

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9729 OF 2015

Hussain Shaikhji Mulla. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents
—
ShriSanjay D. Thokade for the Petitioner.
Shri Manish Pabale, AGP for the State.
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CORAM : A.S. OKA & A.K. MENON, JJ

DATED : 4TH APRIL 2017

PC.

1. The only substantive prayer in this Petition under Article 226 of the Constitution of India is the prayer clause (b), which reads thus:

“(b) This Hon'ble Court may please to issue Writ of Mandamus or any other appropriate Writ or Direction or order against the respondent Nos.1 to 3 to deliver possession of the suit land i.e. Gat No.546/A and 546/B (Old S.No.359/2/2) of Village Huljanti, Tal. Mangalvedha, Dist. Solapur as per order passed in RTS No.1/1988, forthwith.”

2. The Petitioner claims that the land subject matter of prayer clause (b) was a watan land which was regranted to his predecessor. On a Revision Application preferred by the Petitioner under Section 257

of the Maharashtra Land Revenue Code, 1966, the Sub-Divisional Officer passed an order holding that there was an illegal transfer of the said land made by the predecessor of the Petitioner in favour of one Jakaraya. In the said Revision Application, the Sub-Divisional Officer held that the said transaction was illegal. He observed that the further sale effected by the fourth Respondent in favour of the father of the fifth to seventh Respondents was also illegal. The Sub-Divisional Officer observed that if the Respondents in the Revision Application apply for regularization of the transaction, an action should be taken accordingly. He directed that on the failure of the Respondents in the Revision Application to apply for regularization, the land be restored to the original owner. In view of this order that the aforesaid substantive relief is claimed for delivery of possession.

3. We have perused the provisions of the Bombay Inferior Village Watan Abolition Act, 1958 (for short “the said Act”). There is nothing placed on record to show that the land subject matter of this Petition which is admittedly a watan land was regranted to the Petitioner's predecessor or to the Petitioner. Even assuming that it was regranted, the Petitioner's predecessor was not entitled to transfer the said land without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine. There is a specific provision to that effect

under Sub-section (3) of Section 5 of the said Act. Therefore, the transfer of the said land by the Petitioner's predecessor was held to be illegal.

4. It follows that on account of the transfer made by the Petitioner's predecessor admittedly in violation of Sub-section (3) of Section 5 of the said Act, the land will have to be resumed and, therefore, under no circumstances, the Petitioner is entitled to have the possession of the said land.

5. The learned counsel appearing for the Petitioner submits that after the land is resumed, the Petitioner may be permitted to apply for allotment of the said land under the Disposal of Government Land Rules framed under the Maharashtra Land Revenue Code, 1966.

6. It is well settled that a writ of mandamus cannot be issued by a High Court for enforcement of an order passed by a Quasi Judicial Authority which is contrary to the law. In the present case, the direction issued by the Sub-Divisional Officer of directing the return of the land to the Petitioner in the event of the failure of the transferees to apply for regularization is contrary to the provisions of the said Act. Therefore, the relief which is sought in this Petition cannot be granted in this Petition under Article 226 of the Constitution of India.

7. If the Petitioner is otherwise entitled to seek allotment of the said land in accordance with the Land Disposal Rules, this order will not prevent the Petitioner from making an appropriate application to the concerned Authority.

8. In view of what is observed above, the Petition is disposed of.

(A.K. MENON, J)

(A.S. OKA, J)