

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12873 OF 2019

Durga Gruhnirman Co-operative
Society Ltd., Registered Co-operative
Society, 451, Savarkar Road,
Municipal Park, Bhusawal,
through its Chairman
Vaman Laxman Chaudhari

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through its Department of
Revenue and Forest,
Mantralaya, Mumbai – 32
- 2) The Divisional Commissioner,
Nashik Division, Nashik
- 3) The Collector, Jalgaon,
Collector Office, Jalgaon

(Copies to be served on
Govt. Pleader, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENTS

.....
Shri S.P. Shah, Advocate for petitioner
Shri S.P. Tiwari, A.G.P. for respondents
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 4th February, 2021

Date of pronouncing judgment : 23rd July, 2021

J U D G M E N T :

The challenge in this Writ Petition is to the order dated 7/8/2019, passed by the Minister, Revenue & Forest Department, in Revision No.RTS 3281/Pra.Kra.236/Ja-61. The substantive reliefs prayed in this Writ Petition are as under :-

- (A) The Hon'ble High Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of writ and thereby quash and set aside directions contained in clause-2 of the operative order of the order dated 07/08/2019 passed by the Hon'ble Minister, Revenue and Forest Department in Revision No.RTS 3281/Pra.Kra.236/Ja-6A, to the extent to which it requires the petitioner society or its members to seek NOC every time while allotting plots to its members from plot in Survey No.60/2, Survey No.60/3 and Survey no.60/4 situated at Satare, Bhusawal.
- (B) The Hon'ble High Court may be pleased to hold and direct that the petitioner society would be entitled to seek adjustment of amount already paid as unearned income as against the amount of 10% of the market value which would be required to be paid at the time of converting each plot from land Survey No.60/2, Survey No.60/3 and Survey No.60/4 situated at Satare,

Bhusawal from Class II occupancy to Class-I occupancy.

2. The petitioner is a Co-operative Housing Society. The land, bearing original Survey No.60, situated at village Satare, Taluka Bhusawal, District Jalgaon belonged to the State of Maharashtra. It was an agricultural land. The State granted the said land to one Shri Keshv R. Wankhede way back in 1959. Keshav Wankhede held the said land as Class-II occupant. Keshav died in the year 1975-76. On his demise, the land was inherited by his heirs, widow and children. The heirs partitioned the said land amongst themselves in July 2001. Due to the partition, the land Survey No.60 came to be sub-divided in four portions described in revenue record as Survey Nos.60/1, 60/2, 60/3 and 60/4. The owners of the land Survey Nos.60/2 to 60/4 applied to the Collector for grant of permission for sale of the said lands. They had also simultaneously moved the same authority for converting the user of the said land to non-agricultural. On depositing a sum of Rs.14,52,000/- towards an unearned income, the Divisional Commissioner, Revenue granted permission for sale of the said land. The land was also permitted to be used for non-agricultural purpose. The

petitioner Society purchased number of plots, which were formed of the land Survey Nos.60/2 to 60/4, under different sale deeds. The petitioner Society proposed to allot the plots to its members on lease. The plots in fact came to be assigned to the members of the Society. The holder of the Plot No.4 surrendered the plot back to the petitioner Society. The Society proposed to assign the Plot No.4 to a new member. It, therefore, applied to the sub-Registrar, Bhusawal for registration of lease deed. The Sub-Registrar, vide communication dated 13/6/2018 informed the petitioner Society that unless and until a prior permission of the competent authority is obtained for transfer of the said plot, the deed would not be registered. The Society, therefore, approached the Collector in July 2018, asking for no objection certificate. The Society had urged the Collector to observe that since the ownership of the plots was not to be transferred from the Society to its members, no prior permission for assignment of the plots to its members is required. The Collector, by his letter dated 27/8/2018, informed the Society that, Section 37-A of the Maharashtra Land Revenue Code, 1966 (MLRC) and the Government Resolution dated 8/9/1983 do not permit transfer of Class-II land by lease. The Society,

therefore, preferred appeal to the Additional Commissioner, Nashik Division, Nashik. The appeal came to be dismissed. The Society then preferred the revision application to the Minister, Revenue and Forests. The learned Minister, vide judgment and order dated 7/8/2019, partly allowed the revision with a direction to regularize past transactions of assignment of plots by the petitioner Society to its members, by charging one per cent of the rent amount towards transfer charges. The Minister was further pleased to direct to grant permission for assignment of the plots on charging one per cent of the rent amount towards transfer premium and grant no objection certificate for such assignment of the plots. The learned Minister further observed that, in terms of the Government Resolution 8/3/2019, the land/ plots held by the Society shall be liable for conversion to Class-I occupancy on payment of 10% premium.

