

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

WRIT PETITION NO. 3985 OF 1996

1. Dada Nana Khot,
Since Deceased by his legal
heirs and Representatives :

- 1(a) Ashok Dada Khot, Age-59 years,
1(b) Dhanpal Dada Khot, Age-55 years,
1(c) Shripal Dada Khot, Age-50 years.

All R/o. Kanawadi, Tal. Miraj,
Dist. Sangli.

.. Petitioners

Vs.

1. Shri Sudam Subhanna Kamble,
adult, Agriculturist, resident
of Tanang, Taluka Miraj,
District Sangli.

2. The Additional Commissioner,
Pune Division, Pune.

3. The Collector, Sangli,
District Sangli,

4. The State of Maharashtra,
through the Secretary,
Revenue & Forest Department,
Government of Maharashtra,
Mantralaya, Mumbai – 400 032.

.. Respondents

Shri T.S. Ingale, Advocate for petitioners.

Mr.Ketan Dhawale I/b Shri R.S. Apte, Advocates for respondent No.1.

Mr.P.P. Pujari, AGP for respondent Nos.2 to 4.

CORAM : N.J. JAMADAR, J.

RESERVED ON : 4th APRIL 2019
PRONOUNCED ON : 5TH APRIL 2019

JUDGMENT :

1) The challenge in this petition is to an order passed by the Additional Commissioner, Pune Division, Pune in Revision No.A-WTN-14/1993 on 29th March 1995, whereby the Additional Commissioner had set aside the order passed by the Collector, Sangli on 8th January 1993 granting permission under Section 5(3) of the Bombay Inferior Village Watans Abolition Act, 1958 (as it stood then) [hereinafter referred to as 'the Act, 1958'] for transfer of the occupancy of the land re-granted under Sub-Section (1) thereof.

2) The background facts leading to the instant petition can be summarized as under :-

(a) Agricultural land bearing Gat No.477, admeasuring 1 Hectre and 64 Are situated at Mouje Tanang, District Sangli was the Watan land within the meaning of the Act, 1958. On 28th April 1964, the said watan land came to be re-granted in favour of Watandar-respondent No.1. On 7th May 1975, the

respondent No.1 executed an Agreement for Sale of the said land in favour of the petitioners for a valuable consideration of Rs.22,275/-. Part consideration of Rs.11,000/- was accepted by the respondent No.1. As the respondent No.1 failed to perform his part of the contract for sale of the said land, the petitioners instituted a Suit, viz., Regular Civil Suit No.227 of 1981 for specific performance of the said contract. The said suit came to be decreed. The respondent No.1 herein, preferred appeal being Regular Civil Appeal No.1 of 1983. The Appellate Court, by its judgment and order, dated 28th August 1989 upheld the decree for specific performance. However, the decree passed by the trial Court was modified so as to incorporate the consequences of refusal of permission for transfer of occupancy by the Collector, Sangli.

(b) The petitioners herein filed an execution petition. The Executing Court made a reference to the Collector for deciding the question of grant of permission for transfer of occupancy under Section 5(3) of the Act, 1958. The Collector, Sangli, in turn,

made a reference to the Divisional Commissioner, Pune. By a communication dated 3rd September 1991, the Divisional Commissioner, Pune directed the Collector to grant permission for transfer, subject to the condition of deposit of amount equal to 10 times agricultural cess by way of *nazrana*, and the use of the said land for agricultural purpose only. Pursuant to the said direction, the Collector, Sangli, by order dated 8th January 1993, passed an order under Section 5(3) of the Act, 1958 and granted permission for transfer of the occupancy. Being aggrieved, the respondent No.1 herein preferred revision under Section 257 of the Maharashtra Land Revenue Code, 1966 before the Divisional Commissioner, Pune. By the impugned order, the Additional Commissioner, set aside the aforesaid order of the Collector of granting permission holding, *inter-alia*, that an effective opportunity was not given to the Watandar-respondent No.1 and the Collector did not properly consider the directions of the Civil Court to refund the amount of earnest along with interest @ 10% per annum on the principal

amount, in the event of the refusal of permission.

Being aggrieved by and dissatisfied with aforesaid order of the Additional Commissioner, Pune, the petitioners have invoked writ jurisdiction.

3) I have heard Shri T.S. Ingale, the learned counsel for the petitioners, Shri Ketan Dhawale, the learned counsel for respondent No.1 and Shri P.P. Pujari, the learned AGP for respondent Nos.2 to 4.

