

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2922 OF 1996**

1. Ramnath Kondaji Darade
R/o Nalwadi, Tah. Sinnar, District Nashik.

... PETITIONER

V E R S U S

1. Hirabai w/o Maruti Jadhav
(deceased through L.Rs.)
2. Mirabai Sudhakar Salve
R/o Saliwadi, Taluka Sangamner, District
Ahmednagar.
3. Sitabai w/o Gangaram Bhagat
(deceased through L.Rs.)
- 3-A Shri Vasant Gopal Bhagat
R/at – Gopal Nagar, Vighnadarshan, Plot
No.2, Antillery Center Road, Nashik.
4. Gitabai w/o Vithal Waghmare
C/o Vasant Gangaram Bhagar,
Chandanwadi, Patil Garrage, M. G. Raod,
Nashik Road.

.... RESPONDENTS

APPEARANCE :

Mr. P. N. Joshi for Petitioner.

Mr. A. L. Bhise h/f Mr. H. S. Venegaonkar for Respondent

Nos. 1 to 3.

**CORAM : K. K. TATED, J.
DATE : JULY 13, 2017.**

JUDGMENT

. Heard learned Counsel for parties.

2. The learned Counsel for Petitioner submit that he received letter dated 27th February, 2017 from the Respondents' Advocate that Respondent No.1 – Hirabai Maruti Jadhav has passed away on 12th November, 2016. The legal heir of Respondent No.1 are already on record as Respondent No. 2 Mirabai Sudhakar Salve. He submit that in view of this fact Petitioner may be permitted to carry out the amendment in cause title of the Writ Petition. Same is permitted.

3. Amendment to be carried out during the course of a day.

4. By this Writ Petition under Article 227 of the Constitution of India, Petitioner is challenging the Judgment dated 20th November, 1995 passed by Maharashtra Revenue Tribunal at Mumbai in Revision Application No. 4 of 1993 setting aside the order dated 26th September, 1988 in Vatan Case No. 1 of 1986 holding that Petitioner is trespasser in respect of the land bearing Gat No. 247 admeasuring area 1 Hectar 67 Ares at Mouza Nalwadi, Tahsil Sinner District Nashik.

5. The learned Counsel Mr. Joshi appearing on behalf of Petitioner submit that in the present proceedings earlier the land was awarded in favour of the Respondents on the basis of new tenures. Hence, the Respondents filed application. That application was allowed by the Tahsildar, Sinnar on 30th April, 1971 and awarded the said land on old tenures on same terms and conditions.

6. Thereafter the Petitioner by Agreement to Sale dated 17th June, 1970, 12th July, 1971 and 26th June, 1972, Petitioner agreed to purchase the suit land, from Respondents.

7. The learned Counsel for Petitioner submit that Petitioner filed Regular Civil Suit No. 236 of 1979 in the Court of Civil Judge, Junior Division, Sinnar against the Respondents for specific performance of Agreement for Sale dated 17th June, 1970, 12th July, 1971 and 26th June, 1972. That suit was compromised between the parties and thereafter they executed the Sale Deed dated 7th January, 1983 in favour of Petitioner.

8. The learned Counsel for Petitioner submit that Respondent No.1 - Hirabai Jadhav and others have earlier filed Vatan Case No. 1 of 1986 under Section 59 of the Maharashtra Land Revenue Code. That case was rejected by the Tahsildar by order dated 26th September, 1988. Being aggrieved by the same, Respondents preferred Appeal No. RTS.A.67 of 1989 before the Sub Divisional Officer, Niphad under Section 247 of the Maharashtra Land Revenue Code, 1966. That Appeal was rejected by the Sub Divisional Officer, Niphad by Judgment and order dated 18th September, 1992. Thereafter the Respondents preferred Revision Application No. 4 of 1993 before the Maharashtra Revenue Tribunal at Mumbai and Tribunal passed the impugned order dated 20th November, 1995 holding that Petitioner is in unauthorized occupation of the suit premises and directed the Petitioner to handover the same to the Respondents. The said order is challenged by the Petitioner before this Court.

9. The learned Counsel appearing for Petitioner submit that the Tribunal erred in coming to the conclusion that Petitioner is in possession of the suit land without any permission and/or any authority. He submit that in view of the Judgment passed by the Civil Judge, Junior Division, Sinnar in Regular Civil Suit No. 236 of 1979 Respondents executed the Sale Deed in favour of the Petitioner and handed over possession thereof. He submit that the Tribunal failed to consider the provisions of Section 5 of the Maharashtra Inferior Village Watans Abolition Act, which read thus :

“5. Regrant of watan land to holders of watan.

