IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2378 OF 2018

Geecy Developers
And Another ... Petitioners
Versus
State of Maharashtra
(Revenue Department)
And Others ... Respondents

ALONG WITH
WRIT PETITION NO.426 OF 2011

Hasmukh Manilal Sheth
And Another ... Petitioners
Versus
State of Maharashtra
(Revenue Department)
And Others ... Respondents

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Mr. G.S. Godbole a/w Mr. Deepak Shukla I/b Vinod Mistry & Co. for the Petitioners in Writ Petition No.2378 of 2018.
Mr. Kishore V. Tembe I/b Mr. Amol K. Tembe for the Petitioners in Writ Petition No.426 of 2011.
Ms. Geeta Shastri, Addl. G.P. for the Respondents in Writ Petition No.2378 of 2018.
Mr. J.P. Sen, Senior Advocate a/w Ms. Geeta Shastri, Addl. G.P. for the Respondents in Writ Petition No.426 of 2011.

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CORAM : S.C. GUPTE, J.

DATE : 15 APRIL 2019

<u>ORAL JUDGMENT</u> :

. Heard learned Counsel for the parties.

2 These two petitions concern the State Government's right to recover part of unearned income of a grantee of a property in respect of the property at the time of its transfer. Writ Petition No.2378 of 2018 challenges the impugned orders/letters dated 31 July 2015 (Exhibit 'G'), 18 January 2018 (Exhibit 'L') and 8 March 2018 (Exhibit 'M-1") issued by the City Survey Officer, Chembur, Superintendent of Land Records, Mumbai and Dy. Director of Land Records, Mumbai. The Petitioners had applied for mutation of the land record in pursuance of a purchase of the suit property. The application was accompanied by the registered conveyance deed and Index II. The application was rejected by the City Survey Officer on the ground that the property being of 'B-1' category, its mutation could not be effected without an NOC of Collector of Mumbai, Suburban District. The Superintendent of Land Record and Dy. Director of Land Records, respectively, rejected an appeal and a revision from that order. These three orders are the subject matter of challenge in the writ petitions. The companion petition, namely, Writ Petition No.426 of 2011, challenges a demand by the Collector, Mumbai Suburban District from the Petitioner of a portion of unearned income on transfer as a condition precedent for permitting the transfer of the suit property. Originally, this order was challenged by filing a writ petition. The petition was disposed of by directing the Collector to hear the parties and decide the matter. Since the Collector persisted in his demand after a fresh hearing, the Petitioners filed another petition. This Court, by its order dated 2 December 2009, set aside the order of demand and directed the Collector to rehear the matter and decide the same after taking into account the judgment of this Court delivered in the case of **Vinod Harikishan Gupta Vs. Minister for**

Revenue, State Government[1]. Since despite hearing the parties thereafter *inter alia* on the judgment in **Vinod Harikishan Gupta**, the Collector persisted in his demand of a part of unearned income by his last order dated 25 October 2010, the present petition has been filed by the Petitioners. Since both petitions involve the same issue, namely, the State Government's right to claim part of unearned income in respect of transfer of property of “B-1” tenure, namely, property held under Sanad in Form 'H' and 'HH', they deserve to be heard together. Rule is, accordingly, issued in Writ Petition No.2378 of 2018 and, by consent of Counsel, is taken up for hearing forthwith along with Rule in the companion petition, namely, Writ Petition No.426 of 2011.

3 It is not in dispute that the subject Sanads held by the Petitioners in both these petitions do not contain any condition of payment of unearned income to the State as a condition for transfer of the properties being part of the Sanads. In both cases, such conditions are read into the respective tenures by reference to Category B-1 referred to in the property card. The question whether in the absence of any specific stipulation under the original allotment of land restraining its alienation or requiring permission of the State for its transfer with or without payment of part of unearned income, a condition could be read by implication, was considered by a learned Single Judge of this court in **Vinod Harikishan Gupta** (supra). Even in the case before the learned Single Judge, the subject Sanad was in Form 'HH'; it did not contain any provision or restriction either regarding the tenure of the land or for obtaining the previous sanction of the Government for transfer of land; and in the City Survey record, a mention

1 2006 (6) ALL MR 217

was made of the tenure of land as 'B-1'. The learned Single Judge considered the relevant provisions of law, namely, Bombay Land Revenue Code, 1879 read with the Land Revenue Rules of 1921 and evaluated the rival submissions in the context of these governing provisions. (These provisions are also applicable in the present case, since the allotment is made even in this case under the Bombay Land Revenue Code, 1879, the present Land Revenue Code, namely, Maharashtra Land Revenue Code, 1966, having come into force on 15 August 1967.) After *inter alia* considering Sections 60, 62, 68 and 73 of Bombay Land Revenue Code and Rules 42 Sub-Rule (2) and Rules 43 and 44 of the Land Revenue Rules, the learned Judge held that Form 'HH' in that case indicated that there was no restraint imposed in the conditions specified therein on transfer of land. Applying, thus, the provisions of Land Revenue Code and Revenue Rules to a case where the tenure did not show as part of Sanad that there was any condition attached to alienation, the learned Judge held that it was not possible to accept the State's contention that though the agreement entered into by the original allottee with the then Government of Bombay in 1946 did not stipulate any condition restraining alienation of the land or requiring permission of the government for transfer of the land, nonetheless such a condition must be read by implication. The learned Judge considered each and every circumstance considered by the Appellate Authority in that case to read such condition in the Sanad, and negatived each and every submission in this behalf and held the order of the authority requiring either permission of the State or condition of payment of unearned income in restraint on the alienation of the land to be illegal.

