

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4043 OF 2017

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DATTATRYA BHIKAJI KAPOTE (DIED)
KAMALBAI BHIKAJI KAPOTE (DIED) L.RS.
MANDAKINI SUBHASH KAPOTE
VERSUS
VALMIK SUKHDEO KANDEKAR AND OTHERS.

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Advocate for Petitioners : Mr Chapalgaonkar Shailesh S.
Advocate for Respondent 1 : Mr R R Karpe Caveator.

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CORAM : V.K. JADHAV, J.
Dated: January 25, 2018

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PER COURT :-

1. I find no substance in this writ petition. The Petitioner is original Defendant No.3 in Special Civil Suit No.41 of 1998 instituted by Respondent No.1 for specific performance of contract as well as the decree for perpetual injunction against the present Petitioner and two more defendants in respect of the landed property. After the full-fledged trial of the suit, the learned Judge of the Trial Court has decreed the suit with costs as against original Defendant Nos.1 to 3 (including the present Petitioner) and further held that the Plaintiff is entitled for specific performance of contract for

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execution of the registered sale-deed from the Defendants, on Plaintiff depositing in Court a sum of Rs.20,000/- within one month and that is subject to sanction by the appropriate authority under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999. The learned Judge of the Trial Court has further directed that in the event of the appropriate authority not granting sanction for execution of the sale-deed, the Plaintiff would be entitled to refund of the consideration amount of Rs.20,000/- together with interest at the rate of 9% per annum from the date of institution of the suit till its realization. Being aggrieved by the same, the Defendants including the present Petitioner, preferred first appeal. However, the lower Appellate Court has confirmed the decree passed by the Trial Court. During the pendency of said first appeal, original Defendant No.3 (Appellant before the lower Appellate Court) died and as such, her legal heirs were brought on record before the lower Appellate Court. Being aggrieved by the judgment and order passed by the lower Appellate Court, the legal heirs of

original Defendant No.3 preferred Second Appeal No.436 of 2012 and this Court by order dated 19th July, 2012, partly allowed the second appeal to the extent of counter claim in as much as it is directed that in the event the appropriate authority refuses to grant sanction for execution of the sale-deed as directed in the decree of the Trial Court, then the Plaintiff shall deliver the possession of the suit property to the Defendants. Thereafter, none has challenged the said order passed by this Court and accordingly, the decree has attained the finality.

2. It is a part of the record that after decision rendered by this Court in the Second Appeal, the decree passed in the aforesaid suit has attained the finality. On 10.5.2013 respondent no.1 Walmik has filed the application before the Collector, Ahmednagar, wherein he has pointed out that the petitioners are deliberately avoiding to file an application seeking permission. Respondent No.1 has also pointed out in the said application that the provisions of the Maharashtra

Project Affected Persons Rehabilitation Act, 1999 (for short hereinafter referred to as the 'Act of 1999') cannot be made applicable to the suit land since the concerned Deputy Collector Rehabilitation, Ahmednagar has already informed that the aforesaid land does not come under the provisions of the Act of 1999. Even, respondent no.1 has also pointed out that there is no question of obtaining the permission under the Ceiling Act as held by the District Court while disposing of the appeal. However, there is an endorsement in respect of the suit land as "new tenure" and therefore, there is a difficulty in executing the sale deed in respect of the suit land. Respondent no.1 has also contended in the said application that his possession over the suit land is from 1995 and, as such, he is ready to comply the conditions of the 'new tenure' if converted into 'old tenure' and also ready to pay the Nazrana amount. On the basis of his application, the Tahsildar, Kopergaon was directed to submit the report and in turn, the Tahsildar, Kopergaon has directed the Circle Officer to submit the report. Thus, on 7.10.2013 the Circle Officer

Kopargaon has submitted the report to Tahsildar, Kopargaon. After receiving the said report from the Circle Officer, the Tahsildar, Kopargaon has submitted a detail report dated 30.10.2013 to the Additional Collector, Ahmednagar, Revenue, wherein the Tahsildar, Kopargaon has clarified that after Nazrana amount has deposited, such permission as sought can be accorded. Thereafter, the Collector, Ahmednagar has submitted a detail report to the Divisional Commissioner, Nashik Division, Nashik, Revenue Branch on 1.12.2014 seeking guidance and directions in respect of the report received from the Tahsildar. On 20.2.2014 the Divisional Commissioner, Nashik Division, Nashik has informed to the Collector, Ahmednagar to record the statements of the owners of the land and also submit the proposal in the prescribed form alongwith all the relevant documents. Thereafter, on 5.11.2015, the Additional Collector, Ahmednagar has submitted a detail report in the prescribed form alongwith the relevant documents to the Divisional Commissioner, Nashik Division, Nashik, Revenue Branch and in the said report also