(1) A Watan land resumed under section 4 shall, in cases not falling under sections 6 and 9 be regranted to the watandar of the watan to which it appertained on payment by or on behalf of the watandar to the State Government of the occupancy price equal to three times the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the watandar shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; and all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land :

Provided that in respect of the watan land which was not assigned under the existing watan law as the remuneration of the inferior village hereditary office, an occupancy price equal to the amount of the full assessment of

such land shall be paid by or on behalf of the watandar for the regrant of such land.

(2) If there is failure to pay the occupancy price under sub-section (1) within the prescribed period and in the prescribed manner, the watandar shall be deemed to be unauthorizedly occupying the land and shall be liable to be summarily evicted therefrom by the Collector in accordance with the provisions of the Code.

[(3) [(a)] On or after the commencement of the Bombay Paragana and Kulkarni Watans (Abolition), the Bombay Service Inams (useful to Community) Abolition, the Bombay Merged Territories Miscellaneous Alienations Abolition, the Bombay Inferior Village Watans Abolition and the Maharashtra Revenue Patels (Abolition of Office) (Amendment) Act, 2000 (hereinafter, in this section, referred to as “the commencement date”), the occupancy of the land regranted under sub-section (1) may be transferred by the occupant for agricultural purpose, and no previous sanction or no objection certificate from the collector or any other authority shall be necessary for such transfer. After such transfer, the land shall be continued to be held by such transferee occupant on new and impartiable tenure (Occupant Class II), in accordance with the provisions of the Code;

[(b) Before the commencement date, if any such occupancy has already, without previous sanction or no objection certificate from the Collector or any other authority, been transferred by the occupant, for agricultural purpose, such

transfer may be regularised on the production of registered instruments such as sale deed, gift deed, etc. as a proof thereof, for such transfer. After such regularisation, the occupancy of such land shall be held by shch transferee occupant on new and impartiable tenure (Occupant Class II), in accordance with the provisions of the Code :]

Provided that, any such occupancy held on new and impartiable tenure (Occupant Class II) may, after the commencement date, be converted into old tenure (Occupant Class I) by the occupant by making payment of fifty percent of the amount of current market value of such land to the Government, and after such conversion, such land shall be held by the occupant as Occupant Class I, in accordance with the provisions of the Code :

Provided further that, if on the commencement date, any such occupancy has already, with the prior permission of the Collector or any other competent authority on payment of the appropriate amount as Nazarana, been transferred for non-agricultural use, such transfer of occupancy shall be deemed to have been made under the first proviso and the land shall be deemed to be held by the occupant as an Occupant Class I, in accordance with the provisions of the Code, with effect from the date of such transfer :

Provided also that, if on the commencement date, any such occupancy has already, without prior permission of the Collector or any other competent authority and without

payment of the amount equal to fifty percent, of the current market value of such land, as Nazarana, been transferred for non-agricultural use, such transfer may be regularised on payment of an amount equal to fifty percent of the current market value of such land for non-agricultural use as Nazarana, and an amount equal to fifty percent of such Nazarana as a fine, and on such payment, the occupant shall hold the land as an Occupant Class I, in accordance with the provisions of the Code.

(4) Notwithstanding anything contained in sub-section (3), the occupancy of the Mahar Watan land re-granted under sub-section (1), shall not be transferable or partiable by metes and bounds 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.]”

10. The learned Counsel for the Petitioner submit that authority below erred in coming to the conclusion that Petitioner ought to have obtain permission before execution of Sale Deed. Hence, the Petitioner's possession over suit land is unauthorized.

11. The learned Counsel for Petitioner submit that bare reading of Section 5 (3) of the said Act shows that it is not mandatory to take prior permission for entering into the Sale Deed. He submit that permission can be taken subsequently.