4 Mr. Sen, learned Senior Advocate for the State, however, submits that the learned Judge in **Vinod Harikishan Gupta** (supra) did not consider the effect of Section 20 of Maharashtra Land Revenue Code, which now provides for the right of the Collector or Survey Officer, after formal enquiry, to pass any order deciding a claim over any property, either a claim for or on behalf of the Government or any person against the Government. Section 20, which forms part of Chapter III titled "Lands" of Maharashtra Land Revenue Code, 1966, deals with the title of State in all public lands, which are not property of others. The lands, such as public roads, lanes and paths, bridges, ditches, dikes and fences, beds of seas and harbours and creeks below the high water mark, and rivers, streams, nallas, lakes, tanks, canals and watercourses, and all standing and flowing water and all lands wherever situated, which are not the property of any person legally capable of holding property, and except in so far as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force are and are declared to be, with all rights in or over the same, or appertaining thereto the property of the State Government under Section 20 and it is lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as may be prescribed by the State Government in this behalf. Sub-section (2) provides where any property or any right in or over any property is claimed by or on behalf of the Government or by any person against the Government, it shall be lawful for the collector or survey officer, after formal inquiry of which due notice has been given, to pass an order deciding the claim. Such order is subject to one appeal and revision in accordance with the provisions of the Code. Section 20 read as a whole and in particular, Sub-section (2) thereof,

makes it clear that inquiry contemplated thereunder is in respect of State land where claims are made by the Government or by any person against the Government. The provision of Section 20 including the inquiry contemplated under Sub-section (2) thereof, does not envisages any inquiry as to the condition of any tenure or condition/s attached to any particular allotment of land by the State. The subject of reading of any such condition into the agreement of allotment, when the agreement does not stipulate any condition restraining alienation or requiring permission of the Government for transfer of land, has been extensively and fully dealt with by our Court in **Vinod Harikishan Gupta** (supra). The argument advanced by learned Counsel for the State under Section 20 of Maharashtra Land Revenue Code, does not detract from the proposition of law determined by our Court in **Vinod Harikishan Gupta.**

7 Even otherwise, Sub-section (2) of Section 37A of Maharashtra Land Revenue Code makes it clear that the State Government while granting permission under Sub-section (1) is empowered to recover any premium or charge or share of unearned income subject to such terms and conditions as may be specified, by general or special order issued by the Government from time to time, subject to terms and conditions of the order of the land grant or lease deed executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012, which made amendments to the Code. The provisions of Section 37A, which reserve unto the State the power to recover premium or charge or share of unearned income, are consistent with the law stated in **Vinod Harikishan Gupta.** The terms and conditions of order of land grant or lease deed shall prevail in the matter of the State's right to recover any premium or charge

or share of unearned income from the grantee of a land.

8 In the premises, the impugned orders of the Collector and the Survey Officer, confirmed by the Deputy Superintendent and Deputy Director of the Land Records, requiring either the permission of the State Government or insisting on share of unearned income as a condition for transfer of land, cannot be sustained.

9 Accordingly, Rule is made absolute and the writ petitions are allowed by quashing and setting aside the impugned orders referred to in prayer clauses (a) of Writ Petition No.426 of 2011 and Writ Petition No.2378 of 2018. Collector and City Survey Officer are directed to transfer the land or carry out the mutation, as the case may be, without insisting on either an NOC of any officer of the State or on payment of any share of unearned income in respect of the subject lands. The amount of Rs.6 lacs deposited by the Petitioner in Writ Petition No.426 of 2011, as a condition of stay, shall be refunded by the Prothonotary and Senior Master with accrued interest, if any, to the Petitioner.

10 Insofar as Writ Petition No.426 of 2011 is concerned, it is the case of the State that there are two other special conditions of Form HH, Schedule II, namely, keeping open 2/3 of land and no erection of building with more than ground and one upper floors, which have been breached by the Petitioners. The impugned order does not deal with any breach of these conditions. It is made clear that if any such condition is breached, the State Government is free to conduct such proceedings as it may deem fit. That issue, anyway, is not a matter of contest in the present matter.

11 At the request of learned Counsel for the Respondent-State, this order is stayed for a period of six weeks from today.

(S.C. GUPTE, J.)