

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2151 OF 2021

Ajay Sitaram Yadav & Ors. ... Petitioners

Versus

The State of Maharashtra & Ors. ... Respondents

Mr.N.V.Walawalkar, Sr. Adv. a/w. Mr. S.M.Sabrad, Mr. A.C.Sawant, Ms.N.R.Parte for the Petitioners.

Mr.A.I.Patel, Addl. G.P. for the State.

CORAM : S.J. KATHAWALLA, &
MILIND N. JADHAV, JJ.

DATE : 24TH JUNE, 2021

(THROUGH VIDEO CONFERENCING)

P.C. :

1. By the above Writ Petition, the Petitioners have interalia sought the following relief :

“(b) That by an appropriate Writ, Order of Direction, this Court be pleased to direct Respondent Nos. 1 and 2 to afford an opportunity of hearing to the Petitioners prior to taking any decision on the report dated 28th May, 2021 forwarded by the office of Respondent No. 4 (Exhibit-N to the Writ Petition) to set aside the Order dated 31st March, 2011 granting prior approval under Section 36A of the Maharashtra Land Revenue Code, 1966 in favour of the Petitioners pursuant to the Applications dated 19th April,

2021 and 12th May, 2021 made by Respondent Nos. 6 to 8 and further be pleased to direct the Respondent Nos. 1 and 2 not to give effect to any order being passed for a period of three weeks from the date of receipt, if the same is adverse to the Petitioners.

2. The Learned Senior Advocate for the Petitioners has interalia submitted as under :

2.1. That Respondent Nos. 6 to 8 are the owners of the land bearing Survey No. 45/1/A/1/2 admeasuring 1 Hectare 1 Are, situated at Mouje Valshind, Taluka – Bhiwandi and District Thane (**the said land**).

2.2. That Respondent Nos. 6 to 8 being tribals are required to obtain prior permission from the concerned authorities under Sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 (**the Code**) before selling the said land.

2.3. That since Respondent Nos. 6 to 8 were in dire need of money, they approached the Petitioners with their offer to sell the said land. The Petitioners showed their willingness to purchase the said land. Thereupon, a formal agreement between the Petitioners and Respondent Nos. 6 to 8 was executed in respect of the said land.

2.4. That thereafter the Petitioners filed an Application before the Collector, District Thane seeking sanction for sale of the said land under Sections 36 and 36A of the Act.

2.5. That upon receipt of the said Application, the Collector, District Thane

forwarded the same to the Tahsildar, Bhiwandi, Taluka Bhiwandi, District Thane to make necessary enquiries as per the prevalent rules.

2.6. That after making enquiries, the Collector, District Thane forwarded his report to the Additional Commissioner, Konkan Division, Navi Mumbai, who forwarded his report to the Minister, Revenue and Forest Department, Mantralaya, Mumbai.

2.7. That on 31st March, 2011, the Minister, Revenue and Forest Department, granted permission to the Petitioners as provided under Section 36A of the Act.

2.8. That thereafter on 11th May, 2011, Respondent No. 3 and the Divisional Commissioner, Konkan Division, Navi Mumbai forwarded its letter enclosing the copy of the Order dated 31st March, 2011 passed by the Minister, Revenue and Forest Department to the Collector, District Thane with a further direction to grant permission to sell the said land.

2.9. That the Petitioners thereafter approached Respondent Nos. 6 to 8 and informed them about the permission being granted and requested them to complete the procedure on their part.

2.10. That Respondent Nos. 6 to 8 informed the Petitioners that there were certain disputes interse between them and once the same is sorted out, Respondent Nos. 6 to 8 would get back to the Petitioners and complete the necessary procedure.

2.11. That Respondent Nos. 6 to 8 contacted the Petitioners in the year 2018

and informed them that the interse disputes between them were resolved and they were ready and willing to perform the duties on their part to complete the transaction. Accordingly, the Respondent Nos. 6 to 8 recorded their statement before the Tahsildar, Bhiwandi.

2.12. That Respondent Nos. 6 to 8 in their statements confirmed that they have received the entire amount / consideration from the Petitioners and in view of the interse disputes between them there was delay on their part to complete the transaction and that they would not become landless pursuant to the said land being sold by them to the Petitioners. Accordingly, the Tahsildar, Bhiwandi, vide his letter dated 31st December, 2018, forwarded his report to the Collector, District Thane.

2.13. That on 4th February, 2019, the Collector, District Thane vide his Order granted permission for sale of the said land in favour of the Petitioners on the terms and conditions mentioned therein. In the said letter, it is specifically mentioned / recorded that since there were interse disputes between the Respondent Nos. 6 to 8, further steps for completing the process of sale was stalled and the said dispute between them has been resolved. It was also recorded / mentioned in the said letter that the entire amount / consideration mentioned in the order is already received by Respondent Nos. 6 to 8.

2.14. That thereafter on 24th December, 2019, the Collector, District Thane issued a letter to the Tahsildar, Bhiwandi for making necessary compliance under Section 43 of the Tenancy Act i.e. for payment of the amount of Nazrana.

Accordingly, the Petitioners made necessary payments towards Nazrana.

2.15. That after payment of Nazrana, the entire procedure except registering the Sale Deed by the Respondent Nos. 6 to 8 was completed. The Petitioners on several occasions contacted the Respondent Nos. 6 to 8 for executing the Sale Deed. However, they expressed their inability to execute the same due to the pandemic.

2.16. That after the lockdown was lifted, the Petitioners renewed their request for registering the Sale Deed. However, Respondent Nos. 6 to 8 gave evasive replies to the Petitioner.