12. In support of this contention, the learned Counsel for Petitioner

relies on the Judgment of this Court in the matter of ***Bhagwantrao @ Bhagwan @ Bhagwat s/o Mahadu Munjane (since deceased by L.Rs) ..Vs.. State of Maharashtra & Ors., reported in 2011 (2) ALL MR 335***. He submit that in this authority our High Court held that the sanction contemplated under Section 5 (3) of the said Act can be granted even subsequently i.e. after the Sale Deed. To that effect the learned Counsel for Petitioner relies on paragraph 9 of the said Judgment which read thus :

“9. In “Sheikh Lal Vs. Malhari and others”, 1984 Mh.L.R.191, a somewhat similar fact situation was noticed by the Hon'ble Division Bench of this Court. A Division Bench of this Court held that the sanction contemplated under section 5(3) of the Bombay Watans Abolition Act can be granted even subsequently and, therefore, the occupant in possession of the land, in contemplation of such grant of sanction under section 5(3) of the Bombay Watans Abolition Act cannot be regarded as an unauthorised possessor. The relevant observations may be usefully quoted as below :

“Shri. Patil, the learned Counsel for the petitioner very fairly did not dispute that before transfer neither sanction of the Collector was obtained nor an amount equivalent to 10 times the revenue as fixed by the State Government by an order was paid before the transfer required under section 5(3). However, he invited our attention to two judgments of this Court in (1) Special Civil Application No. 2177/78, 2319/78,3322/78,3323/78 and 2413/78 decided on 20-7-1979 in the case of Kondhalkar Vs. The State of Bombay, and

(2) Writ Petition No. 261/80 decided on 17th June, 1983 in the case of Anandrao Shankar Vs. Smt. Sindhu, decided at Aurangabad. The view taken is that considering the policy of the State to regrant the Watan land to the ex-watandar on payment of Nazarana the granting of permission by the Collector was formal and it was not the intention of the legislature that a drastic step under section 59(b) of the Maharashtra Land Revenue Code should be taken in the matter for non-compliance. Reference has been made to various Government circulars to regrant watan land to old tenure on receiving Nazarana thereby removing the condition of non-transfer. In other words, it has been held that the sanction contemplated under section 5(3) of the Act can be granted even subsequently. It is apparent that the respondent No.1 had not moved the authorities for restoration of the land which means the respondent No.1 had never any intention to take back the land taking advantage of section 5(3). The petitioner has paid a huge sum of Rs. 4,000/- and is in possession of the property since 1974.”

13. During the course of argument, the learned Counsel for Petitioner submit that though the conditions were imposed by the Tahsildar at the time of passing order dated 30th April, 1971 granting the land on old tenure for payment of fine in case the same is transferred without obtaining prior permission, Petitioner is ready and willing to pay the same to Authority. He further submit that as on today the Petitioner is in possession of the suit land.

14. On the basis of these submissions, the learned Counsel for Petitioner submit that the impugned order passed by the Tribunal is required to be set aside.

15. On the other hand, the learned Counsel Mr. Bhise submit that he is unable to go on with the matter, as he do not have any instructions.

16. It is to be noted that the order passed by the Tribunal dated 20th November, 1995 in Revision Application No. 4 of 1993 is contrary to the view taken by this Court in the matter of ***Bhagwantrao @ Bhagwan @ Bhagwat s/o Mahadu Munjane (since deceased by L.Rs) ..Vs.. State of Maharashtra & Ors., reported in 2011 (2) ALL MR 335.***

17. It is to be noted that the Tribunal has held that under Section 5 of the said Act prior permission is mandatory to sale the suit property. The said issue is squarely covered in the matter of *Bhagwantrao Mahadu Munjane (supra)*. In that authority it is specifically held that it is not mandatory to obtain prior permission for sale and purchase of Vatan lands granted by the Authorities, on old tenure.

18. Considering the fact that both the parties entered into the Sale Deed as per compromise arrived in Regular Civil Suit No. 236 of 1979 and as per Section 5 of the Said Act, the Petitioner can make application after taking Sale Deed from the Respondents as held by this Court in the matter of *Bhagwantrao Mahadu Munjane (supra)*, I am of the opinion that, the impugned order passed by the Maharashtra Revenue Tribunal at Mumbai dated 20th November, 1995 is required to be set aside.

19. It is to be made clear that if the Petitioner makes application for permission as required under section 5 of the said Act, Authority to decide the same on its own merits, because same can be made even after purchase of the suit property as per the decision of this Court in the matter of *Bhagwantrao Mahadu Munjane (supra)*. Hence, the following order.

ORDER

Writ Petition allowed as under :

- (a) The judgment dated 20th November, 1995 passed by the Maharashtra Revenue Tribunal, Mumbai in Revision Application No. 4 of 1993 is set aside.
- (b) Liberty is granted to the Petitioner to make appropriate application under Section 5 of the Maharashtra Inferior Village Watans Abolition Act, 1958 within three months from today and that is to be decided by authority on its own merits.
- (c) No order as to costs.

(K.K.TATED, J.)