

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

WRIT PETITION NO. 10448 OF 2017

Vijay Co-operative Housing Society
Limited.

... Petitioner.

V/s.

State of Maharashtra & Ors.

... Respondents.

Mr. Gaurav Shah, Advocate, a/w. V. A. Joshi i/by
M/s.Chitnis Vaithy & Co. for the Petitioner.
Mr. N. C. Walimbe, AGP for the State.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 13, 2019.

PC :

1 Heard Mr. Gaurav Shah, learned counsel appearing for the Petitioner and Mr. Walimbe, learned Assistant Government Pleader for the State - Respondents.

2 This petition has been filed under Article 227 of the Constitution of India, assailing the legality and correctness of the order dated 26.05.2015 passed by Respondent No.1 and seeking a direction to Respondent No.3 to withdraw condition no. 8 in the permission granted to the Petitioner for use of Exh. "2" property for non-agricultural use.

3 It appears that Chief Executive Officer, Zilla Parishad, Thane, granted permission to the Sarpanch of Village Panchayat, Thakurli, Taluka- Kalyan under Bombay Village Panchayats Act, 1958, now called the Maharashtra Village Panchayats Act, to sell a plot of land, admeasuring 9 Acres 18 Gunthas of the said village to the Petitioner, which is a Co-operative Housing Society, for construction of houses for its members at the rate of Rs. 700/- per acre, vide order dated 02.08.1962.

4 Petitioner thereafter submitted an application before the Collector at Thane, for grant of permission for non-agricultural use of the aforesaid land.

5 Permission was granted by the Collector, Thane on 31.05.1963 but a condition was imposed in the form of condition no. 8 to the effect that the Petitioner should not sell, lease or otherwise transfer the plot of land in any manner without the previous permission of the Collector.

6 Petitioner challenged insertion of the aforesaid condition in the said permission before the Collector, Thane, which was however, dismissed vide order dated 15.12.2006. Against the said dismissal

order, Petitioner preferred Appeal under section 247 of the Maharashtra Land Revenue Code, 1966. By order dated 10.12.2007, the Appeal was dismissed by the Appellate Authority i.e. , Additional Commissioner, Konkan Division, Mumbai.

7 Aggrieved by the aforesaid, Petitioner preferred further Appeal before the Government of Maharashtra, Revenue and Forest Department, Mantralaya, Mumbai. By order dated 26.05.2015 passed by the Secretary and Special Work Officer (Appeals), Revenue and Forest Department, the said Appeal was dismissed. Hence, this writ petition.

8 Learned counsel for the Petitioner has referred to Section 51 of the Maharashtra Village Panchayats Act (the Act, hereinafter) to contend that State Government had vested the land in the Panchayat concerned and the Panchayat, in exercise of the powers under section 55 of the said Act, sold the land to the Petitioner Society. But section 55 does not provide for any condition while selling or transferring the land.

9 That apart, Petitioner had paid sale value of the land and it was thereafter, that the impugned

condition was inserted by the Collector, which is without any authority of law.

10 On the other hand, learned AGP submits that the land in question is Class-II government land. The Collector, therefore, was well within his right to impose the condition which in any case does not cause any prejudice to the Petitioner.

11 Submissions made by learned counsel for the parties have been considered.

12 At the outset, relevant portion of the order dated 10.12.2007 passed by the first Appellate Authority i.e. Additional Commissioner, Kokan Division, Mumbai may be adverted to and the same is reproduced as under :

“Arguments made by appellant society are taken into consideration and documents of Lower Court are perused. Suit property was given to Group Grampanchayat for cattle grazing. Though the said land is sold to the Appellant Society after obtaining permission of Chief Officer, however, as per Government Circular dt. 05.08.1963, the said land is of Class-2. Therefore, at the time of making transfer of the said land permission of Collector is required to be taken. Chief Executive Officer has not

imposed any conditions while granting permission of sale of land to Appellant Society. While regularizing it by granting ex-post-facto permission to the said order, the conditions which can be imposed while allotting government land to Co-operative Housing Societies, the Collector has imposed those regular terms and conditions on Appellant Society. The Collector has mentioned in his order dated 15.12.2006 that since the said terms and conditions are put up as per provisions in Act, question of cancelling the same does not arise. Since the order of Collector, Thane is in accordance with the provisions of law, there is no need to make changes therein. While sending the said matter to Collector, this Court had passed order for passing re-order by giving opportunity of hearing of Appellant Society. Accordingly, Collector has passed re-order by hearing them by giving opportunity of hearing to the Appellant Society. It is prima-facie clear that the said orders are proper. The Appellant Society has not submitted any new point or documentary evidence in this Court, hence, there is no reason for making modification in order of Lower Court. Therefore, order is passed as under :

