

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5329 OF 1995
WITH
CIVIL APPLICATION NO. 947 OF 2018

Nandlal Wadhumal Kukreja
(Since deceased, through L.Rs.)

- 1) Smt. Garubai w/o Nandlal Kukreja
Age 65 years, Occ. Household
- 2) Ravindra s/o. Nandlal Kukreja
Age 49 years, Occ. Business,
- 3) Niraj s/o. Nandlal Kukreja
Age 35 years, Occ. Business,

All R/o. 156, Kanwar Nagar,
Jalgaon, Tq. and Dist. Jalgaon
- 4) Sau. Anita Rajkumar Bulhani
Age 43 years, Occ. Household,
R/o. Near Samaj Mandir,
Galli No.2, Dastur Nagar,
Amravati (M.S.)
- 5) Sau. Pinki Ghanshyam Bulhani
Age 30 years, Occ. Household,
R/o. Near Samaj Mandir,
Galli No.2, Dastur Nagar,
Amravati (M.S.)
- 6) Sau. Shobha Mukesh Nathani
Age 39 years, Occ. Household
R/o. Talaw Road, Shindi Colony,
Khamgaon, District Buldhana
- 7) Sau. Bela Joginder Jadwani
R/o. T.M. Nagar, Near Shindhi
Colony, Jalgaon (M.S.)

...Petitioners

versus

- 1) Shri Dhondu Ramdas Patil,
Age 50 years, Occ. Agriculture
R/o. Pimpalkothe,

Pragane Chandsar, Tal. Erandol
District Jalgaon

- 2) The State of Maharashtra
Through the Secretary for
Revenue department,
Mantralaya, Mumbai

...Respondents

.....
Mr. G.V. Wani, advocate for the petitioners
Mr. A.N. Sabnis h/f Mr. V.D. Gunale, advocate for respondent No.2
Mr. S.P. Tiwari, A.G.P. for respondent No.2
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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 12.01.2018**

**Date of pronouncing
the Judgment : 18.01.2018**

JUDGMENT:-

1. The petitioner by way of this writ petition has challenged the judgment and order dated 28.7.1995 passed by the learned Member, Maharashtra Revenue Tribunal, Bombay in Tenancy Revision No. 147 of 1994. The learned Member of the Tribunal has dismissed the said revision mainly on the ground that even for the purpose of agreement to sale of agricultural land, the permission under Section 43 of Maharashtra Tenancy and Agricultural Lands Act 1948 (hereinafter for the sake of brevity referred to as "the Act of 1948"), is required to be obtained and if there is no such prior permission, the agreement of sale become invalid as contained in provision of Sections 42 and 43 of the Act of 1948.

2. Brief facts giving rise to the present writ petition are as follows:-

a) The agriculture land bearing Gat No. 148 admeasuring 1 Hectare and 86 R situated at village Pimpalkote, Pragane Chandsar, Tq. Erandol, District Jalgaon is owned by respondent No.1. Deceased father of respondent No.1 had purchased the said land as a tenant under the provisions of Section 32-G of the Act of 1948 and thus the land came within the mischief of Section 43 of the Act of 1948. On 26.6.1982, respondent No.1 had executed an agreement to sale of the land in favour of petitioner for amount of Rs.30,000/- and accepted the earnest money of Rs.18,000/- and also delivered the possession. Copy of agreement to sale is produced before the authorities and in terms of said agreement to sale, respondent No.1 had to obtain permission under Section 43 of the Act of 1948 on or before 29.9.1988. Respondent had also filed an application for permission of sale of the said land as contemplated under Section 43 of the Act of 1948. However, lateron respondent No.1 resiled from his earlier stand and reported that he had not filed said application. Thus, the petitioner was constrained to institute Special Civil Suit No. 84 of 1989 against respondent No.1 for specific performance of contract. On 16.4.1994, learned Civil Judge, Senior Division, Jalgaon has decreed the said suit. Though respondent No.1 has preferred an appeal against the judgment and decree passed by the trial court in special civil suit No. 84 of 1989, the said appeal also came to be dismissed.