3. Heard. Perused the impugned orders and the relevant documents.

Shri S.P. Shah, learned counsel for the petitioner Society would submit that, the ownership of the land/plots would remain with the Society. The plots are assigned to its

members on charging a nominal rent/ premium. In view of the learned Minister, such assignment of plots would not amount to transfer of the plots. According to learned counsel, the petitioner Society has no reservation to pay one per cent of the rent amount towards transfer charges. The impugned order passed by the Minister observing that, for each and every assignment of the plot, a prior permission be obtained, is unsustainable in law. Moreover, the Government Resolution permits appropriation of the amount already paid for conversion of the land from Class-II occupancy to Class-I, to be adjusted towards payment of 10% premium to be paid for the very purpose. The learned Minister did not observe that the sum of Rs.14,52,000/- already paid by the petitioner towards unearned money be appropriated towards payment of 10% of premium in terms of the Government Resolution 8/3/2019. The learned counsel, therefore, urged for allowing the petition in terms of prayer clauses (A) and (B).

4. The learned A.G.P. would, on the other hand, support the impugned order/s.

5. Admittedly, the land originally belonged to the State. It was granted to Keshv R. Wankhede in 1959. He

held the said land as "Occupant – Class-II". Section 29(3) of the MLRC describes Occupants – Class-II to mean person who hold unalienated land in perpetuity subject to restrictions on the right to transfer. On the demise of Keshav Wankhede, his heirs partitioned the land Survey No.60. As a result of the partition, the land came to be sub-divided in four blocks namely Survey nos.60/1 to 60/4. The owners of the Block Nos.60/2 to 60/4 obtained Collector's permission for sale of the said lands. The said owner simultaneously got the said lands converted to non-agricultural assessments. On sanction of the lay-out, residential plots came to be formed of the said land. For obtaining permission for sale of the said land/ plots, the owner, not the petitioner Society, paid Rs.14,52,000/- to the State towards unearned income. A copy of the order granting permission for sale of the land is on record. The order contained number of conditions. Condition No.3 thereof reads thus :

"खरेदीदार उक्त जमीन विकत घेतल्यानंतर विभागीय आयुक्तांच्या पूर्व परवानगी शिवाय हस्तांतरण करणार नाहीत व अशा प्रकारची परवानगी देणे किंवा नाकारणे हे विभागीय आयुक्तांच्या अधिकारात राहिल. परवानगी द्यावयाची ठरल्यास अनर्जित उत्पन्नाची रक्कम वसूल करण्याचा अधिकार विभागीय आयुक्तांना राहिल."

6. Moreover, the order dated 17/9/2002 permitting the change of user of the land from agricultural to non-agricultural is also on record. The clause/ Condition No.23 thereof reads :-

"खरेदीदार उक्त जमीन विकत घेतल्यानंतर विभागीय आयुक्तांच्या पूर्व परवानगी शिवाय हस्तांतरण करणार नाहीत व अशा प्रकारची परवानगी देणे किंवा नाकारणे हे विभागीय आयुक्तांच्या अधिकारात राहिल. परवानगी द्यावयाची ठरल्यास अनर्जित उत्पन्नाची रक्कम वसूल करण्याचा अधिकार विभागीय आयुक्तांना राहिल."

7. Moreover, in the sale deed under which the petitioner Society purchased the clause, there is a recital :-

"बिनशेती आदेशातील (एन. ए. ऑर्डर) सर्व शर्तीस व नोटीस अनुसरून तुम्ही वहिवाट करावी किंवा क्रयविक्रय करावा त्यातील शर्ती व अटी ह्या तुमचेवर बंधनकारक राहतील."

8. As such, the petitioner Society held those plots as "Occupants – Class-II". Necessarily, for transfer of the plots held by the petitioner Society, a prior permission of the Collector or the competent revenue authority is a must. The observations, if any, of the authorities below that the assignment of plots, by way of a lease on a nominal rent does

not amount to transfer, are erroneous and against the provisions of the Transfer of Property Act. The impugned order passed by the Minister, directing the revenue authorities to grant No Objection Certificate (NOC) for transfer of the plots on lease by the petitioner Society to its members on accepting one per cent of the lease money, towards premium, therefore, cannot be faulted with.

9. So far as regards clause (3) of the impugned order passed by the learned Minister is concerned, it is to be stated that, the matter before the learned Minister was a revision against the order passed by the Collector and affirmed by the Revenue Commissioner. Subject matter of the proceeding before the Collector was limited to the extent as to whether a permission has to be obtained by the petitioner Society for assignment of its plots to the members of the Society. The learned Minister, therefore, should not have expanded the scope of revision. Moreover, the revision petition was filed on 31/10/2018. It appears that, pending the revision, the State of Maharashtra, on 8/3/2019, framed the rules – the Maharashtra Land Revenue (Conversion of Occupancy Class II and Leasehold Lands Into Occupancy Class-I) Rules, 2019. Perusal of these rules will indicate that the Collector of the

concerned district has been authorised to grant permission for conversion of the Occupancy Class-II into Occupancy Class-I lands. The petitioner Society may very well approach the concerned Collector, if it is so advised, for conversion of its plots from Class-II to Class-I occupancy. If such application is preferred, the Collector concerned would decide the same on its own merits and in accordance with the relevant provisions of the Maharashtra Land Revenue Code and the aforesaid Rules. The Collector shall not be influenced by clause No.3 of the impugned order.

10. As such, I find the petition to be devoid of merit. The petition is, therefore, dismissed.

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

fmp/-