

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

WRIT PETITION NO.15324 OF 2017

1. Navnath s/o Devidas Dalve
Age: 38 Yrs., occu. Agril
and Labour.
2. Balasaheb s/o Devidas Dalve,
Age: 42 Yrs., occu. Agril.
And Labour.

Both r/o Dalve Wadi, Tq.Washi,
District Osmanabad.

= **PETITIONERS**

VERSUS

1. The State of Maharashtra.
2. The Additional Collector,
Osmanabad., Tq. And Dist,.
Auragnabad.
3. The Member,
Maharashtra Revenue Tribunal,
Aurangabad.
4. Vasant s/o Ramling Kale
(Died through L.Rs.) -
 - i. Vimal w/o Vasant Kale,
Age: 65 Yrs., occu. Household,
R/o Pimpalgaon (Lingi),
Tq. Washi, Dist. Osmanabad.
 - ii. Sow. Alke w/o Murlidhar Kale,
Age: 45 Yrs., occu. Household,
R/o as above.
 - iii. Kalyan s/o Vasant Kale,
Age: 40 Yrs., occu Agril.
R/o as above,.
 - iv. Sow. Shamal w/o Narayan
Waghmare, Age 35 Yrs.,
occ. Household,

R/o as above.

v. Sow. Vatsala w/o Madhukar Sawant
Age: 30 Yrs., occu. Household,
R/o as above.

5. Dnyanoba w/o Ramling Kale.

6. Chandrakant s/o Ramling Kale

(Resp.Nos. 5 & 6 are deleted
as per Court's order dated
30.9.2021)

= RESPONDENTS

Mrs. M.A.Kulkarni, Advocate for petitioners;

Mr. P.G.Borade, AGP for Respondent Nos.1 & 2;

Mr. P.B.Rakhunde, Advocate for Respondent Nos.4(i)
to 4(v)

CORAM : PRITHVIRAJ K.CHAVAN,J.

RESERVED ON : 14/03/2022

PRONOUNCED ON : 05/04/2022

JUDGMENT :-

1. Rule, returnable forthwith.

2. Heard finally with consent of learned
Counsel for the parties.

3. The petitioners have challenged an order
dated 22.9.2017 passed by Respondent No.3 thereby
confirming an order dated 30.9.2014 passed by
Respondent No.2.

4. The petitioners contend that Respondent Nos.4 and 5 are the objection petitioners and Respondent No.6, who is an allottee of land Gut No. 561, area 1 hectare 1 R. situated at village Pimpalgaon Lingi as a beneficiary from weaker section of society. It is contended that Chandrakant Ramling Kale, as he was unable to cultivate the land due to his old age and before his death, sold the aforesaid land to the petitioners on 17.5.2008.

5. Pursuant to the sale-deed, names of the petitioners were entered in the revenue record. However, after death of deceased Chandrakant, Respondent Nos.4 and 5 moved an application for cancellation of the sale-deed dated 17.5.2008, as according to them, it was in contravention of Section 29 of The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short, " the Act").

6. The petitioners *inter alia* filed an application for regularization of transfer as per Government Resolution dated 19.10.2001 and revised

Rule No.12. By the impugned order dated 30.9.2014, Respondent No. 2 allowed the application filed by Respondent Nos.4 and 5 and cancelled the sale-deed, *inter alia*, directed that the said land shall vest in the Government.

7. An appeal preferred by the petitioners under Section 33 of the said Act before the Respondent No.3 also came to be dismissed by the impugned order dated 22.9.2017.

8. The petitioners have, therefore, invoked writ jurisdiction of this Court by contending that the authorities below have exercised their powers arbitrarily, without jurisdiction and, therefore, the orders passed by the authorities below need to be quashed and set aside. It is the contention of the petitioners that Respondent Nos.2 and 3 ought to have regularized the transaction under the revised Rule 12. It is also, *inter alia*, contended that post-facto sanction can be granted in view of revised Rule 12.

