IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.2233 OF 2018

Sandu s/o Mahadeo Kale,
Age 65 years, Occu. Agri.,
R/o Mahora, tq. Jafrabad,
District Jalna ... PETITIONER

VERSUS

1. Harising s/o Deosing Solanke
Age 50 years, Occu. Agri.,
R/o Wadala (Valsa),
Tq. Jafrabad, Dist. Jalna

2. Additional Divisional Commissioner,
Aurangabad Division, Aurangabad

3. The Additional Collector,
Jalna, District Jalna

4. The Sub-Divisional Officer (Revenue),
Jalna, Tq. & District Jalna

(Copies of respondents No.2 to 4
are served to the office of Govt. Pleader,
High Court of Bombay,
Bench at Aurangabad) ... RESPONDENTS

.....

Shri S.S. Tope, Advocate for petitioner
Shri K.R. Doke, Advocate for respondent No.1.
Shri P.M. Kulkarni, A.G.P. for respondent Nos.2 to 4

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CORAM : R.G. AVACHAT, J.

Date of reserving judgment : 29th August, 2019
Date of pronouncing judgment : 20th September, 2019

J U D G M E N T :

Rule. Rule returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. This Writ Petition, under Article 227 of the Constitution of India, is directed against the judgment and order dated 15/12/2017, passed by Additional Commissioner, Aurangabad Division, Aurangabad in R.O.R. Revision No.492/2012. By the impugned order, the learned Additional Commissioner did set aside the order passed by the Additional Collector, Jalna, declaring the sale deed dated 11.2.2008 to be illegal one. The Additional Collector had further directed the Tahsildar, Jafrabad to take the land into possession and grant it for cultivation for a year.

3. The Additional Commissioner has set aside the aforesaid order directing the sale deed (No.414), dated 11.2.2008, to be regularized on depositing ‘Nazrana’ amount.

4. Mr. Sambhaji S. Tope, learned counsel for the

petitioner, would submit that, the petitioner had moved application to the Collector for making enquiry into the sale transaction, being No.442, dated 8.2.1968. Learned counsel would submit that, the writ land had been granted to the father of the petitioner as an inferior Watan (Mahar). The writ land was the only source of living for the petitioner's father. The petitioner found that, the writ land had changed hands. The revenue entries also came to be changed in accordance with the transaction that took place pertaining to the said land. The revenue authorities and the purchasers were hands-in-glove to deprive the petitioner's father of his Watan land. During enquiry, it was found that the land was sold without obtaining prior permission, in view of Section 5(3) of the Bombay Inferior Village Watan Abolition Act, 1958 (for short, the Act of 1959). The sale transactions were, therefore, illegal and *non est*. The learned Additional Collector passed the well reasoned order. Under the provisions of the Act of 1959, an appeal is provided against the order passed by the Additional Collector. The forum of appeal is the State Government and not the Commissioner. The respondent No.1 did not prefer appeal against the order of the Additional Collector. He preferred revision application, wherein the impugned order has been passed. The scope of enquiry in revision application is very limited. The

Additional Commissioner travelled beyond his revisional powers and passed an order for regularization of the disputed sale deed. In the revision application, the respondent No.1 had not urged for such a relief. The learned Advocate ultimately urged for allowing the Writ Petition, setting aside the impugned judgment and order.

5. Shri K.R. Doke, learned counsel for respondent No.1 would, on the other hand, submit that, the powers of the State Government to entertain appeal against the order passed by under Section 3 of the Act of 1959 have been delegated to the Additional Commissioner. Although the proceedings before the Additional Commissioner were titled as revision application, those were entertained and decided as an appeal. The Additional Commissioner has an authority to regularize sale deeds executed without obtaining prior permission of the Collector, under Section 5(3) of the Act. The learned Advocate urged for dismissal of the Writ Petition.

The learned A.G.P. supported the impugned order.

6. The land Gat No.52 (Old Survey No.212) was the Watan land. It was allotted by the Government to seven persons

including the father of the petitioner. The holdings of the petitioner's father in the said land was little over one acre. It was a Mahar Watan land. Sections 4 and 5 of the Act of 1959 need to be referred to. The Sections read as follows :

> "4. Notwithstanding anything in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a court or in the existing watan law, with effect on and from the appointed date,
>
> (1) all inferior village watans shall be and are hereby abolished.
>
> (2) all incidents (including the right to hold office and watan property, the right to levy customary fees or perquisites in money or in kind, and the liability to render service) appertaining to the said watans shall be and are hereby extinguished.
>
> (3) subject to the provisions of sections 5, 6 and 9 all watan land shall be and is hereby resumed and shall be subject to the payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated land :
>
> Provided that such resumption shall not affect the validity of any alienation of such watan land made in accordance with the provisions of the existing watan law or the rights of an alienee thereof or any person claiming under or through him.
>
> 5. (1) A Watan land resumed under section 4 shall, in cases not falling under sections 6 and 9 be regranted to the watandar of the watan to which it appertained on payment

by or on behalf of the watandar to the State Government of the occupancy price equal to three times the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the watandar shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; and all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land :

Provided that in respect of the watan land which was not assigned under the existing watan law as the remuneration of the inferior village hereditary office, an occupancy price equal to the amount of the full assessment of such land shall be paid by or on behalf of the watandar for the regrant of such land.

