

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7446 OF 2014

Mahadu s/o Shenfadu Mali
Age 57 years, Occu. Service,
R/o Nagad, Taluka Kannad,
District Aurangabad

... PETITIONER

VERSUS

1. Dagdu s/o Shenfadu Mali,
Age major, Occu. Agriculture,
R/o Nagad, Taluka Kannad,
District Aurangabad
2. Kailas s/o Dagdu Mali,
Deceased, legal heirs are already on record
3. Dnyaneshwar Dagdu Mali,
Age major, Occu. Agriculture
4. Mangalabai Dagdu Mali,
Age major, Occu. Housewife
5. Vimalbai Dagdu Mali
Age major, Occu. Housewife
6. Smt. Nakubai Dagdu Mali,
Age major, Occu. Housewife

All R/o Nagad, Taluka Kannad,
District Aurangabad
7. State of Maharashtra
Through its Secretary,
Ministry of Revenue & Forest,
Mantralaya, Mumbai – 400 032

(Copy to be served in the office of
Govt. Pleader, High Court of Bombay,
Bench at Aurangabad)

... RESPONDENTS

.....
Shri R.M. Sharma, Advocate for petitioner
Shri M.P. Kale, Advocate for respondents no.1 & 3 to 6
Shri S.N. Morampalle, A.G.P. for respondent No.7/ State
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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 2nd April, 2021

Date of pronouncing judgment : 10th June, 2021

J U D G M E N T :

Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel appearing for the parties.

2. The challenge in this Writ Petition is to the order dated 27/6/2014, passed by Member, Maharashtra Revenue Tribunal (M.R.T.), Aurangabad in Revision Application No.69/B/2012. By the impugned order, the M.R.T. upheld the order passed by Deputy Collector, General Administration, Aurangabad on 5/11/2012 in Case No.2008/Bhusudhar/TNC/A-14, set aside the decision of the Mamlatdar, Kannad, dated 8/4/2008 in proceeding No.94/Bhusudhar/CR-74.

In short, the decision of the Deputy Collector, holding the sale of the writ land to be invalid on account of it

having been in contravention of provisions of Section 50-B of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short, the Act) and directing the Mamlatdar to deal with the land in terms of provisions of Section 98-C of the Act, is under challenge in this Writ Petition.

FACTS :

3. Agricultural land in Gut No.155 (Survey No.86), situated at village Nagad, Taluka Kannad, District Aurangabad admeasures 30 acres. One Shenfadu Ishram Mali, father of the petitioner, was the protected tenant in the said land. Shenfadu died on 8/11/1971, leaving behind three sons, Babulal, Mahadu (petitioner) and Dagdu (respondent No.1). The respondents No.2 to 6 herein are the wife and children of respondent No.1 Dagdu. Shenfadu, during his lifetime, became the owner of the land Gut No.155. On his demise, the land was inherited by his aforesaid three sons. The said land was partitioned among the three sons. On 26/9/1983, respondent No.2 sold 2 acres of land from his share to the petitioner for consideration of Rs.8000/-. A suit was filed in February 1995 for setting aside the said sale deed. The suit came to be dismissed. No appeal was preferred against the judgment and decree passed in the said suit. As such, the

decree in the said suit attained finality.

4. The respondents No.2 to 5 filed application dated 7/2/1996 to the Tahsildar, Kannad, claiming that the transfer of the agricultural land vide sale deed dated 26/9/1983 was in breach of provisions of Section 50-B of the Act and the land is, therefore, liable to be confiscated to the Government and be distributed as per Section 98-C of the Act.

The Tahsildar rejected the said application. The appeal preferred thereagainst was allowed by the Deputy Collector on 5/11/2012. The decision of the Deputy Collector has been upheld by the M.R.T. Hence the present Writ Petition.

5. Heard. Shri R.M. Sharma, learned counsel for the petitioner would submit that the sale transaction took place between two real brothers. The land acquired under tenancy law is not going out of the tenant's family. The respondents No.2 to 5 preferred the application almost 13 years after the sale deed was executed. The petitioner has developed the land by spending a lot. The learned counsel would further submit that, in the year 2014, a proviso has been added to

Section 50-B, providing that no previous sanction of the Collector shall be necessary for transfer of the land in respect of which 10 years have elapsed from the date of purchase. The learned counsel meant to say that, Section 50-B has since substantially diluted. According to him, the respondents are not going to be benefited even if the Writ Petition is dismissed. According to learned counsel, the Writ Petition deserves to be allowed in the facts and circumstances of the case.