b) Meanwhile, under the instructions of Sub Divisional Officer, Jalgaon Division, Jalgaon, the Tahsildar and A.L.T. initiated proceedings under Section 84-C of the Act of 1948 and those proceedings was numbered as Tenancy case No. 6 of 1986. After recording statements of concerned parties, the Tahsildar and A.L.T. Erandol by his judgment and order dated 24.9.1991 declared the transaction as illegal and directed that the lands should be forfeited to the Government and to be disposed of according to Section 84-C of the Act of 1948.

d) Being aggrieved and dissatisfied by the judgment and order passed by the Tahsildar and A.L.T. Erandol, the petitioner filed Tenancy appeal No. 3 of 1993 before the Sub Divisional Officer, Jalgaon with an application for condonation of delay. By order dated 3.9.1993, the Sub Divisional Officer, Jalgaon was pleased to dismiss the appeal and confirmed the judgment and order passed by the Tahsildar and A.L.T. Erandol, holding that the agreement of sale dated 26.6.1982 and the possession receipt dated 4.5.1988 squarely fall within the purview of Section 43 of the Act of 1948 and thus transaction is illegal.

e) Being aggrieved by the judgment and order passed by the Sub Divisional Officer, the petitioner preferred Tenancy Revision bearing No. A. 147 of 1994 before the Maharashtra Revenue Tribunal, Bombay.

After hearing the parties, the learned Member of the Tribunal, on 28.7.1995 was pleased to reject the revision confirming the order passed by the lower authorities observing that the prior permission as contemplated under Section 43 of the Act of 1948 is necessary and the provisions of Section 43 are thus contravened. Hence, this writ petition.

3. Learned counsel for the petitioner submits that respondent No.1 had executed an agreement of sale in respect of suit land in favour of the petitioner and also filed an application for permission of sale, before the competent authority. The learned Tahsildar and A.L.T. decided Tenancy case No. 6 of 1986 directing forfeiture of suit land to the Government on the ground of non observance of provisions of Section 43 of the Act of 1948. The said order passed by the Tahsildar came to be confirmed by Sub Divisional Officer in appeal and also in revision. Learned counsel submits that the question whether Section 43 of the Act of 1948 prohibits absolutely, even an agreement of sale, without delivery of possession, to the prospective purchaser is no more res-integra and this Court in the case of ***Kalandi Baburao Raut and ors. vs. Dattu Damu Thakare, reported in 2008 (5) Bom.C.R. 693*** has observed that in view of Section 43 of the Act of 1948, the transfer by sale, gift, exchange, mortgage, lease or assignment, without previous sanction of the Collector is prohibited and if the parties have entered into an agreement of sale, it cannot be held that there is any creation of interest in favour of vendee. This Court in the above cited case has

also taken a view that it would be the responsibility of the vendor to make an application to the Collector seeking permission for alienation and grant specific performance can always be made subject to such condition of securing permission from the appropriate authority.

4. Learned counsel for the petitioner submits that the petitioner had instituted Special Civil Suit No. 84 of 1989 for specific performance of contract in respect of the said transaction and the suit came to be decreed by the Civil Court in terms of the prayers made therein. The said decree has now attained finality. Even the petitioners have preferred execution proceeding before the learned Civil Judge, Junior Division, Erandol bearing R.D. No. 20 of 2001. In the said execution proceeding, the learned Judge of the executing Court has sent letter to the Tahsildar seeking clarification on the point that whether necessary permission would be required in view of subsequent notification issued by the State of Maharashtra dated 11.2.2014. The learned counsel submits that the operative part of the judgment and decree passed in Special Civil Suit No. 84 of 1989 specifically directs that even the defendants failed to obtain permission then the plaintiff i.e. petitioner is at liberty to move this Court for appointment of Commissioner for obtaining permission from the competent authority. Learned counsel submits that in view of above, writ petition deserves to be allowed.

