

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

WRIT PETITION NO.408 OF 2021

Smt. Vajirbi Khutub Mulla & Ors. Petitioners

Vs.

Ilahi Ramjan Sarjekhan & Ors. Respondents

Mr. A.V. Anturkar, Senior Advocate i/by Ramdas A. Shelke for
Petitioners.

Mr. Suresh M. Kamble for Respondent

Smt. Madhubala Kajle “B” Panel AGP for Respondent Nos. 5 and 6.

Coram : NITIN W. SAMBRE, J.

Date : 24TH FEBRUARY, 2021

P.C.:

1 The case of the Petitioner-Plaintiff is, he is perfected his title through a sale-deed, after having obtained permission on 17th July 1984 under the provisions of Section 43 of Bombay Tenancy and Agricultural Land Act (for short “BTAL Act”) thereby getting subsequent sale-deed.

2 In the aforesaid backdrop, prior sale-deed dated 22nd December, 1983 was held to be invalid, in view of legal embargo

provided under Section 43 of the said Act. The said order of the revenue authorities was confirmed upto the Apex Court against the Petitioners.

3 Based on the aforesaid title on 18th June 1986, the Petitioner filed a suit being Regular Civil Suit No. 202 of 2018 thereby seeking declaration that he is in possession of the suit property and he has become owner of suit property by virtue of sale-deed dated 18th June, 1986. An application for temporary injunction thereby praying protection of his possession came to be rejected on 29th September, 2018, which order was confirmed vide judgment dated 4th December, 2019 passed in an appeal preferred by the Petitioner being Miscellaneous Civil Appeal No. 205 of 2018. As such, this petition.

4 Learned Senior Counsel for the Petitioners, Mr. Anturkar would urge that once the Petitioners' title to the property is perfected after having obtained permission under Section 43 of BTAL Act, the Court below ought not to have rejected the prayer for injunction. According to him, the earlier owner has executed two sale-deeds of

same property in Petitioners favour. The sale-deed dated 27th December, 2003 will not come in the way of the Petitioners in claiming protection of possession, as the title was perfected in second sale-deed dated 18th June, 1986 after taking recourse to the provisions of Section 43 of the BTAL Act i.e. by obtaining permission in favour of Petitioners from Revenue Authorities.

5 He would then urge that possession if any taken by the revenue authorities pursuant to the provisions of Section 84(c) of the BTAL Act, cannot be termed to be lawful as neither any notice before taking such possession was served nor the application of mind based on issue of subsequent perfection of title can be inferred.

6 Considered rival submissions.

7. The Petitioner claimed to be in possession of the suit property, by virtue of his title vested upon him, vide sale-deed dated 22nd December, 1983, which was declared invalid under Section 43 of the Act, which order was confirmed upto the Apex Court.

8 The Petitioner thereafter in regard to the very same land, obtained permission under Section 43 of BTAL Act and got executed

fresh sale-deed i.e. on 18th June, 1986.

9 The moment 1983, sale deed was declared invalid by virtue of which the Petitioner claimed to be continued in possession, the effect of the provisions of Section 84(c) of BTAL Act came into force. As such the very possession of the Petitioner has rendered illegal as the sale-deed based on which he would claiming title was declared invalid. In this background, even if the Petitioner ha subsequently taken permission under Section 43 of BTAL Act while getting the sale-deed executed on 18th June, 1986, his earlier possession will not be validated as neither permission under Section 43 of BTAL Act is retrospective nor second sale-deed gives any retrospective possession.

10 In the aforesaid background, the Respondent Revenue authorities were justified in taking our possession of the suit property.

11 As the possession has already stood vested in the revenue authorities, in the light of aforesaid observations, no case for interference is made out. The petition fails, dismissed.

(NITIN W. SAMBRE, J.)