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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.783 OF 2018
IN
WRIT PETITION NO.10623 OF 2015

Arvind Products Ltd. ...Applicant

IN THE MATTER BETWEEN :

Arvind Products Ltd. ...Petitioner

V/s.

The State of Maharashtra & Ors. ...Respondents

Mr.Girish Godbole with Ms.Jai Kanade, Mr.Atul Kshtriya, Mr.S Gala and Mr.Jigar Shah i/b M/s.Markand Gandhi & Co. for the Applicant / Petitioner.

Mr.S.H. Kankal, A.G.P. for the State – Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 14TH AUGUST, 2018.

P.C. :-

1.

By this civil application, the applicant (original petitioner) seeks amendment to the writ petition and also seeks permission to use the land bearing Gat nos.(1) 42A/1D/1/A admeasuring about 43 acres (2) 89A admeasuring about 10 acres and (3) 37 admeasuring about 1 acre under the provisions of the Maharashtra Agricultural Land (Ceiling & Holding) Act, 1961.

2. In the writ petition, the applicant had impugned the order

dated 24th August, 2014 passed by the respondent no.2 whereby the applicant was allowed to retain the land admeasuring only 54 acres out of total land of the applicant of 310 acres 28 gunthas and 10 annas . The writ petition has been admitted by this Court.

3. It is the case of the applicant that the entire land owned by the petitioner is not the subject matter of the writ petition and thus the applicant is entitled to retain the surplus land. Mr.Godbole, learned counsel for the applicant invited my attention to the affidavit in reply filed by the learned Tahsildar on 29th November, 2016 stating that the applicant was seeking amendment of the choice to take 54 acres of land but the said choice was already given to the applicant by the learned Tahsildar vide notice dated 29th December, 2014 and was served upon on the applicant on 30th December, 2014. There was no reply given by the applicant about such choice of land offered by the learned Tahsildar. On this ground, the learned Tahsildar opposed the civil application.

4. My attention is also invited to the affidavit in reply dated 29th November, 2016. In paragraph 5 of the said affidavit, it is stated by the learned Joint Secretary, Revenue & Forests Department, Government of Maharashtra, Mantralaya, Mumbai that as far as choice given by the applicant in the year 2011, the petitioner was already given an option by the original land owners i.e. (1) Mouje

Adiwali survey No.37/0 Area 1.28.12 Acres, (2) Mouje Adiwali survey No.42 A / 10 (1) A Area 43.12 Acres and (3) Mouje Adiwali survey No.89 A part Area 8.39.04 Acres.

5. My attention is also invited to the amended prayer clause (b) of the civil application in support of the submission that prayer clause (b) as amended is in conformity with option made available to the applicant as referred in paragraph 5 of the affidavit in reply dated 29th November, 2016. It is submitted that the respondents thus cannot refuse to permit the applicant to use or to deal with the said portion of the land described in prayer clause (b) of the civil application.

6. During the course of argument, learned counsel for the applicant tendered a plan of village Adiwali in which the portion was marked in blue which the applicant proposed to use out of the entire land as the said portion was allowed to retained by the applicant in the impugned order itself. The matter has been adjourned from time to time.

7. A copy of such map was also handed over to the learned A.G.P. to enable him to take instructions. By an order dated 7th August, 2018 this Court while granting last opportunity to the respondents to take instructions and to comply with the order dated 18th June, 2018, had made clear that no further extension would be granted. It was recorded that if the respondents would not agree with

the prayers as sought in the civil application, the Court will hear the parties on merit and pass an appropriate order.

8. Mr.Kankal, learned A.G.P. for the respondents today seeks further adjournment on the ground that since the applicant has already dealt with that portion of the land, no such option can be made available to the applicant. He seeks time to file additional affidavit at this stage on the instructions from the learned Tahsildar vide letter dated 13th August, 2018. I am not inclined to grant any adjournment to the respondents. Several opportunities were given to the respondents to convey their stand in the matter. This Court therefore, heard the matter on merit.

9. Mr.Kankal, learned A.G.P. is not able to take a different stand already taken by the learned Tahsildar in the affidavit in reply dated 29th November, 2016 and in the affidavit filed by Mr.S.B. Patankar, Joint Secretary, Revenue & Forests Department, Government of Maharashtra in the affidavit in reply dated 29th November, 2016.

10. A perusal of two affidavits clearly indicates that it is the case of the respondents themselves that the applicants were given an option by the original land owner more particularly in para 5 of the affidavit in reply dated 29th November, 2016 The contents of prayer clause (b) of the civil application clearly indicates that though

originally the applicants had sought relief for different portion of the land, same is made in conformity with the option given by the respondent no.4 as set out in paragraph 5 of the affidavit in reply dated 29th November, 2016. In my view, the respondents now cannot be allowed to take a different stand that since the applicant has alleged to have transferred those lands, the option already given to the applicants would be forfeited.

11. I therefore, pass the following order :-

a). The civil application is made absolute in terms of prayer clauses (a) and (b). It is made clear that insofar as prayer clause (b) is concerned, the applicant would be allowed to retain the plot having mentioned in paragraph 5 of the affidavit in reply dated 29th November, 2016 without prejudice to the rights and contentions of the applicant in the pending writ petition, which reads as under :-

“(1) Mouje Adiwali survey No.37/0 Area 1.28.12 Acres,
(2) Mouje Adiwali survey No.42 A / 10 (1) A Area 43.12 Acres and
(3) Mouje Adiwali survey No.89 A part Area 8.39.04 Acres.”

b). The amendment to be carried out within two weeks from today.

c). The civil application is accordingly disposed of.

Hearing of the writ petition is expedited.

12. All the parties as well as the Authorities to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)