

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1 WRIT PETITION NO. 8630 OF 2013

**BIRAJLAL MOTILAL KARVA
VERSUS
THE COLLECTOR, JALNA AND OTHERS**

Smt. Anjali Bajpai Dube, Advocate, for petitioner.

Shri. S.K. Tambe, Assistant Government Pleader, for
respondent Nos.1 to 4, 9 and 10.

Shri. Swapnil Patunkar, Advocate, for respondent No.5.

Shri. R.R. Mantri, Advocate and Shri. Sanjay R.
Choukidar, Advocate, for respondent Nos.7 and 8.

Shri. Vishal Bagadiya, Advocate, for respondent
Nos.11,13,15,18,19,22,28,36,37,39,40,41,42,44,45 and
46.

Shri. Mehul V. Navandar, Advocate, for respondent
Nos.12,16,17,20,29,32,34,35 and 38.

CORAM: T.V. NALAWADE, J.

DATE : 15 NOVEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the Hon'ble Minister for Revenue in Revision No.2013/CR 31/J-7. The revision was filed by present petitioner to challenge the order made by the Appellate Authority in Appeal No.34/2013. The appeal was filed

along with delay condonation application and the delay condonation application itself was rejected by the learned Commissioner, Aurangabad. This decision is confirmed by the Hon'ble Minister in revision. Both the sides are heard.

2) The dispute is in respect of N.A. Order made on 27-3-2002 in respect of land Survey No.40/1 situated at Ambad, Tahsil Ambad, District Jalna. It is the case of the petitioner that he purchased 58 R portion from one Jainarayan Gilda under sale deed dated 7-10-2006 of this property and due to the N.A. Order his rights will be affected as respondent No.6 and the family members of respondent No.6 are attempting to sell the portion which is purchased by present petitioner under the aforesaid sale deed. Argument was advanced in respect of other portion admeasuring 5 acres from the same land but the purchaser of that land is not party petitioner in the present proceeding.

3) The submissions made and the record produced show that the sale deed executed in favour of the present petitioner was under challenge in a civil suit. But the suit

is dismissed and first appeal is pending. In the first appeal present petitioner who is respondent in the appeal had applied for interim relief like injunction to prevent respondent No.6, his wife etc. from transferring the property shown to be purchased under sale deed of 2006. Injunction is granted and those parties are prevented from alienating the portion shown to be sold under sale deed of 2006 in favour of the petitioner. Similarly, in first appeal filed against the decision of the suit for specific performance, some interim relief is granted of similar nature. However, that matter need not be considered in the present matter.

4) The sale deed executed in favour of present petitioner shows that the petitioner purchased 58 R portion which was already converted to N.A. use in the year 2002. In spite of this circumstance, the petitioner wants to challenge the N.A. order. It can be said that the substantive matter is pending as first appeal and so the proceeding filed for challenging the N.A. order was misconceived. Further, it appears that the vendor of the present petitioner, namely Jainarayan Gilda had joined

with other respondents when the tentative layout plan was submitted for approval before the competent authority and the tentative layout plan came to be approved in the year 2004 and that map is on the record. Thus, apparently the rights of the present petitioner cannot be more and different from the rights of his vendor like Jainarayan but the petitioner is trying to challenge the N.A. order which was the basis of the sale deed executed in his favour in the year 2006. The learned counsel for the petitioner placed reliance on a case reported as **2006 (5) Bom.C.R. 610 (Estate Investment Company Private Limited vs. State of Maharashtra)**. The Division Bench has observed that rights regarding title in respect of the suit land cannot be decided in a proceeding filed for converting the land for N.A. use. There cannot be any dispute over the proposition.

5) The delay condonation application is rejected by the Appellate Authority and the Revisional Authority, Hon'ble Minister has dismissed the revision by making some observations. The appeal proceeding with delay condonation application was filed in the year 2013 when

the N.A. Order was made in the year 2002. In view of these circumstances, this Court holds that the appellate authority did not commit any error in rejecting the application filed for condonation of delay and the Hon'ble Minister has also not committed any error in dismissing the revision. It is needless to mention that the rights of the parties will be decided ultimately in the first appeal. With these observations the petition is dismissed.

Sd/-
(T.V. NALAWADE, J.)

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