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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.608 OF 2016**

Shri. Rajaram Shankar Patil ... Petitioner
Vs.
The State of Maharashtra and Anr. ... Respondents

Mr. S.G. Karandikar i/by Ms. Manjiri S. Parasnis for the Petitioner.
Mr. Manish Pabale, AGP for the Respondent No.1.

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

DATE : 21st MARCH, 2017

PC.

1 Heard the learned counsel appearing for the petitioner and the learned AGP for the respondents. The land subject matter of this Petition is Gat No.176 admeasuring 3 Hectare and 57 Ares. The said land is situated at village Savli, Taluka Miraj, District Sangli. The land was allotted to one Shri Jairam Dattu Mulik, who was an Ex-Army personnel. An application was made by the said allottee seeking permission to transfer the said land. Accordingly, by the order dated 18th April, 2000, the Divisional Commissioner, Pune granted permission to the said allottee to sell the said land subject to payment of 50% of the unearned income being a sum of Rs.2,94,326/-. There was a condition

imposed in the said order that occupancy of the said land will continue to be Class – II. Various other conditions were imposed under the said order. The transfer by the allottee in favour of the petitioner was permitted. The petitioner had a grievance about the terms and conditions imposed by the Commissioner. The main grievance was that even after payment of unearned income of Rs.2,94,326/-, the occupancy of the said land will not be converted into Class – I. The first prayer in this Petition under Article 226 of the Constitution of India is for cancelling the Government Circular dated 9th July, 2002. The challenge is to that part of the circular by which it is provided that even after payment of unearned income, the purchaser of the land will continue to occupy as occupant Class – II. A prayer is also made seeking a writ of mandamus directing that the representation dated 15th December, 2008 (Exhibit – I to the Petition) be decided within the time bound frame. In the said representation, the contention of the petitioner is that subject to payment of unearned income, the occupancy of the said land be converted from Class – I to Class – II.

2 By an order dated 1st February, 2017 a direction was issued to the Principal Secretary of the Revenue Department to consider the issue whether there is any statutory power vesting in the State Government to permit conversion of occupancy from Class – II to Class

– I. On the basis of the said order, Shri Manu Kumar Srivastava, the Principal Secretary of the Revenue and Forests Department has filed an affidavit dated 6th March, 2017. The stand taken in the affidavit is that the circular dated 9th July, 2002 does not deal with conversion of the land from occupancy Class – II to Class – I. Reliance is placed on Rule 3 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 which provides that the State Government shall not part with the proprietary rights in the Government lands and shall only grant right to occupy and use the Government lands. The affidavit states that till Section 29-A of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”) was brought on the statute book with effect from 29th April, 2016, there was no power vesting in the State Government to convert occupancy Class – II into Class – I. He has further stated in the affidavit that provisions of Section 29-A can be implemented only after the Rules are framed. It is pointed out that a Study Group has been appointed to make recommendations. Today, a further affidavit is filed by Shri Sunildatta Bhikaji Patankar, Joint Secretary of the Revenue and Forests Department stating that report of the Study Group is expected within three months from today and within approximate period of one year from the date of submission of the report, an endeavour shall be made to notify the Rules in the Gazette.

3 Perusal of the impugned circular dated 9th July, 2002 shows that it is applicable only in case of Watan lands which are specified in paragraph 1 thereof. The circular dated 8th September, 1983 (Exhibit – A to the Petition) does not generally deal with the issue of conversion of Class – II occupancy into Class – I occupancy. After having perused the provisions of the said circular/notification and the provisions of the said Code, before Section 29-A was brought on the statute book by way of amendment, we find that there was no power vesting in the State Government for converting occupancy Class – II into Class – I. Section 29-A which is added by way of amendment in the year 2016 reads thus :-

“29-A. Notwithstanding anything contained in sections 20, 31, 35 and 38, but save as otherwise provided in the Maharashtra Tenancy and Agricultural Lands Act, the Hyderabad Tenancy and Agricultural Lands Act, 1950, the Maharashtra Paragana and Kulkarni Watans (Abolition) Act, the Maharashtra Service Inams (Useful to Community) Abolition Act, the Hyderabad Abolition of Inams and Cash Grants Act, 1954, the Maharashtra Merged Territories and Miscellaneous Alienations Abolitions Acts, the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, the Maharashtra Inferior Village Watans Abolition Act, the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and the Maharashtra Revenue Patels (Abolition of

Office) Act, 1962, the respective prescribed Competent Revenue Authority in respect of different categories of lands granted by the Government on Class-II occupancy or on leasehold rights, may convert the occupancy of any land belonging to such category of lands, granted on Class-II occupancy, or leasehold rights, as may be prescribed, into Class-I occupancy on payment of such conversion premium and after following such procedure and subject to such terms and conditions, as may be prescribed for different categories of lands.”

4 Section 29-A permits conversion of Class – II occupancy into Class – I occupancy in case of certain lands, as may be prescribed, on payment of such conversion premium and after following such procedure and subject to such terms and conditions, as may be prescribed for different categories of lands. Therefore, Section 29-A can be implemented only after the Rule making power is exercised by the State Government.

5 Coming back to the facts of the case, under the order dated 18th April, 2000 a specific condition was imposed that after the sale, the purchaser will continue to hold the said land as occupant Class – II. The said order was not challenged by the petitioner.

6 Hence, as the position stands today, the prayer made for conversion of the occupancy of Class – II to Class – I cannot be considered.

7 Though a writ Court cannot issue a writ directing the State Government to legislate, nevertheless the State Government will have to take all possible steps to ensure that Section 29-A can be implemented.

8 Though we are not entertaining this Petition, we are directing that the Petition be listed for reporting compliance with the assurances contained in the affidavit of Shri Sunildatta Bhikaji Patankar dated 21st March, 2017.

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

ORDER

- (i) The prayers made in the Writ Petition stand rejected;
- (ii) We accept the statements made in the affidavit of Shri Sunildatta Bhikaji Patankar and particular paragraph 5 thereof;

(iii) For reporting compliance as regards submission of the report by the Committee, notwithstanding the disposal of the Petition, the same shall be listed on 29th June, 2017 under the caption of “Directions”;

(iv) All concerned to act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)