

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3261 OF 1997

Smt. Nasima Banu Sayyed
Nabi Ahmad, residing at
“Mandavi Mohalla”, At &
Post-Alibaug, Taluka-Alibaug,
District-Raigad

.....Applicant/Petnr
(Orig. Applicant)

V/s.

1. Smt. Jayashri Narayan Khambe
residing at & post Moronde,
Taluka-Alibaug, District-Raigad

2. Shri. Latif Mahamud Patil,
residing at & post Ramraj,
Taluka-Alibaug, Dist. Raigad,

3. The State of Maharashtra,
through Additional Collector,
Raigad, Alibaug.

4. Shri. Surendra Joshi,
Court Commissioner and Advocate
at & post – Alibaug, Taluka-Alibaug
District-Raigad

5. Shri. J.L. Pimple, President,
Maharashtra Revenue Tribunal,
Old Secretariat Annexe, Bombay

.....Opponents
(Opponent No.1 to
4 , Orig. Opponents)

Mr. K.P. Shah a/w. Mr. P.B. Shah, Advocate for the petitioner.

Mr. Anil L. Desai, Advocate for respondent no.1.

Mr. R.S. Desai a/w. Mr. Shakuntala A. Mudbidri for respondent no.2.

CORAM :- SMT. R.P. SONDURBALDOTA, J

DATED : 17TH JUNE, 2016.

JUDGMENT :-

1). This petition is directed against the order dated 29th March, 1996 passed by the Additional Collector, Raigad in Case No. Tenancy/KAT/2/4337/95 and the order dated 24th December, 1996 passed by the Maharashtra Revenue Tribunal in Revision Application No. Ten. A.109/96.

2). The petitioner had filed Special Civil Suit No. 10 of 1989 against respondent no.1 for specific performance of the agreement for sale of the land admeasuring 1 hectare 12 Ares at Survey No.31, now Gat No.39 of Moronde, Taluka-Alibaug, District-Raigad. The land at Survey No.31 was in possession and cultivation of one, Hari Pandu Khambe as a tenant. He became deemed purchaser thereof on the Tillers day. under Section 32 of The Bombay Tenancy and Agricultural Lands Rules, 1956. On initiation of the proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands

Act, 1948 (for short “the Tenancy Act”) and on payment of the purchase price, the land was transferred to the name of Hari Khambe. After the death of Hari, his son Narayan inherited the land and his name was mutated in the revenue records. Narayan agreed to sell a portion of that land for consideration of Rs.18,000/- under the agreement of sale dated 5th December, 1986 to the petitioner and had received a sum of Rs.4,000/- as earnest money. He had agreed to execute the necessary sale-deed in favour of the petitioner after obtaining permission for sale under Section 43 of the Bombay Tenancy Act. Narayan had, in the meantime, transferred a portion of that land to his wife, respondent no.1. When the transaction of sale was not completed by respondent no.1 and her husband, the petitioner had filed Special Civil Suit No. 10 of 1989 against them. It was decreed on 28th July, 1992. Respondent no.1 and her husband failed to obtain permission for sale from the Sub-Divisional Officer, Alibaug as required under Section 43 of the Bombay Tenancy Act within a period of 2 months from the date of the judgment. The petitioner therefore made an application to the Court for appointment of Commissioner to obtain necessary permission for sale and for execution of the necessary documents. That application was allowed and respondent no.4 was appointed Commissioner by the order dated 22nd June, 1994. Thereafter, respondent no.4 made the necessary application to the Sub-Divisional Officer, Alibaug Division, Alibaug for permission under Section 43 of the Bombay Tenancy Act for sale of the land to the petitioner. During pendency of that application, respondent no.2 appeared and filed an application on 13th March, 1995 claiming that

he is the owner and in possession of the land at Survey No.31 and requested that no permission for sale of the land be given to any person. Then, respondent no.1 and her husband also appeared before the Authority and stated that the land bearing Survey No.31 was not in their possession and cultivation but the same was in cultivation of respondent no.2. The authority then rejected the application by its judgment and order dated 29th March, 1996. Being aggrieved by that order of the Additional Collector, Raigad the petitioner filed Revision Application before the Maharashtra Revenue Tribunal. The Tribunal by its order dated 24th December, 1996 dismissed the Revision Application.

3). During the course of the hearing of the application filed by respondent no.4 under Section 43 of the Bombay Tenancy Act, the Collector had called for report from the Tahsildar who had visited the site and submitted his report on the basis of which the Collector had come to the conclusion that the land agreed to be sold to the petitioner was in possession to respondent no.2 and that respondent no.1 and her husband had no concern with the same. Respondent no.2 had contended specifically that, at the time of issuance of certificate under Section 32G an error had crept in the records as regards the description of the land. According to him, the description of the land owned by respondent no.1 and her husband, is Survey No.26 and not Survey No.31. The Collector noted that, the panchanama of the land at Survey No.31 drawn by Tahsildar showed that respondent no.2 had planted coconut trees on the land which were 8 to 9 years old. He also claimed to have planted 200 mango trees on the land. Besides, the map drawn by the

Competent Authority with the boundaries drawn of Survey No.26 and Survey No.31 indicated that there was mis-description of the land in the proceedings under Section 32G of the Tenancy Act. Further, respondent no.2 was not a party to the proceedings under Section 32G of the Tenancy Act and therefore the order on it was not binding on him. Also he was not claiming any right to the land at Gat No.26. The Tahsildar had recorded the statements of the adjoining landholders who had supported respondent no.2. In the circumstances, the Collector held that it will not be justified to grant permission for sale of the land at Gat No.31.

4). The Maharashtra Revenue Tribunal rejected the revision against the order. Considering the above facts and circumstances of the case, the Tribunal could not have passed any other order. It is surprising that, the petitioner instead of proceeding to take corrective steps as regards the description of the property sold to her, challenged the order of the Collector. In any case, though the Tribunal rejected the petitioner's revision, it has made an observation in favour of the petitioner. It has held that, no permission under Section 43 of the Tenancy Act need be taken in case of transfer by the heirs of the original tenant. The petitioner contends this view is not correct. However, in the facts and circumstances of the case, this aspect need not be gone into in the present proceedings.

5). For the reasons stated above, the Writ Petition is dismissed. Rule is discharged.