4) The facts are rather indisputable. The controversy revolves around the justifiability of the exercise of jurisdiction by the Additional Commissioner to revoke the order of granting permission under Section 5(3) of the Act, 1958, especially when the entitlement of the petitioners to get the specific performance of the contract for the sale of the agricultural land, entered into by the respondent No.1, was upheld and the decree passed by the Appellate Court in Regular Civil Appeal No.1 of 1983 attained finality. At the outset, it may be apposite to extract the operative order passed by the learned 2nd Additional District Judge, Sangli in Regular Civil Appeal No.1 of 1983 , which reads as under :-

“O R D E R

1. *Appeal is partly allowed. Parties shall bear their own costs.*
2. *Order passed by Civil Judge, Junior Division,, Miraj*

on 20.10.1982 in Regular Civil Suit No.287 of 1981 is hereby modify as under :-

- “(1) The suit is decreed with costs.*
- (2) Plaintiffs shall deposit balance of consideration Rs.10,275/- in Court within two months from the date of order.*
- (3) As permission for completion of the transaction of sale is necessary, such permission shall be obtained from Collector as required by Section-5 of The Bombay Inferior Village Watan Abolition Act. For this purpose, defendant shall make an application to the Collector in respect of filed Gat No.477 situated at Mouje Tanang, Taluka Miraj, District Sangli. If defendant does not make an application for permission within 1 month, after balance of consideration is deposited in Court, necessary formality shall be completed by the Court.*
- (4) Defendant shall execute sale-deed in favour of a plaintiffs in respect of field Gat No.477 situated at Mouje Tanang, Taluka-Miraj, District Sangli within one month after obtaining necessary permission from the Collector. If defendant fails to execute the sale-deed within the stipulated period, the sale-deed shall be executed by Court. Plaintiffs shall bear the expenses of the sale-deed.*
- (5) If the permission is refused by the Collector, then plaintiffs shall be entitled to refund of earnest and damages by way of interest at the rate of Rs.10% per annum on the principle from the date of filing of the suit till the date of realisation.*
- (6) Decree be drawn-up accordingly.”*

The Additional Commissioner, Pune, while passing the impugned order, laid emphasis on Clause 2(5) of the aforesaid order in support of his

decision to revoke the permission granted by the Collector.

5) The learned counsel for the petitioners urged that the Additional Commissioner committed a grave error in revoking the permission lawfully granted by the Collector, Sangli. The impugned order, according to the learned counsel for the petitioners, is unsustainable for reasons more than one. Firstly, the Additional Commissioner could not have passed the order which had the effect of nullifying the decree passed by the Appellate Court in Regular Civil Appeal No.1 of 1983. Secondly, the Additional Commissioner, could not have passed that order in derogation of the order passed by the Divisional Commissioner, who was superior in rank to him, as reflected in the communication dated 3rd September 1991. Thirdly, the Additional Commissioner could not have gone into the merits of the matter, especially as regards the question as to whether the respondent No.1 would be rendered a landless person, since the said question has been decided by the competent Civil Court while passing the decree for specific performance. Lastly, the Additional Commissioner committed a patent error in recording that the Collector had passed the order of grant of permission without considering the order passed by the Commissioner, Pune.

6) In opposition to this, the learned counsel for the respondent No.1 supported the impugned order. It was pointed out that the communication dated 3rd September 1991 was by way of a letter, and it was not an order passed by the Commissioner, Pune. Secondly, the question as to whether by granting permission for transfer of occupancy, the respondent No.1 would be rendered a landless person, was a relevant consideration and having regard to the purpose of re-grant of the land to the Watandar, the Collector was enjoined to adopt an approach which advances the object of the Act and benefits the downtrodden person like the respondent No.1. Taking me through the order passed by the Collector, Sangli on 7th January 1993, it was strenuously urged that the said order is bereft of consideration on the aforesaid aspect. Thus, the Additional Commissioner was justified in correcting the error committed by the Collector in grant of permission, urged the learned counsel for the respondent No.1.

7) It is imperative to note that the question as to whether the petitioners were entitled in law and equity to have a decree for specific performance was determined by competent Civil Courts and concurrent findings were recorded that the petitioners were entitled to the specific performance of the contract. In this view of the matter, the Revenue Authorities, on the first principles of law, could not have ventured into the said question again, even indirectly.

8) The decree for specific performance was undoubtedly subject to the condition of grant of permission by the Collector under Section 5(3) of the Act, 1958. However, it does not warrant that the authorities, which were statutorily empowered to consider the issue of grant of permission, could delve into the question of very entitlement of the petitioner for the specific performance of the said contract again, under the guise of consideration of grant or refusal of such permission.

9) With the aforesaid clarity, it may be appropriate to note the reasons which weighed with the Additional Commissioner to revoke the permission granted by the Collector, Sangli. The Additional Commissioner was impressed by the fact that the respondent No.1 required the protection of the provisions of the Act, 1958, and was not willing to part with the said land. It was further observed that the Divisional Commissioner, vide communication, dated 3rd September 1991, had directed the Collector, Sangli, to ensure the compliance of certain conditions and those conditions were not complied with and yet the Collector granted said permission. Thirdly, in the opinion of the Additional Commissioner, in view of the order passed by the Appellate Court, it was open to the Collector to direct the refund of the earnest amount by the respondent No.1 to the petitioners.