5. Learned counsel for the respondents submits that the suit land

has been allotted to the family of the respondents in accordance with provisions of Section 32(G) of the Act of 1948 and as such, for alienating the property, permission of the appropriate authority is required. Learned counsel submits that agreement to sale is thus illegal and invalid in view of provisions of Section 43 of the Act of 1948. Learned counsel submits that the alleged agreement of sale was sham and bogus document. The amount was outstanding towards respondents and in order to satisfy the said amount, the defendants have allowed the plaintiffs to cultivate the suit field for a period of six years. The petitioners are taking disadvantage of the fact that the defendants are illiterate persons. Learned counsel submits that the Tahsildar and A.L.T. has rightly passed the order, which is subsequently confirmed by the Sub Divisional Officer and the Tribunal. There is no merit in this writ petition.

6. In the case of ***Kalandi Baburao Raut and ors. vs. Dattu Damu Thakare, (supra)*** relied upon by learned counsel for the petitioner, in identical facts of the case, this Court has dealt with substantial questions of law whether Section 43 of the Act of 1948 prohibits absolutely, even an agreement of sale, without delivery of possession, to the prospective purchaser and whether the said agreement of sale is rendered invalid, unlawful and illegal. Thus, the question is no more res-integra and this Court has observed that Section 43 of the Act of 1948 prohibits transfer by sale, gift, exchange, mortgage, lease or

assignment, without previous sanction of the Collector is prohibited and if the parties have entered into an agreement of sale, it cannot be held that there is any creation of interest in favour of vendee. This Court in para 14 and 15 of the judgment has made the following observations:-

14. In the instant matter, in view of the fact that the property, which is sought to be purchased by the plaintiffs was purchased by vendor/defendant under Section 32-G of the said Act, there is restriction, as laid down under Section 43 of the Act, in respect of transfer of such property. Transfer of such property or part thereof is permissible only with previous sanction of the Collector. The property in dispute is subjected to restriction as contained in Section 43 of the Act and in view of the terms of agreement arrived at between the parties, it will always be the responsibility of the vendor to remove the impediment and secure appropriate permission. In this regard, reference may be necessary to the decision of the Apex Court in the case of Phoolchand Nathulal v. Phoolchand reported in : Air 1970 SC 546, wherein it has been held that:

“That it is well settled that where by statute, property is not transferable without the permission of the authority, an agreement to transfer the property must be deemed subject to the implied condition that the transferor will obtain the sanction of the authority concerned. Hence, Nathulal as vendor has necessarily to get the prior sanction of the State Government made under Section 70(4) of the Madhya Bharat Land Revenue and Tenancy Act (Act No. 66 of 1950). This he has to fulfill before he can claim payment from Phoolchand notwithstanding the absence of such a clause in the agreement.”

15. In this view of the matter, it would be the responsibility of the vendor to make an application to the Collector seeking permission for alienation and grant of specific performance can always be made subject to such condition of securing permission from the appropriate authority."

7. In the instant matter also, the petitioner had instituted Special Civil suit for specific performance of contract and the civil Court has decreed the suit, which has now attained the finality, directing the respondents herein to execute the sale deed in respect of the suit property and also to hand over the possession of the suit field to the petitioner and in case even the defendants failed to obtain permission then the plaintiff is at liberty to move the Court for appointment of Commissioner for obtaining permission from the competent authority by filing necessary application. It further appears from the documents placed before this Court alongwith civil application No. 947 of 2018, the civil court by giving reference to Resolution dated 11.2.2014 also called upon Tahsildar and A.L.T. Erandol to explain as to whether such permission is now required. It further appears that the executing Court cannot proceed further due to pendency of this writ petition and that the authorities are also not responding to the executing court in consequence of pendency of this writ petition.

8. In view of the above observations and the ratio laid down by

this court in the case of ***Kalandi Baburao Raut and Ors. vs. Dattu Damu Thakare, (supra)***, this writ petition deserves to be allowed.

Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is allowed in terms of prayer clause (b)
- II. Rule made absolute in the above terms.
- III. Writ petition is disposed of accordingly.
9. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

rlj/