(2) If there is failure to pay the occupancy price under sub-section (1) within the prescribed period and in the prescribed manner, the watandar shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily evicted therefrom by the Collector in accordance with the provisions of the Code.

(3) . . . .

(4) Notwithstanding anything contained in sub-section (3), the occupancy of the Mahar watan land re-granted under sub-section (1), shall not be transferable or partiable by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the

State Government may, by general or special order determine.

7. By virtue of Section 4 of the Act of 1959, inferior village Watans came to be abolished. All incidents appertaining to the said Watans stood extinguished. Watan lands stood resumed to the Government and became subject to the payment of land revenue under the provisions of the Code and the Rules made thereunder as if it were unalienated land.

8. By virtue of Section 5 of the Act, the Watan Land resumed by the Government, became liable to be regranted to the Watandar of the Watan, to which it appertain on payment by or on behalf of the Watandar, to the State Government of the occupancy price.

9. In the case at hand, the writ land came to be resumed by the State Government. The mutation came to be effected in that regard way back in February 1961. There is no evidence to indicate that the father of the petitioner or anyone through him got the writ land regranted in their favour on payment of the occupancy price. As such, the writ land continued to belonged to the State Government. The record indicates that, still the

petitioner's father ventured to sell the said land on 8.2.1968 to Pandu Ganu Pate. Mutation Entry (No.1440) came to be effected, giving effect thereto in the revenue record. The purchaser Pandu Pate passed away in or about 1978. He was survived by his son – Tukaram and one daughter. Tukaram sold the said land to the respondent No.1 herein in February 2008 for a consideration of Rs.1,45,000/-.

10. It appears that, the petitioner could not digest the fact that the writ land came to be purchased by the respondent No.1. The petitioner, therefore, preferred application to the Collector on 20.8.2011, requesting for enquiring into the transaction of sale dated 8th February 2008. The petitioner conveniently kept silent to disclose that his father had sold the land way back in 1968. The Additional Collector did enquire into the transaction. After giving opportunity of hearing to the petitioner, respondent No.1 and Pandu Pate, the Collector and was pleased to pass the order, declaring the sale deed to be illegal one.

11. In my view, after the writ land was resumed by the Government, after passing of the Act of 1959, it no longer remained with the father of the petitioner. He failed to get the said

land regranted in his favour till the petitioner’s father sold the said land in 1968. When he sold the said land, he did not have right, little and interest therein. The petitioner, in the year 2011, i.e. after title over 43 years, moved the application to the Additional Collector for making enquiry into the sale transaction. In my view, the Additional Collector should not have heard the petitioner in the aforesaid factual backdrop. True, the revenue authorities could have, on their own enquired into the sale transaction that took place in breach of the provisions of the Act of 1959. It appears that, the petitioner, with an oblique motive, moved the application, asking for enquiring into the sale deed. Be that as it may.

12. Section 3 of the Act of 1959 reads thus :

> “3. (1) If any question arises, –
>
> (a) whether any land is watan land,
>
> (b) whether any person is a watandar,
>
> (c) whether any person is an unauthorised holder,
>
> the Collector shall, after giving the party affected an opportunity to be heard and after holding an inquiry, decide the question.
>
> (2) Any person aggrieved by such decision may file an appeal to the State Government within ninety days of such decision.

> (3) The decision of the Collector, subject to an appeal under sub-section (2) and the decision of the State Government in appeal under sub-section (2), shall be final.”

13. The decision of the Collector is subject to an appeal to the State Government.

Section 18 of the Act authorizes the State Government to delegate to any of its officers not below the rank of a Collector, all or any of the powers conferred on it by the Act of 1959.

14. By Bombay Government Gazette dated 25.3.1975, the State Government exercised its powers under sub-section (2) of Section 3 of the said Act to all Additional Commissioners of Division. As such, the Additional Commissioner was competent enough to decide the proceedings filed against the decision of the Additional Collector, dated 15.9.2012.

15. It is true that the proceedings before the Additional Commissioner were titled as Revision Petition under Section 257 of the Maharashtra Land Revenue Code, 1966. It is also true that, nature of revisional powers may differ with the powers to be

exercised as an appellate authority. The title of the proceedings would further indicate that it was registered as an appeal, being No.492/2012. The learned Additional Commissioner, relying upon judgment of the Division Bench of this Court, directed to regularize the sale deed. It may sound that the Additional Commissioner has travelled beyond his powers as an appellate authority. The fact, however, remains that, in view of the law laid down by the Division Bench in case of **Kacharu s/o Bhagaji Gaikwad & ors. Vs. Smt. Sheela w/o Ramesh Mittal & ors. (Writ Petition No.3220/1990),** sale transaction executed in breach of Section 5(3) of the Act of 1959 could be regularized by ex-post-facto sanction. The said power has been exercised by the Additional Commissioner. The petitioner, having lost right, title and interest in the land way back in 1968, could not be heard to dig out the claim after 43 years of the land having been resumed by the Government.

