

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7989 OF 2018

Shri Sharad Rajaram Jadhav and anr. ... **Petitioners**

V/s.

Deputy Superintendent of Land Record
Khanapur and ors. ... **Respondents**

Mr.Rajesh Naik i/by Mr.Umesh R. Mankapure for the Petitioners.
Mr.N.C.Walimbe, AGP for Respondent Nos. 1 to 5.

**CORAM : A.S.OKA AND M.S.SONAK, JJ.
DATE : AUGUST 29, 2018.**

ORAL JUDGMENT (PER A.S.OKA, J) :

1. Considering the narrow controversy involved in this petition, the same is forthwith taken up for final disposal. Rule. Learned AGP waives service the Respondent.
2. By this Petition under Article 226 of the Constitution of India, the petitioners have challenged notice dated 25th January 2017 issued by the first respondent (Ex.K to the petition) and further order dated 4th February 2017 passed by the second respondent (Ex.M to the petition).
3. With a view to appreciate the controversy, a reference to

few factual aspects will be necessary. It appears that a plot of land which is the subject matter of this petition being Plot No.50 was allotted by the State Government to one R.H.Patil. There is a Kabulayat executed by him under which the possession was handed over to him.

4. The said allottee applied for grant of permission to sell the said plot to the mother of the second petitioner. A permission was granted by Sub-Divisional Officer on 3rd May 1968. It is pointed out in the petition that as per the said order passed by the Sub-Divisional Officer, a fresh Kabulayat in Form 'H' was got executed from the second petitioner's mother. The petitioners have annexed a copy of the said Kabulayat.

5. On 7th December 1992, an application was made to the Sub-Divisional Officer by the mother of the second petitioner. The said application was for grant of a permission to transfer an area of 400 sq.ft. out of the Plot No.50 alongwith the ground floor of the structure constructed thereon to the first petitioner. On 13th July 1993, a permission was granted. According to the case of the petitioner's an amount of Rs.3,700/- was deposited in the Treasury under a chalan. Thereafter, a sale deed was executed

on the basis of the said permission by the second petitioner's mother in favour of the first petitioner and two others. The sale deed was duly registered. Subsequent steps taken on the basis of the sale deed are also set out in the petition.

6. On 25th January 2017, by the impugned notice served to the second petitioner's mother, first petitioner and other purchasers under the aforesaid sale deed, a demand was made for payment of Rs.91,44,682/-. It is alleged that a breach was committed of terms and conditions in the order dated 15th June 1966 passed by the Deputy Collector. It is alleged that illegal transfer without permission was made. The second petitioner replied to the said notice by pointing out that his mother was no more. He referred to the permissions granted earlier. He stated in the reply that he was not liable to pay any money. However, he stated that if after the year 2001, any assessment at commercial rate is payable, he was willing to pay the same. A similar reply was sent by the first petitioner on his behalf and in his capacity as the constituted attorney of other two purchasers. However, in the said reply, the first petitioner did not offer to pay any assessment at the commercial rate. The order dated 4th

February 2017 was passed by the first respondent in relation to several properties (total 77) calling upon various parties to deposit unearned income and penalty.

7. The learned counsel appearing for the petitioners relies upon the order dated 28th February 2018, in Writ Petition (Stamp) No.6608 of 2017 (Anil Ramchandra Diwate and ors. Vs. the Deputy Superintendent of Land Records and ors.) passed by a Division Bench of this Court.

8. It appears that the impugned demand was made on the basis of an audit objection raised by the Government Auditor. The Division Bench by order dated 28th February 2018, dealt with a similar controversy. In paragraph No.5, the Division Bench observed thus:

“In our view, that is nothing but a mere communication and not a speaking order. The record does not show anything as to how the amounts which are now claimed have been arrived at and in what facts and circumstances, what is the breach, which term and condition is breached, what are the legal consequences of such breach and whether that breach can be regularized. These matters which ought to be considered on case to case basis. There cannot be a general presumption irrespective of the factual position which may be differing from, petitioner to petitioner or noticee to noticee. Thus, on the basis of an audit report or

the objections contained therein or a mere notice to show cause, the petitioners cannot be called upon to pay huge sums.”

9. Thereafter, the Division Bench proceeded to set aside the demand while granting the liberty to the respondents to issue a show cause notice to the petitioners therein setting out the nature of breaches allegedly committed by them.

10. It is true that both the impugned orders are purportedly passed in the exercise of powers under the Maharashtra Land Revenue Code, 1966 (for short “the said case”) and remedies are available under the said Code to challenge the said demands. However, the facts of this case are similar to the facts of the case Writ Petition (St.) No.6608 of 2017. Perusal of the impugned notice dated 25th January 2017 and the impugned order dated 4th February 2017 show that the first respondent has not set out the nature of breaches allegedly committed by the petitioners. The first respondent has not set out the basis on which the demand of huge amount of Rs.91,44,682/- is made. Moreover, after the first and second petitioners submitted a separate reply, the first respondent has not dealt with the contentions raised in the reply.

Even if petitioners were to be relegated to the statutory remedies under the said Code, the only option available to the Authorities is to pass an order of remand as such a huge amount is demanded without following the principles of natural justice and without following due process of law. This is a reason why we are inclined to interfere in the jurisdiction under Article 226 of the Constitution of India in the facts of the case.

11. The second petitioner has conditionally offered to pay non-agricultural assessment at commercial rate after the year 2001. While the respondents issue show cause notice, the said aspect needs to be considered by them. Though we are setting aside the impugned order in relation to the subject plot, it will be always open for the respondents to issue a show cause notice to the petitioners setting out the details of alleged breaches of the terms and conditions committed by them as well as setting out the basis of the monetary demand, if any. It is obvious that an opportunity to file a reply will have to be granted to the petitioners to the show cause notice and even an opportunity of being heard will have to be granted.

12. Accordingly, we dispose of the petition by passing the

following order:

ORDER

(i) We quash and set aside the impugned notice dated 25th January 2017 as well as the impugned order dated 4th February 2017;

(ii) We, however, clarify that the order dated 4th February 2017, is quashed and set aside only in respect of the plot subject matter of sale deed dated 22nd July 1993 (Ex.F to the Petition). In respect of the other properties which are subject matter of the said order, the same will continue to be valid. As observed earlier notwithstanding setting aside impugned notice and order, it will be always open to the respondents to serve a show cause notice to the petitioners and others making a demand of the same amount, which is the subject matter of the impugned notice and order;

(iii) However, no order of recovery shall be made against the petitioners without giving an opportunity to the petitioners of filing a reply to the show cause notice and without giving them a reasonable opportunity of being heard;

(iv) We are sure that in the event an order of recovery is

passed against the petitioners, a reasonable time will be granted to the petitioners to challenge the order in accordance with law;

(v) All contentions of the parties are kept open.

(vi) The parties to act upon an authenticated copy of this order.

(M.S.SONAK, J.)

(A.S.OKA, J.)

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