

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4976 OF 2018

Athani Sugars Limited through Executive
Director Yogesh Patil ... Petitioner
Vs.
The State of Maharashtra and others ... Respondents

WITH
CIVIL APPLICATION (ST.) NO.31413 OF 2018

Indira Gandhi Bhartiya Mahila Vikas
Sahakari Sakhar Karkhana Limited ... Intervener

In the matter between
Athani Sugars Limited through Executive
Director Yogesh Patil ... Petitioner
Vs.
The State of Maharashtra and others ... Respondents

Mr. G. S. Godbole, Senior Advocate a/w. Mr. Mr. S. S. Kothari and Mr. D.
S. Patil for Petitioner.
Mr. C. D. Mali, AGP for Respondents No.1 to 3.
Mr. Laxman Kanai a/w. Mr. Pratik for Intervener.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 28, 2018

P.C. :

Heard Mr. Godbole, learned Senior Counsel for the petitioner,
Mr. Mali, learned Counsel for the respondents No.1 to 3 and Mr. Kanai,
learned Counsel for the intervener in C.A.(St.) No.31413 of 2018 for
intervening in the Petition.

2. Mr. Kanai states that Ms Vijaymala Bajirao Desai, Chairperson of
the applicant - Indira Gandhi Bharatiya Mahila Vikas Sahakari Sakhar
Karkhana Limited (Intervener) is present in the Court. He has tendered
photocopy of her identity card issued by the Election Commission of

India, which is taken on record and marked 'X' for identification. Upon taking instructions from her, he states that applicant is not pressing this Application. In view thereof, Application is disposed of as not pressed.

3. Writ Petition No.4976 of 2018 takes exception to the order dated 28.02.2018 passed by the respondent No.2 - District Registrar cum Additional Collector, Kolhapur in Appeal No.1 of 2017. That appeal was preferred by the petitioner herein challenging the endorsement dated 26.12.2017 made by the respondent No.3 - Sub-Registrar Class-I, Bhudargadh refusing to register the Sale Certificate dated 25.10.2016 in view of the provisions of the Indian Registration Act, 1908 (for short 'Registration Act'). By the impugned order, respondent No.2 dismissed the appeal and upheld the order dated 26.12.2017. While disposing of the appeal, respondent No.2 held that the decision dated 14.09.1987 passed by the Apex Court in ***Raj Kumar Dey Vs. Tarapada Dey, (1987) 4 SCC 398*** is applicable to the present case. Respondent No.2 held that petitioner has presented Sale Certificate for registration on 21.12.2017 (typed as '26.12.2017') after the decision of the Apex Court dated 31.07.2017 i.e. after 4 months and 26 days, and therefore, after imposing penalty, the Sale Certificate is eligible for registration under Section 25(2) of the Registration Act.

4. Respondent No.2, however, dismissed the appeal on the ground that some portion of the land is Occupancy Class II land. In terms of Section 29 of the Maharashtra Land Revenue Code, 1966 (for short 'Code'), without prior permission of the Collector, the land cannot be transferred in view of Sections 29, 37, 37-A of the Code.

5. Rule. Learned AGP waives service for the respondents-State. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

6. In support of this Petition, Mr. Godbole raised several contentions. One of the contentions raised by Mr. Godbole is based upon the decision of the Division Bench of this Court in ***Dalmia Bharat Sugar & Industries Limited Vs. State of Maharashtra, Writ Petition No.9956 of 2016*** decided by this Court (Coram: A. S. Oka and Smt. Anuja Prabhudessai, JJ.) on **17.03.2017**. Though this judgment was specifically produced before the second respondent and the same was also referred in paragraph 4 of the impugned order, respondent No.2 has not dealt with this judgment at all. In the case of ***Dalmia Bharat Sugar & Industries Limited*** (*supra*), the Division Bench of this Court has considered Rule 44(1)(i) (in English) of the Maharashtra Registration Rules, 1961. After extracting that Rule in paragraph 18, the Division Bench observed in paragraph 19 thus,

“19. On plain reading of Clause (i), we fail to understand how the Sub-Registrar of Assurances could have invoked the said clause (i). Sub-Rule (1) of Rule 44 of the said Rules of 1961 provides that before accepting any document for registration, a Registering Officer may not concern with himself with its validity but should ascertain various factors which are set out in Clauses (a) to (i). Clause (i) will apply when transaction covered by the document is prohibited by a Central or State Statute. If it is prohibited, the Registering Officer will have to ascertain whether requisite permission from the Competent Authority under the relevant enactment has been obtained and has been attached to the document. The Registering Officer will have to also ascertain whether the document is contrary to any of the terms and conditions mentioned in the No Objection Certificate granted by the Competent Authority. In the present case, neither the State Government nor the Applicants in the Civil Applications have shown any such statutory prohibition.”

7. Though this judgment was specifically produced before the second respondent as also reference is made in paragraph 4 of the impugned order, respondent No.2 has not dealt with this judgment at all. In view thereof, on this short ground, impugned order needs to be set

aside thereby restoring the appeal to the file of the second respondent to decide the same in accordance with law. As the second respondent has already held that the document is eligible for registration after charging penalty in terms of Section 25(2) of the Registration Act, the said issue shall not be considered again. The controversy in the appeal now confined only in respect of applicability of Rule 44(1)(i) of the Maharashtra Registration Rules, 1961 and whether prior permission of the Collector for transferring Occupancy Class II land is necessary shall be decided in the light of the decision of **Dalmia Bharat Sugar & Industries Limited** (*supra*). The petitioner assures that representative of the petitioner will appear before the second respondent on 04.12.2018. Respondent No.2 will fix the suitable date and thereafter will decide the appeal within 4 weeks. Rule is made absolute in the aforesaid terms with no order as to costs.

8. All parties, including the respondent No.2, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

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