9. In their affidavit in reply, Respondents

No.1 & 2 strongly refuted the averments set out in the petition by contending that Respondent No.6 viz. Chandrakant Ramling Kale was an allottee of the land as per the said Act. The petitioners are the tranferrees of the said land Gut No. 561 area 1 H 1R pursuant to sale-deed dated 17.5.2008. According to the respondents, prior permission of the Collector had not been obtained before execution of the sale-deed by Respondent No.6, which is mandatory in terms of the provisions of the said Act.

10. Pursuant to a complaint made by Respondent Nos.4 and 5 to the Respondent No.2, seeking cancellation of the sale-deed dated 17.5.2008, as it contravened Section 29 of the Act, Respondent No.2, after hearing the respective parties, allowed the complaint of Respondent Nos. 4 and 5. It was observed that the sale-deed dated 17.5.2008 is illegal and the land is directed to be given in possession of the Government.

11. A specific stand taken by the respondents is that, for the first time, in writ petition, the

petitioners have raised a plea that the Respondent No.6 – Chandrakant was above 65 years of age and, therefore, was not in a position to cultivate the land and as such, in view of the amended Rule 12 of the Maharashtra Land (Ceiling on Holdings) Rules, 1975, Act, which came to be amended in 2001, such transfer of the land is permitted by a person, who is 65 years and above. The respondents contend that such exercise could have been done before transfer of the land by the allottee. Respondent No.6 is no more. There is nothing on record to show that he was an old-aged person and above 65 years of age. There is no prayer in the application dated 6.3.2013 by the petitioners for regularizing the transfer. The petitioners could have raised this ground before Respondent No.2, i.e. Additional Collector or in an appeal before Respondent No.3. The petitioners, therefore, according to the respondents, cannot take this ground in the writ petition when the Respondent No.6 is no more.

12. As regards reliance of the petitioners on the Government Resolution dated 19.10.2001, the respondents contend that it is in respect of an Inam

land. As such, the respondents contend that the petition is devoid of merits and needs to be dismissed.

13. I heard Mrs. Kulkarni at a considerable length as well as learned AGP and learned Counsel appearing for Respondent No.4.

14. Mrs. Kulkarni took me through Section 29(3) of the Act by emphasizing that the authorities below had not understood and considered the real scope of Section 29(3). She would argue that the matter needs to be remanded to the Additional Collector, as the authorities below had not considered the notification dated 18.10.2021 issued by the Government of Maharashtra by which regularization of the land, in question, could have been made. She would further argue that the said Act is a beneficial legislation and the lands are given to socially backward communities to achieve the object of equality enshrined in Article 14 of the Constitution of India. The provisions of such statutes are to be liberally construed so as to give maximum benefit to the allottees, who are

socially as well as economically backward. According to the learned Counsel, such lands given to the allottees are normally dry lands with less fertility included in potkharab, which otherwise cannot be cultivated for yielding some income. Under such circumstance, there is no option for them than to transfer the lands in favour of another person. The Counsel would emphasize that sub-section (3) of Section 29 of the Act can be applied to the pending cases as there is no bar for this Court to decide the validity of the impugned order passed by the Additional Collector under Section 29(3) of the said Act.

15. Learned AGP invited my attention to the representation dated 6.3.2013 made by the petitioners to the Collector, Osmanabad, requesting the authority to regularize the sale of the land in question. However, the Collector, by communication dated 1.7.2015, had apprised the petitioners that there is no provision as regards regularizing the sale-deed in the The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The learned AGP submits that this order had not been challenged

by the petitioners and, therefore, such request, at this stage, cannot be entertained. He would further submit that the notification dated 19.10.2001 cannot be made applicable as the said notification is not for regularization of such transactions. The learned AGP, therefore, urged to dismiss the petition.

