

obtained permission under Section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as “**the BT & AL Act**”), the decree cannot be executed.

2. Heard Mr. F.A. Pereira, learned counsel appearing for the petitioners and Mr. Vishwajit Sawant appearing for respondent No.2, the decree-holder. The presence of the other respondents is not necessary since they are the judgment debtors.

3. The plaintiff/respondent No.2 filed Special Civil Suit No.360 of 1996 in the Court of Civil Judge, Senior Division, Pune, seeking specific performance of an agreement executed between the plaintiff and defendant Nos.2 to 9 for purchase of land bearing Survey No.831/1, admeasuring 8 Hectors situated at Village Wadebolai, Tal. Haveli, District Pune. Since there was failure to execute the sale deed, its specific performance was sought.

4. The said suit came to be decreed by judgment dated 28/03/2006 passed by the Civil Judge, Senior Division, Pune, in the following terms:

“2. The defendants are directed to execute register sale-deed in favour of the plaintiff firm as per the agreement to sell dated 20.5.1994 Exh.56 after obtaining necessary permission u/s 63 of the Bombay

Tenancy and Agricultural Lands Act from the Collector, Pune within a period of 4 months from today. The plaintiffs are directed to deposit the balance consideration within one month from today.

3. If the plaintiff fails to obtain permission from the Collector, Pune u/s 63 of the Bombay Tenancy and Agricultural Act or if the Collector, Pune refused to grant such permission this suit for specific performance will stand as dismissed. In such event, the defendants are liable to repay the Earnest money of Rs.1,00,000/- to the plaintiff with interest @ Rs. 6% p.a. from the date of institution of this suit till realisation of the said amount.

4. If the defendants failed to execute the registered sale-deed in favour of the plaintiff as per the suit agreement Exh.56 after obtaining necessary permission by the plaintiff from the Collector, Pune within 4 months from today, the plaintiff is at liberty to get executed and registered sale-deed through the Court along with possession of the suit land at the costs of the defendants.”

The decree was accordingly directed to be drawn.

5. The decree was assailed in an appeal filed before the appellate court in the form of Civil Appeal No.50 of 2013 whereas, some other respondents instituted another Civil Appeal No.49 of 2013 before the Ad-hoc District Judge, Pune, who dismissed the appeals on 11/11/2014 by upholding the decision

of the Civil Judge, Senior Division, Pune. Second Appeal No.305 of 2015 came to be instituted by the aggrieved defendants, which was also dismissed on 27/06/2016 confirming the orders passed by both the courts below.

Against dismissal of the second appeal, a special leave petition was filed before the Hon'ble Supreme Court, which was also turned down on 26/09/2017.

In the wake of the aforesaid proceedings initiated by the present petitioners being dismissed, the decree passed in favour of the plaintiff stood confirmed.

6. The plaintiff filed proceedings for execution of the decree dated 28/03/2006 by filing Special Darkhast No.207 of 2006 in the Court of Civil Judge, Senior Division, Pune. In the said Darkhast, the respondents/judgment debtor raised an objection vide Ex-36, wherein, emphasis was laid upon the permission contemplated under Section 63 of the BT & AL Act and it was urged that the Civil Judge, Senior Division, Pune, while decreeing the suit directed the execution of the registered sale deed in favour of the plaintiff as per the agreement for sale after obtaining the necessary permission under Section 63 of the BT & AL Act from the Collector within four months. It was urged that the judgment dated 28/03/006 clearly stipulated that if the plaintiff fails to obtain permission from the Collector, Pune, or such permission was refused, the suit for specific performance shall stand dismissed and, in such an event, the defendants shall

repay the earnest money of Rs.1 lakh to the plaintiff with interest at 6% per annum from the date of institution of suit till realization of the amount. An objection was, therefore, raised to the effect that the decree cannot be executed and the defendants cannot be compelled to execute the registered sale deed in favour of the plaintiff in absence of the permission being granted by the Collector under Section 63 of the BT & AL Act. The application proceeded to aver that the permission obtained by the decree-holder in the year 2005 was cancelled vide Case No.130 of 2006 on 03/06/2014 by directing the Collector to hold fresh enquiry and the said matter is pending before the Collector. Necessarily as on date, there is no permission in existence granted under Section 63 of the BT & AL Act and, therefore, execution of the decree cannot be proceeded with.

