

Bhogale

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

**WRIT PETITION NO.6622 OF 2016
WITH
INTERIM APPLICATION NO.632 OF 2021
IN
WRIT PETITION NO.6622 OF 2016**

Suresh Bhandu Bhole & anr. .. Petitioners/Applicants

VS.

The Tahsildar & ors. .. Respondents

Mr. P.B. Shah I/b. Mr. Kayval Shah for the Petitioners/Applicants.

Mr. S.D. Rayrikar, AGP for the State.

CORAM : M.S.KARNIK, J.

DATE : MARCH 10, 2021

P.C.

Heard learned counsel for the parties.

2. The Petitioner's Vendor was a project affected person. He was allotted the subject land in the year 1992. The Vendor wanted to transfer the land in favour of the Petitioner some time in the year 2014. An Application was therefore made to the Tahasildar by the Vendor for transfer of land in favour of the Petitioner. The Tahasildar by the order passed in the year 2014 granted permission to transfer the land. Accordingly the sale deed was executed. On the basis of the transfer and the consequent sale the mutation entry came to be recorded being Mutation Entry No.2831 which is at page 23. The Sub Divisional Officer (SDO) exercising suo

moto powers of Revision under Section 257(1) of the Maharashtra Land Revenue Code cancelled the mutation entry observing that the Tahasildar has no power to grant permission to transfer the subject land as only the SDO has the power to transfer the land.

3. The present Petition is filed against the order of the SDO. It is the contention of learned counsel for the Petitioners that under the prevailing Government Resolutions it is the Tahasildar who is empowered to grant permission to transfer the land. He invited my attention to the G.R. issued on 07.03.2019 by the State Government laying down the policy as regards the transfer of land from occupancy Class-II to occupancy Class-I. The said G.R. has been issued after the impugned order is passed by the SDO. It is the contention of learned counsel for the Petitioners that G.R. makes a reference to the earlier G.Rs. of 11.06.2004 and 11.12.2004. It is his contention that in the light of this G.R. the Tahasildar is empowered to consider the applications for transfer of land from occupancy Class-II to occupancy Class-I under the provisions of Maharashtra Project Affected Persons Rehabilitation Act, 1976 and 1986 and the same relates back to orders passed prior to the issuance of the G.R. dated 07.03.2019.

4. Learned AGP supported the impugned order and also raised a preliminary objection that the Petitioner has an alternate remedy of filing an Appeal before the Additional Collector under Section 247 of the Maharashtra Land Revenue Code, 1966.

5. I am however of the opinion that as the issue raised concerns the power of the Tahasildar to effect the transfer of the occupancy and in view of the G.R. dated 07.03.2019, which though issued after passing of the impugned order may have a bearing on this issue, it is necessary for the SDO, therefore, to consider the effect of the G.R. dated 07.03.2019 vis-a-vis the power of the Tahasildar to effect the transfer of occupancy. The impugned order is therefore set aside. The matter is remitted to the SDO for reconsideration. The Petitioners to appear before the SDO on 30.03.2021 along with copy of this order bringing to his notice the G.R. dated 07.03.2019.

6. Learned counsel for the Petitioners states that the mutation entry in question is still not varied or changed. As the order of the SDO is set aside the mutation entry No.2831 obviously will continue to remain in force.

7. The Writ Petition is allowed in above terms.

8. In view do the disposal of the Writ Petition, the Interim Application does not survive. The Interim Application is disposed of.

(M.S.KARNIK, J.)