16. Section 29 of The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 reads thus, -

"29. Restriction on transfer or division of land granted under section 28. -

(1) Without the previous sanction of the Collector, no land granted under section 27 or granted to a joint farming society under section 28, shall be-

(a) transferred, whether by way of sale (including sale in execution of a decree of a civil court or of an award or order of any competent authority) or by way of gift, mortgage, exchange, lease or otherwise; or

(b) divided, whether by partition or otherwise, and whether by a decree or order of a civil court or any other competent authority,

such sanction shall not be given otherwise than in such circumstances, and on such conditions [including conditions regarding payment of premium or nazarana to the State Government], as may be prescribed:

[Provided that, no such sanction shall be necessary where land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in sub-section (4) of section 36 of the Code for raising a loan for effecting any improvement of such land.]

(2) If sanction is given by the Collector to any transfer or division under sub-section (1) subsequent transfer or division of land shall also be subject to the provisions of sub-section (1).

(3) Any transfer or division of land, and any acquisition thereof, in contravention of sub-section (1) or sub-section (2) shall be invalid; and as a penalty therefor, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government.

[Provided that, after the commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2018, (Mah.LXXI of 2018), no such land shall be forfeited by the Collector for contravention of the provisions of sub-section (1) or sub-section (2), as the case may be, if the transferor, transferee or any other person interested in such land makes the payment of such amount, as the State Government may, by order published in the Official Gazette, specify:

Provided further that, the amount specified by the State Government under the preceding proviso shall not exceed fifty per cent. of the market value of such land ascertained as per the current Annual Statement of Rates published under the provisions of the Maharashtra Stamp

(Determination of True Market Value of Property) Rules, 1995.]

[(4) On payment of the amount referred to in the first proviso to sub-section (3),-
(i) no further proceedings for violation of the provisions of subsection (1) or sub-section (2) shall be initiated ;

(ii) where the proceedings are already initiated before the date of commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2018, (Maharashtra LXXI of 2018), such proceedings shall abate and the Collector shall make an order to that effect.]”

17. The learned Additional Collector, Osmanabad as well as the learned Member of M.R.T., Aurangabad have reached concurrent findings by passing the impugned orders. The learned Member of the MRT, Aurangabad in the impugned order, has rightly observed that, the appellants (petitioners herein) and the allottee of the land had apparently misused the beneficial provisions of the said Act in utter disregard to the policy of the Government to enrich landless persons with agricultural properties. It has also been correctly observed that the allottee – Chandrakant Ramling Kale had transferred the land in favour of the petitioners without obtaining prior sanction of the Collector

in view of the aforesaid legal position.

18. During the course of the arguments, the learned Counsel for the petitioners, for the first time, raised an issue of the notification dated 18th October, 2001, on the basis of which, it is contended that, regularization of the said sale transaction can be effected. As a matter of fact, there is no pleading to that effect in the petition.

19. The petitioners have, for the first time, raised a ground of old age of deceased Chandrakant Ramling Kale and his consequent inability to cultivate the land. This plea could have been raised before the authorities below. The learned AGP has, therefore, rightly argued that as per the amended Rule 12 of The Maharashtra Agricultural Lands (Ceiling on Holdings) Rules, 1975, which came to be amended in 2001, though the amended rule permits a land from a person aged 65 and more and one, who is unable to cultivate the land, for the reasons of any medical ground, unless there is a certificate issued by Civil Surgeon is produced

before the Collector, seeking such permission to transfer the land, such transfer is not permissible. No such steps appear to have been taken by the allottee of the land before executing the sale deed, and, therefore, the petitioners cannot raise the said issue, now. That ground was available to the allottee/deceased Respondent No.6 – Chandrakant Ramling Kale and not the petitioners.

20. Consequently, the petition is devoid of merits and hence stands dismissed.

(PRITHVIRAJ K.CHAVAN)
JUDGE

LATER ON :

1) After pronouncement of Judgment, learned Advocate Mrs. M.G.Kasturikar on behalf of learned Advocate Mrs. M.A.Kulkarni, for petitioners, seeks extension of interim relief granted earlier.

2) Learned Counsel Mr. P.B.Rakhunde and learned AGP Mr. Y.G.Gujarathi oppose the prayer.

3) In light of the reasons assigned in the

judgment, the prayer is rejected.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV