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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9801 OF 2017**

Shri Rahul Manikrao Shinde

.... Petitioner.

V/s

Mr. Balkrushna Sadashiv Kulkarni & Ors.

.....Respondents

Mr. Rohan Mahadik i/b the Juris Partners for the Petitioner.Mr. Suryajeet Chavan i/b Ravi Shinde for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 12, 2021

P.C.:-

1] Based on the provisions of Section 29 of the Maharashtra Agricultural Land (Ceiling on Holding) Act, 1961 [For short “the Act”] and the provisions of Order VII Rule 11(d) of the Civil Procedure Code Petitioner/Defendant moved an Application below Exh-21 for rejection of the Plaint in a suit for declaration, specific performance and compensation, which prayer was rejected vide impugned order.

2] Submissions are, Petitioner is a purchaser of the suit property, after having obtained permission under Section 29 of the Act. According to him, development agreement dated 11/07/2013 based

on which suit claim is brought into action, speaks of the responsibility of the Plaintiff to have permission from the competent authority which he had failed to. In the wake of provisions of Section 29 of the Act, suit itself is not maintainable as Sale Deed executed in absence of permission under Section 29 is void and therefore rejection of Plaint is sought.

3] Record depicts that on 07/09/2013, Collector Pune passed the order in favour of the petitioner permitting him to purchase the part of the suit property pursuant to provisions of Section 29 of the Act.

4] Suit in question in which rejection of plaint is prayed is for specific performance of agreement of development dated 11/07/2013, execution of sale deed, declaration, injunction or in alternate, compensation.

5] Suit claim is based on execution of sale deed in spite of existence of execution of sale deed in favour of defendant nos. 2 & 3 who, in turn, sold the same to the petitioner-defendant no. 4. The claim for

compensation perhaps is based on non-performance of development agreement and transfer of the property in favour of the petitioner.

6] As far as the claim of the petitioner that he is purchaser of the suit property by virtue of permission under Section 29 of the Act and in absence of such permission in favour of plaintiff, plaint is liable to be returned, cannot be accepted. The fact that whether for a development agreement, permission under Section 29 of the Act is necessary or not and even otherwise suit of the plaintiff-respondent for compensation is maintainable are the issues which need not be appreciated at this stage of the proceedings.

7] Defence raised by the petitioner-defendant no. 4, in my opinion, will be of hardly any consequence in the aforesaid background.

8] Section 29 of the said Act puts a restriction on transfer and division of the land in absence of permission. In such an eventuality, effect of section 29 on the claim put forth by the plaintiff-respondent can be

looked into at an appropriate stage.

9] In the aforesaid background, no case for interference is made out.

Petition as such fails, dismissed.

(NITIN W. SAMBRE, J.)