IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10140 OF 2017

Multanchand Ratanchand Meher … Petitioner
Vs.
The State of Maharashtra, through the Principal Secretary and others … Respondents

Mr. P. S. Dani, Senior Advocate i/b. Mr. Abhijit P. Kulkarni for Petitioner.
Mr. A. I. Patel, Additional AGP for Respondents No.1 to 6-State.

CORAM : R. M. BORDE &
R. G. KETKAR, JJ.
DATE : FEBRUARY 05, 2018

P.C. :

Heard.

2. Rule. With the consent of the parties, Petition is taken up for final disposal at the admission stage.

3. The petitioner is praying for issuance of directions to the respondents to make necessary corrections in the impugned communication dated 02.08.2017 and calculate unearned income as well as the charges for the non-agricultural use on the basis of the Ready Reckoner rates of the subject land for the year 2010 and to take into account the actual consideration paid by the petitioner i.e. Rs.40 lakhs for arriving at the calculation of 50% of the unearned income and 25% NA charges on the unearned income and issue fresh demand of the charges payable for regularization as prayed by application dated 08.02.2010 and 19.12.2013.

4. It is not a matter of dispute that the petitioner is a purchaser of the

property belonging to the respondent, who was the restricted owner. As a pre-condition for the transfer, it was incumbent upon the petitioner to deposit a Nazrana amount to the extent of 50% of the value of the property plus 25% of the penalty. The respondents though accorded permission for transfer, calculated the unearned income (Nazrana amount) and the penalty taking into account the Ready Reckoner rates of the property prescribed for purchase or transfer during the year 2017-18. The petitioner contends that the aforesaid charges ought to have been levied as applicable on the date of tender of the application by the petitioner seeking permission. The petitioner tendered application to the respondent No.3- Collector, Tenancy Act Division, Pune on 19.12.2013. Since the application remained pending for number of years, petitioner was constrained to approach this Court seeking direction to the respondents to take decision on the application and communicate him the Nazrana amount leviable, by presenting Writ Petition No.6071 of 2015. The Petition was disposed of by the Division Bench of this Court on 05.08.2016 and the respondent No.3-Collector, Tenancy Act Division, Pune was directed to decide the application in accordance with law expeditiously. The application has been decided and the petitioner has been directed to pay a sum of Rs.95,25,632/- within a period of 8 days from the date of the order i.e. 02.08.2017.

5. The petitioner, placing reliance on the judgment delivered by the Division Bench of this Court in Writ Petition No.12347 of 2016 and other companion matters decided on 19.12.2017 as well as the decision of the Division Bench of this Court, Aurangabad Bench in Writ Petition No.3019 of 2016 decided on 28.09.2017, contends that the Nazrana amount shall have to be determined as per the valuation as on the date of the application. The Division Bench has referred to the judgment of the Apex Court in the matter of *Union of India and another Vs. Mahajan*

Industries Limited reported in **(2005) 10 SCC 203** as well the decision of the Division Bench of this Court at Nagpur in the case of *Trimbakrao Mugutrao Deshmukh Vs. State of Maharashtra and another* reported in **2009 (2) Bom.C.R. 467**. As has been referred above, the issue raised in the instant Petition is no more *res integra* and is covered by the decisions, recorded as above.

6. We are surprised by the approach adopted by the respondents No.5 and 6 in the affidavit in reply presented on 19.01.2018. The concerned authority, at the first instance, proceeds to deny all the contentions raised in the Petition, without application of mind, to the contents raised in the relevant paragraphs of the Petition. It has been categorically denied that no such permission, as contended by the petitioner, has ever been accorded. The statement made in the affidavit-in-reply is factually incorrect and is aimed at misleading the Court. The responsible officers of the Revenue Department have purposely kept the application tendered by the petitioner pending for number of years and proceeded to present the affidavit-in-reply at the belated stage and that too disclosing incorrect facts.

7. In the circumstances, while allowing the Petition, we are constrained to direct imposition of costs on the concerned officials i.e. respondents No.5 and 6. Writ Petition is thus allowed. The respondents are directed to compute the amount of Nazrana and the penalty considering the valuation of the property prevailing on the date of application tendered by the petitioner i.e. 19.12.2013. The computation of amount shall be made and the amount payable by the petitioner shall be communicated to him within a period of 15 days from today. On receipt of the communication, the petitioner shall deposit the amount within a period of 4 weeks from the date of the receipt of such

communication and thereupon the respondents shall complete the necessary procedural requirements as expeditiously as possible, within a period of 4 weeks from the date of deposit of the amount by the petitioner. Respondents No.5 and 6 are directed to deposit costs of Rs.5,000/- each in this Court within a period of 4 weeks from today. Rule is accordingly made absolute.

(R. G. KETKAR, J.) **(R. M. BORDE, J.)**

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