10) The aforesaid reasons ascribed by the Additional Commissioner do not lend any support to the impugned order. As observed earlier, the question as to whether it was equitable to grant the specific performance was already considered by the Civil Court. It is pertinent to note that the submission that the respondent No.1 would be rendered landless was duly canvassed on behalf of the respondent No.1 before the Appellate Court and the Appellate Court had discarded the same by recording the following observations:-

“8Appellant has not made any grievance that taking advantages of his predicament, a low price is fixed. Appellant had to sell the suit filed because he was highly indebted. The loans are not yet paid-off. Therefore, I can not sustain contention of learned Counsel for appellant Shri R.G. Retharekar that because the suit land is the only land belonging to appellant discretion should not be exercised for granting specific performance of the contract. This is so because even otherwise it is necessary for appellant to sell the suit land.....”

11) In the backdrop of the aforesaid consideration by the competent Civil Court, it was not open for the Additional Commissioner to revoke the permission on the ground that the respondent No.1 would be rendered landless.

12) Even the second challenge that the conditions imposed by the Divisional Commissioner were not complied with, is factually incorrect. Undoubtedly, the Divisional Commissioner, vide communication dated 3rd

September 1991, had observed that the transfer of occupancy be permitted after the Watandar-respondent No.1 deposits 10 times the agricultural cess by way of *nazrana*. Evidently, the respondent No.1 did not deposit the said amount; instead the said amount was deposited by the petitioners. However, this fact does not distract materially from the case of the petitioners.

13) The Additional Commissioner lost sight of the fact that the Appellate Court had, in fact, directed the respondent No.1 to make an application to the Collector, Sangli for transfer of occupancy under Section 5(3) of the Act, 1958 and, in the event, the respondent No.1 did not make such application, the Court was directed to complete the necessary formalities. It is in pursuance of this direction, the Executing Court had sent the proposal to the Collector for grant of permission. As the respondent No.1 was contesting the claim of the petitioners for specific performance tooth and nail, it was not expected of the respondent No.1 to make an application in deference to the decree passed by the Appellate Court. Consequently, the petitioners moved the Executing Court and thereupon the proposal came to be forwarded to the Collector. In this backdrop, the revocation of the permission on the premise that the respondent No.1 did not deposit the *nazrana* amount or, for that matter, he was not given opportunity to deposit the said amount, would amount to

giving a benefit to the respondent No.1 for disobeying the order of the competent Civil Court.

14) The Additional Commissioner also misconstrued the order passed by the Appellate Court, especially, clause (5) (extracted above), to the effect that it gave discretion to the Collector to revoke the permission on the premise that the earnest amount could be refunded along with interest. The said clause was to take care of an eventuality of the Collector refusing the permission under Section 5(3) of the Act, 1958 for the reasons germane to the consideration of the matter under the said Act, 1958. The said direction was to protect the interest of the decree-holder in the event such permission is refused by the Collector for justifiable reasons. It could not have been construed in a manner so as to cause prejudice to the decree holder.

15) It is evident that the Additional Commissioner has approached the matter as if the entire issue as to whether the petitioners were entitled for specific performance of the contract was open for consideration. The scope of enquiry in exercise of revisional jurisdiction against an order of granting permission for transfer of occupancy under Section 5(3) of the Act, 1958 was evidently limited. Since the petitioners were also stated to be agriculturists and the Collector, Sangli as well as Divisional Commissioner did not find any impediment for grant of permission, there was no

plausible reason for the Additional Commissioner to interfere with the order passed by the Collector, Sangli. The Additional Commissioner exceeded the jurisdiction and ventured into the merits of the matter as regards the decree for specific performance. In the aforesaid view of the matter, the impugned order deserves to be quashed and set aside.

16) For the foregoing reasons, the writ petition stands allowed.

The impugned order, dated 29th March 1995 passed by the Additional Commissioner, Pune Division, Pune in Revision No.A-WTN-14/1993 stands quashed and set aside.

Though the dispute as regards the grant of permission for transfer of occupancy under Section 5(3) of the Act, 1958 stands determined by this order, yet the learned counsel for the petitioners made a fair proposal that the petitioners are willing to allow the respondent No.1 to retain 1 Acre of land, out of the subject land, if the respondent No.1 agrees to abide by the decree of specific performance. It would be suffice to note that the Executing Court may consider the said proposal, if both the parties agree.

17) Rule made absolute in aforesaid terms.

18) At this stage, the learned counsel for the respondent No.1, prays for stay to the execution and operation of the permission granted by the Collector, Sangli, for transfer of occupancy, for a period of six weeks.

Having regard to the chequered history of litigation, the time lag and the view this Court has taken, the prayer for stay does not commend itself. Hence the prayer for further stay stands rejected.

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[N.J. JAMADAR, J.]