

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

**SECOND APPEAL NO.419 OF 1992
WITH
CIVIL APPLICATION NO.5485 OF 1992
IN
SECOND APPEAL NO.419 OF 1992**

1.The State of Maharashtra (The	]	
Collector of Satara)	]	
2. Tahsildar of Koregaon, Taluka	]	
Koregaon, District Satara	]	..Appellants/Orgn. Deft.
		Nos.1 and 2

Vs.

1.Abdul Pirmahamad Inamdar (since	]
dead) through legal heirs	]

1a. Ismail Abdul Inamdar	]
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1b. Khairrudin Abdul Inamdar(since	]
dead) through legal heirs	]

1b-i. Asif Khairrudin Inamdar	]
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1b-ii. Smt. Munira Salim Mulla	]
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1b-iii. Smt Nilophar Hamid Mulla	]
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1b-iv. Smt Shabnam Farukh Mulani	]
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1b-v. Smt Sharifa Khairrudin Inamdar	]
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1c. Aayb Abdul Inamdar	]
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1d. Mussa Abdul Inamdar	]
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1e Mohd. Abdul Inamdar	]
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1f. Nazir Abdul Inamdar	]
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1g. Smt. Shakila Abdul Ajij Mulani	]
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2. Babu Shripati Madane (since dead)	]
through his legal heirs	]

2A.Chandrakant Baburao Madane	]
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2B. Nandkumar Baburao Madane	]
2C. Tai Tukaram Jadhav	]
2D. Savitra Jaganath Bodere	]
2E. Shobha Raghunath Jadhav	]
2F. Babai Madhukar Jadhav	]
2G. Gangubai Babu Madane (since dead	]
through legal heirs	]
2G-i. Chandrakant Baburao Madane	]
2G-ii. Nandkumar Baburao Madane	]
2G-iii. Tai Tukaram Jadhav	]
2G-iv. Savitra Jaganath Bodere	]
2G-v. Shobha Raghunath Jadhav	]
2G-vi. Babai Madhukar Jadhav	]..Respondents/Orgn.
	Plaintiffs.

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Mr. Rajan Pawar, AGP for the appellants/applicants.
None for the respondents.

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CORAM : N.M. JAMDAR, J.
DATED : 17 MARCH 2016

ORAL JUDGMENT:

. By this appeal, the State of Maharashtra challenges the judgment and decree passed by the District Judge, Satara dated 18 July 1991 allowing the appeal arising from judgment and decree passed by the Civil Judge, Senior Division, Satara dated 31 July 1987.

2. Respondent No.1 is the original plaintiff. He filed a Regular Civil Suit No.474/1985 against the appellant/State for declaration that the order of eviction passed by the appellant in

Vatan Case No.3/1978 dated 5 May 1978 is illegal and void and sought for injunction restraining the State from interfering with his possession of the suit land. The respondent No.1 (hereinafter referred as “the plaintiff”) purchased Revision Survey No.152 ad-measuring 12 acres and 19 gunthas situated at village Kinhai, Tal. Koregaon, District Satara from respondent No.3 on 28 March 1966. Respondent No.3 was an ex-watandar of the suit property. According to the plaintiff, Respondent No.3 was competent to dispose of the same after the suit land was re-granted to him. The learned Civil Judge considered the evidence on record and concluded that on the date of inquiry of eviction proceeding u/s.59(b) of the Maharashtra Land Revenue Code, the plaintiff had neither paid nazrana nor he had taken permission of the Collector as contemplated u/s.8(2) of the Bombay Inferior Village Watans Abolition Act, 1958 (for short “Abolition Act”). Learned Civil Judge accordingly concluded that therefore no right accrued to respondent No.1 to claim any relief against the appellant/State. Learned Civil Judge also held that the suit was not within limitation. Learned Civil Judge further held that though nazrana was paid subsequently, it would not cure the defect in the transaction of not obtaining requisite permission. Accordingly, learned Civil Judge dismissed the suit by order dated 31 July 1987.