2.17. That it appears that from the record, that on 16th April, 2021 some tribals from the Constituency of the Respondent No. 2 made an Application to the Collector, District Thane for permission to purchase the said land. It further appears that on 18th March, 2021, the said tribal purchasers filed an Affidavit to be submitted to the office of the Collector, District Thane. From the said Affidavit, it appears that the said tribal purchasers are not even agriculturist. From the contents of the said Affidavit, it also appears that on 18th March, 2021, the Respondent Nos. 6 to 8 have filed an Affidavit in the office of the Collector, District Thane stating that they have not entered into any transaction with any persons with respect to the said land.

2.18. That the Petitioners have also learnt that the Respondent Nos. 6 to 8 have on 16th April, 2021, once again made an Application before the Collector, District Thane requesting for permission to sell the said land, wherein the relevant facts have been suppressed. In the said Application, Respondent Nos. 6 to 8 has sought

permission to sell the said land to a tribal/s who is/are residents of a village from Taluka Sangamner, District Ahmednagar and the Petitioners learnt that one of a very close relative of the Respondent No. 2 has put forward the said tribal/s for purchasing the said land from the Respondent Nos. 6 to 8 in spite of being very much aware that the said Respondent Nos. 6 to 8 have accepted the entire consideration from the Petitioners and that the permission has been granted by the State Government as well as by the Collector, District Thane for the same.

2.19. That the above Application dated 16th April, 2021 of Respondent Nos. 6 to 8 was received by the office of the Collector, District Thane on 19th April, 2021. On that day itself, the office of the Collector, District Thane issued a letter to the Respondent Nos. 6 to 8 and the tribal purchasers that their Application has been forwarded for making enquiry and obtaining a detailed report.

2.20. That on 19th April, 2021 itself, the Circle Officer, Bhiwandi issued a letter to Respondent Nos. 6 to 8 and the tribal purchasers to remain present in his office on 22nd April, 2021.

2.21. That the Circle Officer, Bhiwandi had called Respondent Nos. 6 to 8 and the tribal purchasers for enquiry on 22nd April, 2021. Immediately on the next date i.e. on 23rd April, 2021 without complying with the provisions of the Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non Tribals) Rules, 1975, the Circle Officer forwarded his report to the Tahsildar, Bhiwandi.

2.22. That after receipt of the report dated 23rd April, 2021, from the Circle

Officer, the Tahsildar, Bhiwandi on 23rd April, 2021 itself forwarded the report of the Circle Officer to the Collector, District : Thane.

2.23. That on 3rd May, 2021, the Petitioners made a representation to the Collector, District Thane recording their objections to the Application made by the Respondent Nos. 6 to 8. On 11th May, 2021, the Petitioners also submitted representation to Respondent Nos. 1 and 2 inter alia setting out the aforestated facts.

2.24. That only to create evidence against the Petitioners, on 12th May, 2021 the Respondent Nos. 6 to 8 were once again made to give an Application to the Collector, District Thane, in which Application for the first time after several years, an allegation is made by Respondent Nos. 6 to 8 that the Petitioners have avoided to complete the transaction and did not make payment of the entire amount of consideration. This allegation is not found in the earlier Application of Respondent Nos. 6 to 8 dated 16th April, 2021 whereby the permission was sought to transfer the said land in favour of the tribal purchasers who are residents of the village which forms the constituency of Respondent No. 2.

2.25. That the Petitioners have learnt that based on the Application dated 12th May, 2021, the Additional Collector, District Thane has forwarded a letter dated 28th May, 2021 to the Additional Secretary (J-4), Revenue and Forest Department, Mantralaya, Mumbai mentioning about the Application dated 12th May, 2021 made by the said Respondent Nos. 6 to 8. It is also stated in the said letter that Respondent Nos. 6 to 8 have accepted the entire consideration and that the Collector, District

Thane has already passed final order granting permission and the land still stands in the name of the said Respondent Nos. 6 to 8.

2.26. That the Petitioners after coming to know about the aforestated subsequent developments of Respondent Nos. 6 to 8 trying to once again create third party rights in favour of tribal purchasers, obtained all the aforesaid documents and through their Advocate issued notice dated 1st June, 2021 to Respondent Nos. 6 to 8 for specific performance of the contract and requested them to come and execute the Sale Deed.

2.27. That the Petitioners apprehending that the Respondent Nos. 1 and 2 would flout the principles of natural justice, through their Advocate issued a letter dated 3rd June, 2021 to Respondent No.2. In the said letter, all the aforestated facts were mentioned and a request is made to the Respondent No.2 not to cancel the permission granted on 31st March, 2011 without affording an opportunity of hearing to the Petitioners.

2.28. That the Petitioners have therefore moved this Court seeking relief which is reproduced in paragraph 1 above.

3. Without commenting on the allegations made by the Petitioners against the Respondents in the above Writ Petition, some of which are set out hereinabove, we are of the view that the Petitioners are certainly entitled to a hearing before the Respondents take any decision on the report dated 28th May, 2021 forwarded by the Collector, District Thane to set aside the Order dated 31st March, 2011 granting prior

approval under Section 36A of the Code in favour of the Petitioners. We are also of the view that if any order is passed by Respondent Nos. 1 and 2 against the Petitioners including setting aside the Order dated 31st March, 2011, the Respondents shall not act on the same for a period of three weeks from the date of serving of such order/decision on the Petitioners and/or their Advocates.

4. The above Writ Petition is accordingly disposed off.
5. All contentions of the parties are kept open.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)