

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4453 OF 2019**

Sayed Jafar Sayed Yusuf

.... Petitioner.

V/s

The Union of India and Others

..... Respondents.

Mr. S.B. Ghatol Patil, Advocate for the Petitioner.

Mr. S.B. Deshpande, Assistant Solicitor General for Respondent No.1.

Mrs. V.N. Patil, Jadhav, AGP for Respondent Nos. 2 to 6.

**CORAM: PRASANNA B. VARALE AND
NITIN W. SAMBRE, JJ.**

DATE: 9th April, 2019

P.C.:-

1] The Petitioner, an agriculturist, has questioned the order dated 16/01/2019 passed by the Deputy Collector, GAD, Parbhani, whereby the claim of the Petitioner of conversion of agricultural land Survey No.219/2, area 1 Hectare 62 R from Class-II to Class-I, came to be rejected. The Petitioner, while questioning the aforesaid order, has also questioned the constitutional validity of sub-section (2) of Section 29 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as “the Ceiling Act” for the sake of

brevity).

2] The facts necessary for deciding the Petition are as under:-

3] The land Survey No.219/2 at Mouje Palam, admeasuring 31 Acres 21 Gunthas was recorded as surplus land under the Ceiling Act vide Revenue Entry No.1212 by the Deputy Collector, Land Reforms on 20/03/1972. Out of the aforesaid surplus land, under the provisions of Section 21 of the Ceiling Act, 8 acres of land was allotted to Rahimkhan Daulatkhan and his name came to be mutated at Mutation Entry No.1418. The said land, after the death of Rahimkhan vide Mutation Entry No.2532, came to be recorded in the name of Sultankhan and Nasibkhan, sons of Rahimkhan. In view of aforesaid Mutation Entry, land Survey No. 219/2, area to the extent of 4 Acres 2 Guthas, was offered for sale in favour of the Petitioner by Sultankhan through an agreement of sale which was made on the stamp-paper dated 27/05/2008. The said Sultankhan since has failed to execute the Sale Deed in favour of the Petitioner, the Petitioner initiated Special Civil Suit No.08/2009 in the Court of Civil Judge, Senior Division, Gangakhed, District Parbhanki for specific

performance thereof. In the said suit, a decree for specific performance came to be passed by the Civil Judge, Senior Division, Gangakhed vide judgment and decree dated 21/06/2010. The operative part of the said judgment reads as under:-

“O r d e r

01. Suit is decreed with costs.

02. The plaintiff Syed Jafar S/o Syed Yuosuf is entitled to obtain specific performance of contract from defendant and the defendant is directed to execute and register the sale deed of land survey No.219/2 admeasuring 3 Hec. 28 R to the extent of 4 acres 2 Guntha, situated at Palam Tq. Palam Dist. Parbhani by obtaining permission from the Collector, Office Parbhani according to Ceiling Act within one month from the date of this Judgment.

03. The defendant is directed to obtain permission from Collector Office Parbhani, according to Ceiling Act, within one month from the date of this Judgment.

04. If the defendant failed to obtain permission from Collector Office Parbhani within a period of one month from the date of this order, then plaintiff is entitled to appoint Court Commissioner to do the needful.

05. The defendant, his agent or any one claiming on behalf of the defendant is hereby restrained permanently from obstructing or interfering into the peaceful possession of plaintiff in respect of property land survey No.219/2 total admeasuring 3 Hec. 28 R to the extent of 4 Acres 3 Guntha situated at Palam tq. Palam, Dist. Parbhani.

As a consequence of above, since Defendant to the said suit failed to execute the Sale Deed, as ordered in the decree, the Petitioner approached the Revenue Authority, who, by an order dated 12/05/2016, granted permission in favour of the Petitioner to get the Sale Deed executed, subject to condition that Petitioner deposits an amount of Rs 6,64,000/- towards Nazarana (unearned income).

4] Accordingly, the Petitioner, after depositing an unearned income as ordered and in view of permission to execute the Sale Deed ordered

by the Tahsildar, got the registered Sale Deed executed in his favour. After the Sale Deed was executed, Revenue Entry was effected in the name of the Petitioner.