6. Shri M.P. Kale, learned counsel for the respondents No.1 and 3 to 6 would, on the other hand, submit that, the transfer of the land has been effected in contravention of the provisions of Section 50-B of the Act. The amendment to the said Section made in 2004 would have no retrospective effect. Both the authorities below have held the sale deed to have been invalid. The learned counsel relied on a few authorities to ultimately urge for dismissal of the Writ Petition.

7. Admittedly, the land Gut No.155 (Survey No.86) was purchased by Shenfadu. Late Shenfadu was the protected tenant in the land Gut No.155 (Survey No.86). The

land admeasures 30 acres. Shenfadu became the deemed purchaser of the land. On his demise, the land came to be inherited by his three sons. The sons partitioned the said land. Respondent No.1 Dagdu sold 2 acres of land from his share to the petitioner vide sale deed dated 26/9/1983 for consideration of Rs.8000/-. It is the respondents No.2 to 5 who preferred the application dated 7/2/1996 to the Tahsildar, alleging the said sale deed to have been executed in breach of Section 50-B of the Act. The vendor Mahadu (respondent No.1) is not a party applicant.

8. For deciding the issue involved in this Writ Petition, it is necessary to have a look at relevant provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Section 50-B of the Act reads as under :

"50B. (1) No land purchased by a tenant under sections 38, 38A, 38E, 38F, 38G, 38H or 46D or 48, or sold to any person under sections 53F, 53G, 53H, or 98C shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector:

Provided that, no such previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sections

mentioned in this sub-section, subject to the conditions that,—

- (a) before selling the land, the seller shall pay a nazarana equal to forty times the assessment of the land revenue to the Government;
 - (b) the purchaser shall be an agriculturist;
 - (c) the purchaser shall not hold the land in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961; and
 - (d) the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 shall not be violated.
- (2) Any transfer of land in contravention of sub-section (1) shall be invalid.”

9. By virtue of Section 50-B(2), any transfer of the land in contravention of sub-section (1) is invalid. Admittedly, no previous sanction of the Collector had been obtained before the land was sold by the respondent No.1 to the petitioner herein. The transfer shall, therefore, be invalid. The proviso to Section 50-B was introduced in 2014. It would, therefore, have no application to the facts of the case in hand. It would, however, suffice to say that, by virtue of amendment to Section 50-B in 2014, its rigour has been substantially diluted.

10. Section 98-C of the Act speaks of disposal of the land, alienation of which is invalid. For better appreciation, Section 98-C is reproduced below :-

98C. (1) Where in respect of the permanent alienation, transfer or acquisition of any land made on or after the commencement of the Amending Act, 1957, the Tahsildar suo motu or on the application of any person interested in such land has reason to believe that such alienation, transfer or acquisition is or becomes invalid under any of the provisions of the Act, the Tahsildar shall issue a notice and hold inquiry as provided for in section 98-B and decide whether the alienation, transfer or acquisition is or is not invalid.

(2) If, after holding such inquiry, the Tahsildar comes to the conclusion that the alienation, transfer or acquisition of land is invalid, he shall make an order declaring the alienation, transfer or acquisition to be invalid :

Provided that, where the alienation or transfer of land was made by the landholder to the tenant in possession of the land and the area of the land so alienated or transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed three family holdings, the Tahsildar shall not declare such alienation or transfer to be invalid if—

(i)

(ii)

(3) On the declaration made by the Tahsildar under sub-section (2) —

(a) the land shall be deemed to vest in the State Government free from all encumbrances lawfully

subsisting thereon on the date of such vesting and shall be disposed of in the manner provided in sub-section (4); the encumbrances shall be paid out of the occupancy price in the prescribed manner, but the right of the holder of such encumbrances to proceed against the person liable, for the enforcement of his right in any other manner, shall not be affected;

(b)

(c)

