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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4560 OF 2016**

Smt. Namubai Bhima Chavan	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. Sanjay P. Shinde for the Petitioner.
Mr. Manish Pabale, AGP for the Respondent Nos.1 to 6.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 6th MARCH, 2017

PC.

1 Rule. Considering the nature of the order which we propose to pass, notice to seventh respondent may not be necessary. The learned AGP takes notice for the first to sixth respondents. Forthwith taken up for final disposal. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 19th May, 2015 passed by the Additional Collector, Malegaon, District Nashik.

2 By a registered sale deed dated 4th February, 2015 the petitioner purchased a land bearing Gat No.91 admeasuring 1 Hectare 27 Ares at village Vasantnagar, Taluka Nandgaon, District Nashik from the seventh respondent.

3 By the impugned order, the Additional Collector held that the seventh respondent who was the vendor of the petitioner was occupant Class-II. Therefore, a permission of the Divisional Commissioner was necessary for transfer of the said land. Therefore, a direction was issued to the petitioner to pay a sum of Rs.3,45,000/- as Nazrana amount. The order records that 50% of the current market value will be payable by the petitioner as Nazrana and 75% of the current market value will be payable as an unearned income. Apart from directing the petitioner to deposit the aforesaid amount, the said land was ordered to be resumed by cancelling the mutation entry made in the name of the petitioner on the basis of the sale deed.

4 It is not in dispute that now the petitioner has deposited the amount of Rs.3,45,000/-. The learned AGP on instructions of Shri Chandrakant Bhairavnath Devguni, Tahasildar, Nandgaon accepts that the impugned order was passed without giving an opportunity of being heard to the petitioner. The learned counsel appearing for the petitioner invited our attention to the copies of the applications made by the petitioner to the Additional Collector, Nandgaon and Divisional Commissioner, Nashik on 19th August, 2015 and 9th December, 2015 respectively. In both the applications, the petitioner has shown

willingness to deposit the requisite amount for conversion of the Class-II occupancy to Class-I occupancy. He has prayed for regularisation of the transaction of sale.

5 The learned AGP on instruction of Shri Chandrakant Devgune, Tahsildar, Nandgaon states that in view of the deposit of the amount of Rs.3,45,000/-, the Additional Collector has no objection if the order dated 19th May, 2015 is set aside and the case of the petitioner is considered for regularisation. We accept the said statement.

6 Perusal of the impugned order dated 19th May, 2015 shows that the order of resumption was passed basically on two grounds. The first ground is that as the occupancy of the vendor of the petitioner was Class-II, prior permission of the Divisional Commissioner was necessary for the sale. The second ground is that it was necessary for the petitioner to deposit Nazrana amount as well as unearned income. As directed under the impugned order, the petitioner has deposited a sum of Rs.3,45,000/-. As the said amount is lying deposited with the State Government, now the application made by the petitioner for regularisation will have to be considered by the Divisional Commissioner in accordance with law. We are directing the Divisional Commissioner to consider the said application as the impugned order

records that only the Divisional Commissioner could have granted a permission for sale.

7 If the prayer for conversion of occupancy from Class-I to Class-II can be considered by any other authority, the Divisional Commissioner shall accordingly forward the said request made by the petitioner to the concerned authority.

8 Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) The impugned order dated 19th May, 2015 is quashed and set aside;
- (ii) However, the petitioner will not be entitled to withdraw the sum of Rs.3,45,000/- deposited by her till the disposal of application for regularisation made by her and subject to the orders passed by the concerned authority on the application for regularisation;
- (iii) We direct the petitioner to appear before the Divisional Commissioner having office at Nashik Road, Nashik on 1st April, 2017 at 11.00 am. The petitioner or her

authorised representative shall personally remain present and produce a photo copy of office copy of application dated 9th December, 2015 (Exhibit – F to the Petition) as well as an authenticated copy of this order;

- (iv) We direct the Divisional Commissioner to consider the case of the petitioner for conversion of occupancy from Class – II to Class – I. If the Divisional Commissioner is of the view that power to do so is vesting in some other authority, the Divisional Commissioner shall forward necessary proposal to the concerned authority;
- (v) The Divisional Commissioner shall consider the case of the petitioner for regularisation of the sale transaction on the basis of the sale deed dated 4th February, 2015;
- (vi) It is made clear that in the event both requests made by the petitioner are accepted, if necessary, the petitioner will have to pay requisite amount over and above the sum of Rs.3,45,000/- as may be determined by the concerned authority;
- (vii) We make it clear that the Divisional Commissioner and/or the authority empowered to grant conversion

from occupancy Class – II to Class – I shall give an opportunity of being heard to the petitioner before taking any final decision;

(viii) Final decision on the prayers made in the application dated 9th December, 2015 shall be taken by the concerned authorities within a period of four months from 1st April, 2017;

(ix) We make it clear that till the time the sale in favour of the petitioner is not regularised, she will not be entitled to create any third party rights and transfer the possession of the said land to any third party;

(x) We make it clear that we have made no adjudication on the merits of the prayer for regularisation as well as conversion;

(xi) Rule is made partly absolute on above terms;

(xii) The Divisional Commissioner and all concerned shall act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)