mentioned that respondent no.1 herein is ready to deposit the Nazrana amount as determined and to that effect also filed affidavit before the authority. The Additional Collector, Ahmednagar has also stated in the said report that, as per the provisions of Section 81 of Jamin Mahsul Khand-2 Pariched 81 (Land Revenue Part II, Paragraph No.81), such permission can be accorded and accordingly recommended for grant of permission. Accordingly, on 8.12.2015 the Divisional Commissioner, Nashik Division, Nashik has passed the order directing the authorities to grant permission on fulfillment of the conditions as prescribed in the report submitted by the Additional Collector, Ahmednagar. Accordingly, on 15.12.2015 the Collector Ahmednagar, has granted permission directing respondent no.1 herein to deposit an amount of Rs.11,87,424/- (Rupees Eleven lacs eighty seven thousands four hundred and twenty four) in the office through the Tahsildar, Kopargaon. It is also a part of record that, on 28.12.2015 respondent no.1 has deposited the said amount, as directed. After deposit of the amount, the Additional Collector, Ahmednagar, by

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order dated 30.12.2015 passed the final order. Being aggrieved by the same, the petitioner herein has approached to the State Government by filing the Revision and the Hon'ble Minister, Revenue and by order dated 10.1.2017 dismissed the said revision and confirmed the order passed by the Additional Collector, Ahmednagar dated 30.12.2015, as aforesaid.

3. Meanwhile, on 3.1.2013 present respondent no.2A has filed an application before the Collector, Rehabilitation, Ahmednagar stating therein that the original owners are ready to deposit the Nazrana amount and necessary permission may be granted for execution of the sale deed of the suit land in favour of the respondent no.1. In consequence of the said application, the Deputy Collector, Rehabilitation, Ahmednagar, has directed the Tahsildar, Kopergaon to inspect the spot, carry out the inquiry and submit the report. Accordingly, the Tahsildar, Kopergaon has submitted the report on 30.4.2013 before the Deputy Collector, Rehabilitation, Ahmednagar, stating therein

that during the course of the inquiry, he has recorded the statements of the original owners, however, other co-owners have not given their consent for the said permission for the reason that, they would be rendered landless, if, the suit land is sold to respondent no.1 herein. The Tahsildar, Kopargaon in his report dated 30.4.2013 has informed to the Deputy Collector, Rehabilitation, Ahmednagar that there is no necessity to grant permission under the provisions of the Act of 1999, as the entire process of rehabilitation in the village Malharwadi and adjacent villages came to be cancelled. The Tahsildar, Kopargaon has also stated in the said report that, in fact, no such permission is now required and to mislead the authorities and to create obstacles in the execution of the decree passed by the Civil Court, this application has been filed. On the basis of the said report, the Additional Collector, Ahmednagar has informed to respondent no.2A herein that since the other co-sharers have not given their consent for permission, his application came to be rejected. Since, the Additional Collector, Ahmednagar

has passed the said order dated 21.8.2013 ignoring the report submitted by the Tahsildar, Kopergaon, respondent no.1 herein has filed Revision No.407/2013 before the Divisional Commissioner, Nashik Division, Nashik. By judgment and order dated 21.4.2017 the Additional Commissioner, Nashik Division, Nashik has disposed of the said revision by observing that the order dated 30.12.2015 passed by the Additional Collector, Ahmednagar has attained the finality and, as such, the effect of the impugned order dated 21.8.2013 would be infructuous and meaningless. It has been submitted on instructions, that being aggrieved by the same, the petitioner herein has preferred an appeal before the Hon'ble Minister, copy of the same has not submitted before this court, and said appeal is still pending.

4. The petitioner has challenged the order dated 8.12.2015 passed by the Divisional Commissioner, Nashik Division, Nashik and the order dated 30.12.2015 passed by the Collector, Ahmednagar and also the order dated 10.1.2017 passed by the Revenue Minister. Hence,

this writ petition.

5. Learned counsel for the petitioner submits that, respondent no.2A has filed an application before the Collector, Rehabilitation Ahmednagar, seeking permission for execution of the registered sale deed in favour of the respondent no.1 herein in respect of the suit property, however, the learned Collector, Ahmednagar was pleased to refuse such permission by order dated 21.8.2013 on the ground that if the permission of sale deed is granted, then the petitioner and respondent nos.2 and 3C will become landless. Learned counsel submits that, after permission accorded by the learned Divisional Commissioner, Nasik on 30.12.2015, the Collector, Ahmednagar was pleased to partly allow the application of respondent no.1 subject to the orders passed by the Civil Court. Learned counsel submits that, though, respondent no.1 had knowledge of refusal of the permission, with malafide intention, filed an application behind back of the petitioners and obtained the permission in the year

2015. Learned counsel submits that, since the issue of grant of permission has not attained the finality, the impugned order dated 10.1.2017 passed by the Hon'ble State Revenue Minister is liable to be quashed and set aside. Learned counsel submits that, even the order dated 8.12.2015 passed by the Divisional Commissioner, Nashik Division and the order dated 30.12.2015 passed by the learned Collector, Ahmednagar, are also liable to be quashed and set aside in consequence of the order passed by the Collector, Ahmednagar dated 21.8.2013.