(4) After determining the reasonable price, the Tahsildar shall dispose of the land by sale on payment of occupancy price equal to the reasonable price determined under sub-section (3) in the prescribed manner in the following order of priority :—

(i) the tenant in actual possession of the land,

(ii) the persons or bodies in the order given in section 53-E :

Provided that,

(a)

(b)

11. Since the sale of the land in favour of the petitioner has been held to be invalid, the land has become liable for disposal in terms of Section 53-E of the Act. Section 53-E reads thus :-

53-E. In leasing out the lands where management is assumed under section 51 or section 51-C preference shall be given in the following order :—

Co-operative Farming Societies, agricultural workers working on the said lands, landholders or tenants who cultivate personally less than a family holding, and other landless person residing in the village.

12. The terms of Section 53-E suggest that, the land shall be leased to the following in order of preference given in Section itself. First, the land shall be leased to co-operative farming society. If no farming society is available, or willing to take the land on lease, then the agricultural workers working on the said land. In absence of agricultural workers, then the landholders or tenants who cultivate personally, less than a family holding. In this group of persons, the vendor of the land does not come. As such, if we consider the aforesaid scheme, neither the vendor namely Dagdu or his family members i.e. respondents No.2 to 6 are going to get the land back to their family in case the impugned order is upheld and the land is forfeited to the State Government. It is not known what delight the respondents No.2 to 6 are going to get in success of this proceedings. Be that as it may.

13. The respondents No.2 to 5 preferred application to

the Mamlatdar on 7/2/1996 i.e. after little over 12 years of execution of the sale deed dated 26/9/1983.

14. In case of **Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim**, 1997 (6) SCC 71, it has been observed :-

“This Court in connection with other statutory provisions, in the case of State of Gujarat Vs. Patil Raghav Natha and in the case of Ram Chand Vs. Union of India has impressed that where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under Section 84-c of the Act was not exercised by the Mamlatdar within a reasonable time.”

15. Needless to mention, Section 84-C of the Bombay Tenancy and Agricultural Lands Act is para materia with Section 96-c of the Hyderabad Tenancy and Agricultural Lands Act.

16. In case of **Waman Atmaram Lavand & anr. Vs. Dattatraya @ Dattu Baba Lavand & ors.**, 2009 B.C.I. 147, it has been held :-

“Initiation of proceedings under Section 84-C of

the Act after six years is unacceptable. It is true there is no limitation prescribed under Section 84-C of Act for commencing enquiry. But, when period of limitation not prescribed, action must be initiated within reasonable time. Order passed by all authroities below set aside.”

Similar are the observations of this Court in case of Radhu Gokul Gawali, died through L.Rs. & ors. Vs. Mohan Kishan Gawali, died through L.Rs., 2007(5) Bom.C.R. 93.

17. As against this, learned counsel for respondents No.1 and 3 to 6 has relied on the following authorities :-

- (1) Uttam Namdeo Mahale Vs. Vithal Deo & ors.
[1998 (1) Bom.C.R. (SC) 786]
- (2) Kisan Sayaji Shelke Vs. Madhukar Mohan Deshpande & ors. [2010 (5) AIR Bom. R 512]
- (3) Mesaji s/o Laxman Ubare Vs. Dr. ramchandra s/o Laxminarayan Toshniwal & ors. [2011 (4) ALL MR 25]
- (4) Hasan Bin Salam s/o Salam Bin Abdul Habib Vs. Madhavrao s/o Rangnathrao Shinde
[2015 (2) Mh.L.J. 483]
- (5) Laxman s/o Rama Bandgar (Died) through L.Rs. & ors. Vs. Venkat s/o Rama Bandgar (Died) through L.Rs. & ors.
[2015 (1) Mh.L.J. 408]

18. In case of Uttam (supra), the facts were -, the order of ejectment against the applicant therein had become

final and it was a proceeding initiated under Section 21 of the Mamlatdar's Courts Act for eviction. In the facts and circumstances of the said case, it has been observed :-

“The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within limitation reasonable does not arise.”