ORDER

1. Appeal is hereby rejected.
2. Order No. CR -1/2006 dated 15.12.2006 of the Collector, Thane is hereby confirmed."
3. "

13 This order was affirmed in further Appeal by the Secretary and Special Works Officers (Appeals) to the Government of Maharashtra, Department of Revenue and Forest, Mantralaya, Mumbai, vide order dated 26.05.2015. Relevant portion of the said order is reproduced as under :

“Since suit land is allotted to Grampanchayat, Thakurli on specific condition for cattle-grazing, Grampanchayat cannot transfer/sell such land/ sold without permission of Collector and therefore, since suit land is government class 2 land, while sanctioning government land to person or society, the Collector is competent to mention terms and conditions in his order, as per the provisions in Act and Rules in existence, as stated by Collector, Thane in the said order and therefore, it is stated by Collector in the said order that while regularizing the sale of suit land made with approval of Chief Executive Officer, Zilla Parishad, Thane to the Applicant Society, the terms and conditions are imposed on the said Applicant society as per rules and they are legal. Suit land was government land and it was allotted to Applicant society for housing construction of members. Therefore, the terms and conditions subject to which government land is being allotted to Co-operative Housing Society, the said terms

and conditions are imposed by Collector, Thane and Additional Collector, Thane while allotting land to Applicant Society and nothing is found wrong therein. Therefore, order dated 15.12.2006 of the Collector, Thane is found to be proper. The terms and conditions on which government lands are being allotted to housing co-operative societies, the Applicant society should not have any difficulty for accepting the said terms and conditions. The Additional Commissioner, Kokan Division has confirmed the order dated 15.12.2006 of Collector, Thane with proper reasoning. In view of the above discussion order is passed as follows:

ORDER

1. Application of the Applicant is hereby rejected.
2. Order No. Appeal/Desk/LND.144/07 dated 10.12.2007 of the Additional Commissioner, Kokan Division, Mumbai and Order No. CR/1 of 2006 dated 15.12.2006 of the Collector, Thane are hereby confirmed.
3. "

14 From the above, what is discernible is that the land in question was initially given to the Grampanchayat for cattle - grazing. As per Government Circular dated 05.08.1963, it is Class -II government land. At the time of transfer of the land,

permission of Collector was required to be taken but the Chief Executive Officer neither obtained permission from the Collector nor imposed any condition while granting permission for sale of the land in question. Collector by his order dated 31.05.1963 had ex-post-facto regularized the permission granted by the Chief Executive Officer to the Petitioner. At this stage, it may be useful to refer to the permission granted by the Chief Executive Officer vide order dated 02.08.1962. As per the said order, permission was granted for construction of houses for the members of Petitioner Society. Under the circumstances, the Collector deemed it fit and proper to insert the condition that the Petitioner Society should not sell, lease or otherwise transfer the said land in any manner, without the previous permission of the Collector, while ex-post-facto regularizing the permission granted by the Chief Executive Officer.

15 While granting permission to the Petitioner for purchase of the land in question, the Collector, Thane had inserted certain terms and conditions in the said permission dated 31.05.1963 including condition No. 8 as per which Petitioner was restrained from selling, leasing or transferring the plot of land in

any manner without the previous permission of the Collector. From the above, it is evident that there is no complete embargo as such for the Petitioner Society to alienate the land in question. All that is required is previous permission of the Collector. Reverting back to the order passed by the first Appellate Authority, it is seen that such condition was imposed by the Collector as it was a regular condition, which is imposed while alienating Class- II government land to co-operative housing societies. Such a condition in no way can be said to cause any prejudice to the Petitioner; neither can it be said to be arbitrary or unreasonable.

16 In the light of the above, court finds no merit in the writ petition, which is accordingly dismissed.

(UJJAL BHUYAN, J.)

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