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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13800 OF 2021

MADAN MURLIDHAR WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr S. P. Katneshwarkar, Advocate for petitioner;
Mr P. G. Borade, A.G.P. for respondent Nos.1 & 4

CORAM : SMT. BHARATI DANGRE, J.

DATE : 16th February, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner and the learned A.G.P. for respondents Nos.1 and 4.

The petitioner is aggrieved by the order passed by the Hon'ble Minister, thereby confirming the finding rendered by the Divisional Joint Registrar, Co-operative Societies, Aurangabad, in Application No.42/2016, filed by one Shri. Manchak Kishanrao Kadam and in the proceedings the present petitioner was impleaded as respondent No.2.

2. The background facts disclose that the Agricultural Produce Market Committee (APMC), Jawala Bazar, allotted plot in favour of one Sanjay Bansilal Lahoti on 16/04/2007 and the claim is

(2)

staked by the petitioner as well as one Shri. Manchak Kadam as sub-lessee from Shri. Lahoti. The claim staked by the petitioner is to the effect that, the plot which was allotted to Sanjay Lahoti by APMC was sub-leased in his favour by an agreement dated 16/04/2007. It is the case of the petitioner that pursuant to the said agreement, a request was made to the APMC on 15/07/2010 by Shri. Lahoti, seeking transfer of the said plot in the name of the petitioner. Pertinent to note that this application is made after lapse of a period more than three years when the agreement is executed.

3. One Manchak Kadam claimed that Shri. Lahoti had sub-leased the plot in favour of one Rajeshwar Chakrawar, who has in turn, sub-leased in his favour, and therefore, he sought transfer of the said plot in his name. A Resolution to that effect was passed on 28/01/2013, but since it was not implemented, he approached the Divisional Joint Registrar. His application came to be granted and the APMC was directed to implement the Resolution No.8, passed in its meeting dated 28/01/2013 and the plot was directed to be transferred in the name of applicant Shri. Manchak Kadam.

(3)

Being aggrieved, the petitioner approached the Hon'ble Minister, stating that it was he, in whose favour the plot was sub-leased by the allottee Shri. Lahoti and the agreement executed between the two, was projected to be the basis of his right, and he prayed for setting aside of the order passed by the Divisional Joint Registrar. The Hon'ble Minister heard the petitioner, Shri. Manchak Kadam, APMC and the Divisional Joint Registrar, and returned finding that the APMC had allotted plot No.4 in favour of Sanjay Lahoti by way of lease. This plot was further sub-leased in favour of Shri. Rajesh Chakrawar, by executing a sub-lease agreement on 05/01/2007 and the fees to that effect was paid by Shri. Lahoti to the APMC and on 26/03/2007, the APMC passed Resolution in it's meeting for granting it's approval for transfer of the plot in name of Shri. Chakrawar. In the meantime, the petitioner claimed that, the plot was handed over to him by a lease agreement executed in his favour by Shri. Lahoti on 16/04/2007 and the copy of the said agreement was also forwarded. However, the Hon'ble Minister noted that this agreement is subsequent to the agreement dated 05/01/2007 and a clear case surface to the effect that Shri. Lahoti had leased out the same plot to two different persons. In fact, the petitioner had also

(4)

lodged the first information report against Shri. Lahoti, alleging fraud and the case was registered, which resulted in acquittal on 20/12/2011 at the hands of Judicial Magistrate First Class, Aundha, Hingoli. Recording that as far as the agreement executed by Shri. Lahoti for leasing out plot No.4 in his favour, he is at liberty to knock the doors of the Civil Court, the Hon'ble Minister lent credence to the case of the respondent Shri. Manchak Kadam, who was found to be eligible to the said plot in the wake of subsequent lease executed in his favour. The order passed by the Divisional Joint Registrar, is therefore, confirmed and the appeal filed by the present petitioner is dismissed.

4. The facts are glaring and it is apparent that Shri. Lahoti had executed lease with the present petitioner, but this is at subsequent point, when the earlier lease was executed in favour of Shri. Chakrawar and pertinent to note that for recording the name on the said plot, Shri. Lahoti moved an application after a gap of three years and in the meantime, the name of other person Shri. Chakrawar was already recorded as against plot No.4 allotted by APMC in favour of Lahoti. The copy of the Resolution dated 28/01/2013 specifically reveal the said fact.

(5)

5. In the wake of the above, since no legal infirmity can be found in the said order and since the petitioner is at liberty to invoke the remedy available to him in Civil law, since he accordingly availed the remedy available to him under the criminal law and has failed, the concurrent findings recorded by the two authorities, cannot be faulted and by upholding the same, the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)

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