

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

WRIT PETITION NO.836 OF 2004.

(VIJAY BALAJI FUTANE...VS..STATE OF MAHARASHTRA & 11 OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.V.Shiralkar, Advocate for Petitioner.
Ms S.S.Jachak, A.G.P. for Respondent Nos. 1 to 4.
shri A.A.Bade, Advocate for Respondent Nos. 5, 7 to 12.

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 30, 2015.

After the matter was argued for some time Shri R.L. Khapre, learned advocate for the petitioner has pointed out the proviso below sub-section (1) of Section 57 of the Maharashtra Tenancy and Agricultural Land (Vidarbha Region) Act, 1958. This proviso is added by Maharashtra Act No.I of 2014. It reads as follows :

“57. Restriction on transfers of land purchased or sale under this Act. - (1) No land purchased by a tenant under Section 41 or 46 or 49-A or 57-D or 130 or sold to any person under Section 91 or 122 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction 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 previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sections mentioned in this sub-section, subject to the conditions that, -

(a) before selling the land, the seller shall pay a nazarana equal to forty

times the assessment of the land revenue to the Government ;

(b) the purchaser shall be an agriculturist ;

(c) the purchaser shall not hold the land in excess of the ceiling area under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 ; and

(d) the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 shall not be violated.”

Relying on the above proviso Civil Application No. 1975 of 2015 has been filed praying that the petition be disposed holding that the previous sanction of the Collector was not required for sale of the land in question. Alternatively it is prayed that the petitioners be permitted to withdraw the application which was filed on 18th July, 2002 seeking permission to sell the land and liberty is sought to file fresh application according to law.

The learned advocate for the respondent Nos.5 and 7 to 11 have opposed the prayers made by the petitioner in the Civil Application. It is submitted that the land in question is Class-II land and the sale of land is not permissible without previous sanction of the Revenue Authorities. It is submitted that the Authorities have properly considered all the aspects and the impugned order does not require any interference.

In my view, considering the facts of the present case, the petitioners can be granted permission to withdraw the application dated 18th July, 2002. As the petitioner is permitted to withdraw the application, the impugned orders which are passed while considering the application dated 18th July, 2002, do not survive.

The petitioners are granted liberty to take appropriate steps according to law.

The contentions raised on behalf of the respondent Nos. 5 and 7 to 11 about the legality of the sale of land in question on the ground that the land is Class-II land are not considered in this petition and are left open to be considered by the Authorities in appropriate proceedings.

The writ petition is **disposed of** accordingly. In the circumstances, the parties to bear their own costs.

JUDGE

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