

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

WRIT PETITION NO. 11099 OF 2017

Sanjay Keshavrao Bhosale and another .. Petitioners

Versus

The Deputy Collector, Aurangabad
and others .. Respondents

Shri S. S. Gangakhedkar, Advocate for the Petitioner.
Shri D. R. Kale, Incharge G.P. for the Respondent Nos. 1 and 2.
Shri S. P. Brahme Advocate h/f Shri P. C. Mayure, Advocate for
Respondent Nos. 3 to 12 and 14.
Shri A. M. karad, Advocate for the Respondent Nos. 15, 17 and
18.

**WITH
WRIT PETITION NO. 13841 OF 2018**

Bhagwan Ambadas Ubale and others .. Petitioners

Versus

Dhanaji Bhima Pawar and others .. Respondents

Shri A. M. karad, Advocate h/f Shri Girish N. Kulkarni
(Mardikar), Advocate for the Petitioners.
Shri S. P. Brahme Advocate h/f Shri P. C. Mayure, Advocate for
Respondent Nos. 1 to 12.
Shri D. R. Kale, Incharge G.P. for the Respondent Nos. 13 and
14.

**WITH
WRIT PETITION NO. 2232 OF 2019**

Ram Gyanba Tangade .. Petitioner

Versus

Dhanaji Bhima Pawar and others .. Respondents

Shri A. M. karad, Advocate for the Petitioner.

Shri S. P. Brahme Advocate h/f Shri P. C. Mayure, Advocate for Respondent Nos. 1 to 12.

Shri D. R. Kale, Incharge G.P. for the Respondent Nos. 13 to 15.

CORAM : SANDEEP V. MARNE, J.

DATE : 14TH NOVEMBER, 2022.

FINAL ORDER :

. These petitions emanate out of the order dated 18.08.2017 passed by the Deputy Collector (General Administration) Aurangabad thereby holding that the transfer of the lands was in violation of the provisions of Section 31 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short Act of 1947"). In Writ Petition No. 13841 of 2018 and Writ Petition No. 2232 of 2019, order passed by the Deputy Collector was questioned before the Additional Divisional Commissioner, who was pleased to allow the appeals and set aside the order of the Deputy Collector by his order dated 15.01.2018. The original complainants (respondent Nos. 1 to 12) filed revision before the Hon'ble Minister, who was pleased to allow the same setting aside the order of the Additional Divisional Commissioner and confirming the order of the Deputy Collector.

2. As against this, the petitioners in Writ Petition No. 11099 of 2017 failed to avail the statutory remedies against the order passed by the Deputy Collector dated 18.08.2017 and have proceeded to file present petition directly before this Court. Mr. Brahme, learned counsel appearing for the respondent Nos. 1 to 12 raises a preliminary objection to the maintainability of the Writ Petition No. 11099 of 2017. Ordinarily, this Court would be

loath in entertaining a Writ Petition when a statutory remedy is available. However, considering nature of the order that I propose to pass, the objection of alternate remedy raised by Mr. Brahme, in my opinion would not survive.

3. The orders impugned in the present petitions are assailed on variety of grounds viz (i) that there was inordinate delay in initiation of proceedings; (ii) that on account of the lands falling within Notified Area with appointment of CIDCO as Special Planning Authority, provisions of Section 31 of the Act become inapplicable; (iii) that on account of the fact that the transferees are agriculturists also, provisions of Section 31 of the Act are inapplicable; (iv) that provisions of Section 31 were introduced in the Act with effect from 29.06.1977 and, therefore, the transaction of first sale pertaining to the year 1972 cannot be affected by the Section 31 of the Act of 1947 introduced thereafter and (iv) that a permission was indeed obtained for the first transaction of sale effected in the year 1972 and therefore no permission was necessary for subsequent transactions.

4. It must be stated at the outset that many of the objections such as appointment of CIDCO as Special Planning Authority, the transferees being agriculturists, provisions of Section 31 of the Act of 1947 coming into effect from 29.06.1977, etc were not raised before the Deputy Collector and the Additional Divisional Commissioner. Some of these objections particularly relating to CIDCO being appointed as a Special Planning Authority were raised before the Hon'ble Minister in Revision proceedings. However, perusal of the orders passed by the Deputy Collector, Additional Divisional Commissioner and the Hon'ble Minister

would indicate that these objections/contentions have not been dealt with.

5. Mr. Brahme would contend that issuance of Notification dated 03rd October, 2006 appointing CIDCO as Special Planning Authority is inconsequential for twin reasons of the Notification being prospective and absence of any specific evidence that the concerned land is covered by that Notification, I am of the opinion that the Hon'ble Minister has not dealt with the issue of appointment of CIDCO as a Special Planning Authority. The contentions raised by the petitioners as well as the respondent Nos. 1 to 12 in this regard have remained undecided. In my opinion, if the contentions of Mr. Karad and Mr. Gangakhedkar about lands being saved from clutches of Section 31 on account of appointment of CIDCO as Special Planning Authority are upheld, the same would go to the root of the matter as prior permission U/Sec. 31 of the Act of 1947 would then be not mandatory. However, since these points have not been considered by the authorities below, I deem it appropriate to remand the matter for reconsideration.

6. Since most of the aforestated contentions are raised by the petitioners in Writ Petition No. 13841 of 2018 and Writ Petition No. 2232 of 2019 in Revision before the Hon'ble Minister, it would be appropriate that the proceedings are remanded to the Hon'ble Minister for reconsideration.

7. So far as Writ Petition No. 11099 of 2017 is concerned, even though the petitioners therein did not file appeal challenging the order of the Deputy Collector before the

Additional Divisional Commissioner, they would be justified in preferring a direct Revision before the Hon'ble Minister in the peculiar facts and circumstances of the case so that their revision can be decided along with the Revision of the petitioners in Writ Petition No. 13841 of 2018 and Writ Petition No. 2232 of 2019, which is being remanded back by the present order. Mr. Brahme appearing for respondent Nos. 1 to 12 fairly submits that his clients shall not raise any objection to the maintainability of such Revision, if filed by the petitioners in Writ Petition No. 11099 of 2017.

8. In the light of the position emerging before me, I proceed to pass following order.

O R D E R

A. The order dated 09.10.2018 passed by the Hon'ble Minister as challenged in Writ Petition No. 13841 of 2018 and Writ Petition No. 2232 of 2019 is set aside and the Revisions are remanded back to the Hon'ble Minister for fresh decision.

B. Petitioners in Writ Petition No. 11099 of 2017 shall be at liberty to prefer a direct Revision U/Sec. 257 of the M. L. R. Code to the Hon'ble Minister challenging order passed by the Deputy Collector dated 18.08.2017. If such revision is filed within a period of three (03) weeks from today, the same shall be heard and decided along with the Revisions which are remanded by the present order.

C. The Hon'ble Minister is requested to make an endeavor to

decide the Revisions so remanded and freshly filed as early as possible and preferably within a period of six (06) months from today.

D. The parties shall be at liberty to file fresh documents and raise all pleas as may be available to them before the Hon'ble Minister.

E. It is made clear that I have not dealt with merits of any of the contentions raised before me and all points on merits are left open. The Hon'ble Minister shall decide the revisions without being influenced by any of the observations made in the present order.

F. Interim order passed in Writ Petition No. 11099 of 2017 shall continue till the decision of the Revision by the Hon'ble Minister.

G. Writ Petitions are accordingly partly allowed and disposed of. No costs.

[SANDEEP V. MARNE, J.]

bsb/Nov. 22