7. The said objection was resisted by the decree-holder by filing a reply wherein, it was contended that the decree in favour of the decree-holder was confirmed upto the highest court of the land i.e. the Hon'ble Supreme Court and the objection is nothing but an attempt to stall its execution. The submission advanced was to the effect that the necessary permission under Section 63 of the BT & AL Act was in fact obtained, against which the judgment debtor preferred a revision, when the permission granted by the Collector was set aside and the matter was referred to the Collector for fresh hearing. On obtaining the necessary permission on 27/07/2006, it was pleaded that, the

condition to obtain permission from the Collector before execution of decree was thus fulfilled. It was, therefore, pleaded that in the revision application, the matter was remanded by the Maharashtra Revenue Tribunal, Pune, to the Collector, Pune to be decided afresh and the said order was passed on 03/06/2014 and the Collector re-heard the parties and arrived at a conclusion that there was no requirement in law to seek permission from the Collector and, therefore, the condition in the decree about the permission from the Collector is no more necessary.

8. A compilation of documents has been placed on record by the parties, which include the order/judgment passed by the Maharashtra Revenue Tribunal, Pune in Revision Application filed under Section 76 of the BT & AL Act. On perusal of the said order, it can be seen that the order of the Collector dated 27/07/2006 in respect of permission under Section 63 of the BT & AL Act was set aside and the case is remanded to the Collector for fresh enquiry in accordance with law, in the light of the observations made in the order and complying with the requirements of Section 63 and Rule 36 of the BT & AL Act after affording necessary opportunity to the parties to lead their evidence. It was also made clear that the said application should be decided in view of the decree passed in Special Civil Suit No.360 of 1996.

During the pendency of the said proceedings, the Maharashtra Tenancy and Agricultural Land Act underwent

an amendment by Maharashtra Act No.1 of 2016 and by virtue of the said amendment, the following sub-section was inserted in Section 63 of the BT & AL Act, which reads as under:

“(1C) Nothing in sub-section (1) shall apply to the land situated within the limits of a Municipal Corporation or a Municipal Council, or within the jurisdiction of a Special Planning Authority or a New Town Development Authority appointed or constituted under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force, and also to any land allocated to residential, commercial, industrial or any other non-agricultural use in the draft or final Regional plan or Town Planning Scheme, as the case may be, prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force.”

9. The submission advanced is to the effect that the said amendment has no retrospective effect and, therefore, without complying with the condition of obtaining the permission under Section 63 of the BT & AL Act as required by the judgment dated 28/03/2006, the decree cannot be executed. The reliance placed by learned counsel for the petitioners on the judgment of the Calcutta High Court in the case of **Bhutnath Das & Ors. v. Sahadeb Chandra Panj** reported in **AIR 1962 Cal. 485**, which is a decision completely on the facts of the case, does not render

any assistance to the case of the petitioners.

10. Learned Judge considered the said objection and the response of the decree-holder thereupon. The order of the Collector on remand of the proceedings by the Maharashtra Revenue Tribunal was relied upon by the learned Judge where the Collector has made an observation that no permission is required as on date under Section 63(1)(c) of the BT & AL Act, which has come into force with effect from 01/01/2016. Resultantly, on the ground that the permission is no more required, the Collector refrained himself from granting such permission in the light of the amended provision. The order of the Collector passed on 21/11/2016 has not been assailed by the present petitioners but they have preferred to file an objection in the execution proceedings. The Collector in his order has rightly recorded the chronology of events and by making reference to the amendment effected in Section 63 of the BT & AL Act has declared that in terms of the notification of the Government issued on 01/01/2016, the requisite permission under Section 63 of the BT & AL Act is not required and since the provisions are applicable for the purpose of purchase and since it has come into effect from 01/01/2016, the sale can be effected without the permission from the Collector. Necessarily, since the sale deed is not executed till date and if it is to be executed, as on date, there is no need for the permission as contemplated under Section 63 of the BT & AL Act.

11. By relying upon the order of the Collector, who in turn, has referred to the amendment to the BT & AL Act, learned Judge is perfectly justified in recording that the objection is not tenable, on account of the amendment, which the law has undergone and by the said amendment the requirement of obtaining permission has been done away with.

12. The impugned order rejecting the objection filed by the petitioners is, therefore, perfectly justified and the attempt on part of the petitioners, who are the judgment debtors, is to delay the execution of the decree, which has been upheld in favour of the decree-holder till the Hon'ble Supreme Court, the obstacle must be immediately cleared by dismissing the present writ petition. The writ petition is dismissed. No order as to costs.

[SMT. BHARATI DANGRE, J.]