3. Plaintiff thereafter filed an appeal in the District Court at Satara. The District Court held that action of the appellant was taken under undue haste and that the equities were in favour of

respondent No.1 since the ex-watandar, i.e. respondent No.2 herein, had already received the sale proceeds. The learned District Judge after referring to the provisions of the Abolition Act and the circulars, held that the policy of the Act and the circular contemplates that the moment additional payment is made, as a matter of formality order of conversion should be passed and the order of relaxation of consideration. The learned District Judge also held that the suit was within limitation. Accordingly, by the impugned judgment and order the District Court decreed the suit granting declaration that the order passed on 5 May 1978 to be declared as null and void and the appellant is restrained from disturbing the possession of respondent No.1.

4. The Appeal was admitted on 3/9/1992 on the following questions of law.

- “2. Whether or not the suit as filed by the Original Plaintiff challenging Eviction Order in Vatan Case No.3 of 1978 is barred by the law of limitation ?*
- 3. Whether or not, regrant of the suit land in favour of the defendant No.3 in terms of Mutation No.2407 was subjected to conditions of non-alignability and impariability ?*
- 4. Whether or not, the title under the sale deed in question can be legalized in the absence of the deposit of the Najrana amount, occupancy price and permission of the Collector contemplated under section 5(3) of the Abolition Act ?”*

5. During the pendency of the appeal, respondent No.1 expired and his heirs have been brought on record and they have been served. It appears that no vakalatnama on their behalf is filed. Respondent No.2 has been served. Respondent No.2 did not file written statement in the Trial Court.

6. I have heard Mr. Rajan Pawar, the learned AGP for the appellant-State.

7. As regards issue of limitation is concerned the Appellate Court as a finding on fact concluded that the suit was filed on 17 October 1985 after respondent No.1 was served notice on 4 July 1985. learned District Court Judge held that on the basis of mere mutation entry, it cannot be held that respondent No.1 had lost possession of the property and the suit was filed or that respondent No.1 apprehended his dispossession at the hands of the appellant. In the circumstances, there is no error in the view taken by the learned District Judge that the suit was within limitation.

8. As regard the other question of law in respect of effect of the provisions of the Abolition Act, it will have to be kept in mind that the Sale Deed in question is of 28/3/1966 executed nearly 50 years ago. Ex-vatandar is not contesting the proceeding and it is an appeal filed by the State. Learned District Judge has taken note of the law laid down by this Court in *Vithal Mondhelkar vs. The State of Maharashtra and others, 1981 Bombay Cases Reporter,*

38. In this decision, this Court has noted that after the additional payments are made, order of conversion and removal of restrictions on transfer should follow. During the pendency of the appeal, section 5 of the Abolition Act has been amended. Section 5(3) and clauses (a) & (b) have been introduced, giving power of relaxation on certain conditions to the State. Therefore, the fact that transaction has been entered into without taking requisite sanction will not *ipso facto* result in such transaction being illegal and an opportunity is being given to the purchaser of the said land upon certain condition being satisfied to apply to the State for relaxation. Therefore, the view taken by the learned District Judge as regards policy of the State cannot be faulted. It has come on record and it is not disputed that 10 times nazrana has been paid by respondent No.1. Once the State has made its intention clear by carrying out statutory amendment that relaxation can take place on deposit of monetary compensation and the fact that 10 times nazrana was paid by respondent No.2, I am of the opinion that after a period of 50 years, it will be against the policy of the Abolition Act itself to allow the appeal and set aside the protection granted to respondent no.1 from being dispossessed without due process of law.

9. In the circumstances, the judgment and decree passed by the learned District Judge, Satara being in consonance with the policy of the appellant and the law laid down by this Court in ***Vithal Mondhelkar vs. The State of Maharashtra and others*** (supra) and the subsequent amendments to the Abolition Act and

that period of 50 years has lapsed since the date of Sale Deed, the same will have to be confirmed. In the circumstances, appeal cannot be entertained and is accordingly dismissed. In view of dismissal of Appeal, Civil Application does not survive and is disposed of.

(N.M. JAMDAR, J.)