The facts in Kisan Shelke's case were, the right of a statutory purchaser were involved. It has been held :-

“It is nobody's case that the petitioner validly surrendered his rights. Obviously, the subsequent purchaser, who has entered in the tenanted land without legal transfer is an unauthorised possessor thereof. To say that the petitioner lost right to recover the tenanted land because of the delay in filing of the application is to deny the relief which is otherwise available to him and in spite of any limitation period under the tenancy law, which would cause extinguishment of such right. In other words, where the rights of the statutory tenants are protected under the Agrarian Law, which is a social welfare Legislation, it is difficult to read something to wipe out the tenancy rights which is not provided for under the HT&AL Act.”

19. In case of Mesaji (supra), the father of the petitioner was protected tenant. He had become full owner of

the land. The land was thereafter transferred by erstwhile owner to third person. Proceedings were initiated by the father of the petitioner for recovery of possession. In this factual backdrop, the observations have been made as under :

“22. Whenever Legislature thought it fit to prescribe period of limitation, the said period has been specifically mentioned. In Section 98 only Collector has been enabled to summarily evict a person in unauthorised occupation or wrongful possession. It does not contemplate filing of any application by any party to initiate proceedings under Section 98. Thus, it only casts obligation on the Collector to evict such unauthorised or wrongful occupant. The fact of such wrongful or unauthorised occupation may come to knowledge of Collector belatedly through different sources and in various situations. It is therefore obvious that Legislature has only conferred the powers upon the authority to act in furtherance of provisions and for the purposes of 1950 Act to see that its aims and objections are achieved and preserved. No period of limitation therefore has been deliberately prescribed as such fact of unauthorised occupation or wrongful possession may also be deliberately suppressed by the parties from the Collector by adopting various means and measures. When the legislature has vested title in protected tenant on tiller's day against the wishes of landholder, it is obvious that its design to advance the said cause, to protect or preserve that title from unscrupulous influences whenever it comes across such instances can not be allowed to be defeated by such technical pleas. I find the absence or non-prescription of any period of limitation in Section

98 is deliberate and in tune with that object.”

20. In case of Hasan Bin Salam (supra), the father of the respondent was a tenant of the land owned by the appellant. The ownership of the land was transferred to the protected tenant. The appellant was in unauthorised occupation. It was a case of summary eviction of the appellant who was in unauthorised possession of the land. In this factual backdrop, the Division Bench observed :-

“Summary eviction – Provisions of Section 98 do not prescribe for any limitation – there can be no impediment for entertaining the application under Section 98 by the competent authority at any point of time.”

While in case of Laxman (supra), the agriculturist had been wrongfully dispossessed. The person in wrongful possession of the land was sought to be evicted summarily. In the light of the facts and circumstances of the said case, it was observed :-

“Non-prescription of any limitation in Section 98 must be construed to mean a specific object which the legislature intends to achieve.”

21. Each case has its own peculiar facts and

circumstances. Here, Shenfadu was the protected tenant of the land Gut No.155 (Survey No.86). The land admeasures 30 acres. On his demise, his three sons partitioned the said land among themselves. Respondent No.1 Dagdu sold 2 acres of land from the land that came to his share, to the petitioner under the sale deed dated 26/9/1983. Dagdu did not file application to the Tahsildar alleging the sale deed to be invalid as having been executed in breach of Section 50-B(1) of the Act. It is his children and wife who preferred such application about 13 years after the land was transferred in favour of the petitioner. By such transfer, the vendor did not become landless nor did the land goes out of the tenant's family. The petitioner paid a valuable consideration. He must have developed the land by spending a lot. Even if the sale deed is held to be invalid, neither the vendor nor his family members are going to get the land back. The land will be liable to be forfeited to the State and would be available for distribution in terms of Section 53-E of the Act. Since there has been a considerable delay of over 12 and a half years in preferring the application to the Mamlatdar for declaring the transfer to be invalid.

22. The Writ Petition, therefore, succeeds. The same

is allowed. The order passed by the Deputy Collector, General Administration, Aurangabad on 5/11/2012 in Case No.2008/Bhusudhar/TNC/ A-14 and confirmed by the Member, Maharashtra Revenue Tribunal (M.R.T.), Aurangabad in Revision Application No.69/B/2012 by order dated 27/6/2014 are hereby set aside. Rule made absolute in above terms.

**(R. G. AVACHAT)
JUDGE**

fmp/-