6. Learned counsel for respondent no.1 submits that, writ petition is without any substance. It is a part of record that the rehabilitation process in village Malharwadi and adjacent villages came to be cancelled and, as such, permission required under the provisions of the Act of 1999 was not necessary as communicated by the Deputy Collector, Rehabilitation, Ahmednagar by letter dated 30.9.2015. Learned counsel for respondent no.1 further submits that, the judgment and decree

passed by the Civil Court which has now attained the finality only prescribes two conditions. Firstly, the plaintiff i.e. respondent no.1 herein has to deposit in the court a sum of Rs.20,000/- and secondly, the specific performance as granted by the court would be subject to the sanction by the appropriate authority under the Act of 1999. Since, said permission is no more required and respondent no.1/original plaintiff has deposited the amount within one month as directed by the court in the decree which has now attained the finality, there is no hurdle as such to execute the decree in its entirety. Learned counsel submits that, there are some technical difficulties in execution of the decree and accordingly the competent authority has also granted permission under the provisions of the Maharashtra Land Revenue Code in favour of the respondent no.1 though that is not the requirement of the decree which is now under execution. Learned counsel submits that, respondent no.2A herein has deliberately invited the order dated 21.8.2013 from the Collector, Ahmednagar by misleading the Collector and even, the learned Collector has not

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gone through the report submitted by the Tahsildar, Kopergaon. Consequently, though, it was not necessary for respondent no.1/original plaintiff to challenge the said order, however, as a matter of precaution, respondent no.1 has challenged the said order in the revision before the Divisional Commissioner, Revenue Nashik and accordingly, the Divisional Commissioner, Nashik has disposed of the said revision with the specific observations that the order dated 21.8.2013 passed by the Collector, Ahmednagar would be a meaningless order in view of the order passed by the Divisional Commissioner, Nashik dated 8.12.2015 and the order passed by the learned Collector, Ahmednagar dated 30.12.2015 in consequence thereof. Learned counsel submits that, thereafter, the Honourable State Revenue Minister has also confirmed the order passed by the authorities below. Learned counsel submits that, due to pendency of this writ petition, the executing Court is reluctant to execute the decree.

7. On careful perusal of the entire record and the

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documents submitted alongwith this writ petition, it appears that, this writ petition is misconceived and without any substance. As per the judgment and decree passed by the Civil Court, which has now attained the finality, the only condition that is remained to be complied with by the parties is to obtain the sanction by the appropriate authority under the Act of 1999 in respect of the suit land. It is rather an admitted position that, rehabilitation process in respect of the said village Malharwadi and other adjacent villages came to be cancelled and, as such, permission under the said Act is no more required. Even though, in the order dated 8.12.2015 passed by the Divisional Commissioner, Nashik, the order dated 30.12.2015 passed by the learned Collector, pursuant to the order passed by the Divisional Commissioner, Nashik as aforesaid, it has been specifically observed that, such permission under the provisions of the Act of 1999 is not at all required, even then, the respondent no.2A herein has approached the Collector, Rehabilitation. Even though, Tahsildar, Kopargaon has submitted a

detail report dated 30.4.2013 to the Deputy Collector, Rehabilitation, Ahmednagar, specifically pointing out therein that such permission under the provision of the Act of 1999 is no more required and the application has been filed by respondent no.2A herein is with some ulterior motive and said application has been filed to create hurdles in execution of the decree, the Additional Collector, Rehabilitation, Ahmednagar has passed the order dated 21.8.2013. The learned Additional Commissioner, Nashik Division, Nashik has disposed of the revision by giving reference to the orders passed by the Divisional Commissioner, Nashik dated 8.12.2015 and pursuant to the said order, the order passed by the Collector dated 30.12.2015. Furthermore, said order also confirmed by the Honourable State Revenue Minister by order dated 10.1.2017.

8. In view of the above, I do not find any substance in this writ petition. There is no hurdle as such to execute the decree in its entirety. Hence, the following order.

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1. Writ Petition is hereby dismissed with costs.
2. Writ Petition accordingly disposed of.

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(**V.K. JADHAV, J.**)

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