IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10915 OF 2019

Bhagwat Rachappa Hingmire … Petitioner

Versus

The State of Maharashtra
Through its Secretary of Revenue
and Forest Department Mantralaya,
Mumbai & Ors. … Respondents

…

Mr. G. J. Kore, Advocate for the Petitioner
Mr. S. W. Munde, AGP for Respondent Nos.1 & 2
Mr. M. B. Kolpe, Advocate for Respondent No.5

…

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th September, 2022

PER COURT :-

1. Challenge in this petition is to the order passed by the Maharashtra Revenue Tribunal, Aurangabad in Appeal No.9/A/2014 dated 03/07/2019.

2. The respondent no.5, being landless, was allotted 1 H. 20 R. land in Gat No.100, situated at village Shingoli, Taluka and District Osmanabad under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short 'the said Act').

3. The respondent no.5 intended to sell the said land. Therefore, he sought permission from the Collector, Osmanabad by application dated 31/03/2010. The Collector directed to respondent no.5 to

deposit 50% amount in the government office for the said permission. By order dated 13/01/2011 passed under Section 29 of the said Act, Collector granted permission to respondent no.5 to sell the said land by depositing 50% amount in the government office.

4. After the permission is received, petitioner purchased the said land by way of a registered sale deed from respondent no.5/original land owner.

5. The petitioner thereafter filed application before Tahsildar, Osmanabad, seeking permission to convert the said land into non-agricultural land. The permission was granted by Tahsildar vide order dated 22/08/2011.

6. The respondent nos.3 & 4 approached the Collector on 24/11/2011 and submitted that for violation of conditions mentioned in the permission to sell the said land, permission is liable to be cancelled. The petitioner appeared and submitted that he is willing to deposit remaining/additional amount.

7. The petitioner by applications dated 21/07/2012 and 09/01/2013 showed his willingness to deposit additional amount in addition to 50% amount deposited by him, while obtaining N.A. permission. The petitioner also contended that after N.A. permission was received, petitioner has prepared a layout and

started selling the plots. The petitioner was called upon to show cause as to why N.A. permission granted to the petitioner should not be cancelled.

8. It appears from the record that on 21/07/2012, petitioner applied to the Collector that, the land is uncultivable and barren and he has purchased the same. He has deposited 50% amount at the time of obtaining N.A. permission and he is ready to deposit additional amount. The additional amount be deposited.

On 09/01/2013, petitioner requested the Additional Collector to permit him to deposit additional 25% amount by reiterating the contentions made in earlier application and further prayed that by accepting additional 25% amount, bogus application submitted by respondent nos.3 & 4 be dismissed.

9. By order dated 27/08/2012, Tahsildar has reviewed earlier N.A. permission granted to petitioner and cancelled the same on the ground that petitioner has violated conditions of using the land for agricultural purpose and the petitioner ought to have obtained permission by depositing 75% amount, at the time of seeking N.A. permission.

10. By the impugned order dated 14/02/2014, Collector allowed application filed by respondent nos.3 & 4 and forfeited the said land to the Government on the ground that petitioner has failed to

deposit 75% amount of the market value of the said land and therefore, there is violation of Section 29(3) of the said Act and the land is forfeited to the Government.

11. The petitioner challenged the order passed by the Collector by filing Appeal No.9/A/2014 before Maharashtra Revenue Tribunal, Aurangabad along with stay application. On refusal of stay, petitioner approached this Court by filing Writ Petition No.3553/2014. This Court, by way of ad-interim relief, granted stay to the order passed by the Collector. Thereafter, appeal was dismissed by the Tribunal on merit. Hence, the present petition.

12. I have given due consideration to the rival submissions of the learned Advocate for the petitioner, learned Assistant Government Pleader for respondent nos.1 & 2 and the learned Advocate for respondent no.5. During the pendency of proceedings, respondent no.3 died and respondent no.4 is deleted.

13. Before the Tribunal, petitioner placed reliance on the amended provision of Section 29 of the said Act, which came into effect from 15/12/2018. The Tribunal has refused to apply the said amended provision to the petitioner’s case, holding that the proceedings initiated against the petitioner have concluded by the order of the Collector in the year 2014 itself and therefore, the amendment cannot be made applicable to the petitioner’s case.

14. It is a matter of record that, respondent no.5 was granted permission to sell the said land on condition to deposit 50% amount in the government office. After the said amount was deposited, permission was granted to sell the said land. After receipt of the said permission, petitioner has purchased the said land by way of a registered sale deed. Thereafter, petitioner applied for N.A. permission to convert the said land into non-agricultural land and the said permission was granted to him by Tahsildar vide order dated 22/08/2011. It is further clear from the record that, respondent nos.3 & 4 challenged the permission granted in favour of respondent no.5 for selling of the said land on the ground that petitioner has converted the said land for non-agricultural purpose and he is selling the plots. The Collector has accepted the said contention and cancelled the permission granted in the year 2011 on the ground that petitioner has violated conditions in the permission granted to sell the said land and petitioner has failed to deposit 75% amount at the time of obtaining N.A. permission.

15. Admittedly, the said order of Collector is challenged by petitioner by filing appeal before the Maharashtra Revenue Tribunal, Aurangabad. It is settled legal position that appeal is a continuation of proceedings and therefore, order of Collector had not attained finality in the year 2014, as is held by the Tribunal.

16. It is also a matter of record that during pendency of appeal filed before the Tribunal, this Court granted stay to the order passed by the Collector. In that view of the matter, Tribunal could not have held that the order passed by the Collector attained finality in the year 2014.

17. In view of amended provision of Section 29(3) of the said Act, transfer can be regularized by depositing 75% amount. The N.A. permission granted in favour of petitioner could have been regularized by accepting 75% [50% amount was already deposited]. Therefore, by accepting 25% more amount, N.A. permission could have been regularized. The petitioner has repeatedly approached the Collector with a request to accept remaining 25% amount for regularization of N.A. permission. In these facts of the case, it was improper on the part of the Collector to cancel the sell permission granted in the year 2011 on the ground that petitioner has violated conditions, while obtaining the N.A. permission of the said land.

18. In the facts of the present case, Collector ought to have accepted 25% amount for regularization of N.A. permission.

19. Taking into consideration the fact that, impugned order of forfeiture of the said land was passed by Collector on 14/02/2014 and immediately thereafter, petitioner has filed statutory appeal and this Court has stayed the order passed by Collector.

20. In view of the fact that petitioner has filed appeal challenging the order of the Collector and this Court has stayed the order passed by the Collector and in view of settled legal position that appeal is a continuation of proceedings. The Tribunal has erred in holding that the Collector's order has become final in the year 2014 and therefore, the benefit of amendment cannot be given to the petitioner. The impugned order of the Tribunal is therefore unsustainable in law and facts of the case.

21. This Court is of the opinion that the amendment is applicable to the facts of the present case and therefore, by accepting 75% amount of the market value, N.A. permission granted to the petitioner ought to have been regularized.

22. For the aforesaid reasons, following order is passed;

ORDER

(i) The writ petition is allowed in terms of prayer clause-[B].

(ii) N.A. permission of the petitioner shall be regularized by the Collector, Osmanabad, by accepting 75% amount of the market value of the subject land.

(iii) Since the petitioner has already deposited 50% amount at the time of obtaining N.A. permission, the petitioner shall be liable to deposit further 25% amount, if not already deposited.

[NITIN B. SURYAWANSHI, J.]

Sameer