16. It is a well settled proposition of law that, quoting of a wrong provision does not take away jurisdiction of authorities/ Court under the Act. Therefore, even the proceedings before the Additional Commissioner may title as revision instead of an appeal, there was no jurisdictional error committed by the Additional Commissioner in deciding the proceeding.

17. Reliance on the judgment of **<u>Ramchandra Dagdu Sonavane (Dead) by L.Rs. & ors. Vs. Vithu Hira Mahar (Dead) by L.Rs. & ors. [2010 AIR (SC) 818]</u>** is of no avail to the petitioner. In the factual backdrop. The facts of the said case would indicate that the Collector's decision had become final since no appeal was preferred to the State Government under Section 3 of the Act of 1958. In the case in hand, the revision petition-cum-appeal was preferred to the Additional Commissioner, as he was authorized to hear and decide the same by virtue of the delegation of the powers under the aforementioned Government Gazette dated 25.3.1975.

18. The learned counsel for the petitioner, relying on the judgment in the case of **M/s Sneh Enterprises Vs. Commissioner of Customs, New Delhi [Appeal (Civil) No.706/2005]**, would submit that the issue involved was pertaining to interpretation of taxing provision. The Court held that, the principle of strict interpretation should be applied. The Court shall not interpret the statutory provisions in such a manner which would create an additional fiscal burden on a person.

19. I am afraid, as to how the learned counsel for the

petitioner could be heard to rely upon the judgment in the case of M/s Sneh Enterprises (supra). Same is the case about reliance placed on the judgment of the Division Bench of this Court in case of **Amrutrao Shankarrao Deshmukh & anr. Vs. Laxman Tulshiram Pawar & ors. [2011 (4) AIR Bom. R. 696]**. The facts of the said case would indicate that the State Government had delegated its powers of hearing of the appeal to the Officer on Special Duty. The Division Bench relied on the judgment of the another Division Bench in case of **Ganeshrao Kishanrao Deshmukh Vs. Devisingh Venkatasingh [AIR 1972 Bom. 369]**. Reference to para 7 would itself indicate that, looking to the scheme of the Statute, the Court found that power could not be delegated to another person or authority in absence of the statutory provisions authorizing such delegation. The Court was dealing with the provisions of the Hyderabad Abolition of Inams (amendment) Act, 1956. Here, we are concerned with the provisions of the Act of 1959.

20. The another judgment relied upon pertains to the provisions of Right to Information Act, 2005 [2012 AIR (SC) 864]. There, the question was as to nature of powers under Sections 18 and 19 of the Right to Information Act.

21. In short, the petitioner’s father did not get the land regranted in his favour on payment of ‘Nazrana’ after the land was resumed by the Government in terms of Section 5 of the Act of 1959. Since then, the petitioner’s father did not have right, title or interest in the writ land. Still, he ventured to sell the said land to Pandu pate way back in 1968. The petitioner’s father, and after him the petitioner kept mum until 2011. After about 43 years, the petitioner moved the application that too without disclosing the fact that his father sold the land. Thus, the petitioner seems to have an oblique motive. Meanwhile, the land changed hands. The respondent No.1 purchased the land for consideration of Rs.1,45,000/-. The Additional Commissioner directed to regularize the said sale transaction. The Division Bench of this Court (Writ Petition No.3220/1990) has held that, permission for sale of the land under Section 5(3) can be granted ex post facto. It means, the sale executed in breach of provisions of Section 5 could be regularized by granting ex post facto sanction. True, the writ land belongs to the State Government. The respondent No.1 purchased from someone else and not from the State Government. I, therefore, propose to direct the State Government that, while regularizing the impugned sale instance, the

respondent No.1 be directed to pay the State Government price of the land at the ready reckoner rate prevailing at the time the sale deed was executed in 2008. If the respondent No.1 fails to pay the same, the State Government would be at liberty to summarily evict him from the land. The aforesaid directions are necessary so as to ensure that the loss caused to the State exchequer is made good.

22. For the aforegoing reasons, the Writ Petition fails. The same is, therefore, dismissed. Rule discharged. The Additional Collector, who has been directed by the Additional Commissioner to regularize the sale instance, is expected to get deposited from respondent No.1 the price of the writ land at the ready reckoner rate prevailing at the time the sale deed was executed in 2008, and not the 'Nazrana' amount, in multiples of the land revenue of the writ land. It is expected of the Additional Collector, Jalna to comply with the directions given in this judgment at the earliest.

(R.G. AVACHAT)
JUDGE

fmp/-