5] After the aforesaid development, on 11/1/2019 the Petitioner approached the Respondent-Collector thereby informing that since he has already deposited 50% of the unearned income as directed, land Survey No.219/2 at Mouje Palam, District Parbhani, admeasuring 1.62 Hectare be converted to Class-I from Class-II. This prayer was rejected by the order impugned dated 16/01/2019. The Respondent- Deputy Collector, while passing the order impugned, has observed that there was no order from the State Government to grant such conversion of land from Class-II to Class-I. Hence, this Petition.

6] The submissions of Mr. GhatolPatil learned Counsel appearing on behalf of the Petitioner are, the permission was granted in favour of the Petitioner pursuant to the provisions of Section 29 of the Ceiling Act. He has invited attention of this Court to the order dated 12/05/2016 and also the deposit of amount of unearned income. According to him, once the unearned income to the extent of 50% of

the Government valuation i.e. Rs 6,64,000/- was deposited, the authority ought to have, on its own, converted the land to Class-I i.e. free holding. He would further urge that as a consequence of maintaining Revenue Entry of the land in question in Class-II category, whenever in future Petitioner is required to sell the land the purchaser will be again required to deposit unearned income. According to him, such condition which flows from the provisions of sub-section (2) of Section 29 of the Ceiling Act is against the public policy. The learned Counsel would also urge that such condition of deposit of 50% of the unearned income on every successive transaction in the successive sale of ceiling land, results in imposing unreasonable restriction on the right of an agriculturist to enjoy and deal with the land. He would also urge that the act of the State Government in incorporating sub-section (2) in Section 29 of the Ceiling Act, thereby calling upon the agriculturists to deposit 50% of the unearned income on every successive sale transaction based on the Government valuation, amounts to unjust enrichment. As such, according to him, the order impugned is liable to be quashed and set aside, so also sub-section (2) of Section 29 is required to be declared as against public policy.

7] The learned Assistant Government Pleader for Respondent Nos. 2 to 6 and the learned Assistant Solicitor General for Respondent No.1 have opposed the prayer, as according to them, the condition imposed is a reasonable one and is borne out of the statutory powers. Further submission is, the order impugned is passed in exercise of the powers under the Maharashtra Land Revenue Code. As such, since alternate remedy is available to the Petitioner, dismissal is sought.

8] Considered the submissions.

9] The fact remains that the order impugned in this Petition is passed by the Deputy Collector, General Administration Department, in exercise of powers under the Maharashtra Land Revenue Code. The Maharashtra Land Revenue Code provides for mechanism/procedure to be followed in the matter of conversion of land from that of holding to free holding. Such powers are required to be exercised by the Revenue Officer. The order of Revenue Officer to the said effect is further subjected to proceedings under Section 247 of the Maharashtra Land Revenue Code. Once the order is passed by the Deputy

Collector, appeal against which lies to the Collector under the said provision, which the Petitioner has admittedly not taken recourse to. Though the Petitioner is right in pointing out that the order impugned does not contain any reasons nor the same was passed after hearing the Petitioner, however, that by itself will not entitle him to canvass that Petition itself is maintainable before this Court, particularly when statutory powers vest in the Government to grant or refuse conversion. The revenue authority is also clothed with powers to record findings on the issue raised by the Petitioner as to automatic conversion of the ceiling land to that of free holding once the unearned income as was directed by the Collector, was deposited.

10] In the aforesaid backdrop, the Petition, in our opinion, is not maintainable and same is liable to be dismissed and it is accordingly dismissed. The question of validity of Section 29(2) of the Ceiling Act is not examined and same is kept open.

11] The Petitioner is given liberty to question the order dated 16/01/2019 passed by the Deputy Collector under Section 247 of the Maharashtra Land Revenue Code. If such appeal is preferred by the

Petitioner by 31/01/2020, it is directed that the Collector shall not dismiss the same on the ground that such appeal is barred by limitation. This Court further expects that the Collector shall hear the Petitioner and pass a reasoned order as to the effect of payment of unearned income by the Petitioner pursuant to the order granting permission in his favour for purchase of ceiling land vide order dated 12/05/2016 passed by the Collector. While deciding the appeal of the Petitioner, the Collector needs to be sensitive to the provisions of Section 10 of the Transfer of Property Act, which reads thus :

“10. Condition restraining alienation.- Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to

transfer or charge the same or her beneficial
interest therein.”

12] We expect the Collector to decide such appeal, in any case by
30/06/2020.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE