suit field for agricultural purposes only and the petitioners are satisfied with that.

6. Shri Joshi, the learned advocate for the respondent no.3 has submitted that the petitioners had sought permission to sell the suit field for non-agricultural purposes and the Sub-Divisional Officer could not have granted permission to the petitioners to sell the suit field for agricultural purposes, which was not the claim as made by the petitioners in the application filed by them. It is further submitted that the sale deed executed by the petitioners pursuant to the order passed by the learned Sub-Divisional Officer shows that they have committed breach of the conditions imposed by the Sub-Divisional Officer while granting the

permission to the petitioners to transfer the suit field. The learned advocate has submitted that the order passed by the Tribunal is proper and does not require any interference.

The learned A.G.P. has supported the impugned order.

7. After hearing the learned advocates for the respective parties and examining the documents on the record of the petition, I find that the conclusions of the Tribunal relying on the provisions of Rule 31-A(e) of the Rules of 1959 are unsustainable. The learned advocate for the respondent no.3 and the learned A.G.P. have not been able to point out any provision under the Rules of 1959 which prohibits the Authority from granting permission in favour of the petitioners for selling the suit field for agricultural purposes. The respondent no.3 has not challenged the grant of permission by the learned Sub-Divisional Officer on any other count.

8. The impugned order passed by the Tribunal is passed on misreading of Rule 31-A(e) of the Rules of 1959 and it cannot be sustained. The order passed

by the learned Sub-Divisional Officer is proper and cannot be faulted with.

9. In view of the above, the following order is passed :

- (i) The order passed by the Maharashtra Revenue Tribunal in Appeal No.TEN/B/22/2011 on 24th April, 2014 is set aside.
- (ii) The order passed by the Sub-Divisional Officer in Revenue Case No.10/MRC-81/2010-11 on 5th February, 2011 is restored.
- (iii) Rule is made absolute in the above terms.
- (iv) In the circumstances, the parties to bear their own costs.

JUDGE

C.A.W. NO.1706/2014.

In view of the judgment passed in Writ Petition No.2890/2014 on 23rd June, 2014 this application praying for dispensing with the translation of the document does not survive and is disposed of accordingly.

JUDGE

Tambaskar.