

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3186 OF 2020

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Mohan Sonaji Shilwant (Deceased) Petitioners
Through Legal Representatives
and Ors.

Vs.

State of Maharashtra & Ors. Respondents

Mr. Kalpesh U. Patil for the Petitioners
Ms. Shruti Vyas, "B" Panel Counsel for the State

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : APRIL 13, 2022

P.C.

1 Rule.

Rule is made returnable forthwith.

By consent of the parties taken up for final hearing.

2 The Petitioners seek directions against the Respondents to regularize the sale deed dated 14th January 1997 executed in favour of the Petitioner of land bearing Gut No.21 admeasuring 0.07 R situated within the limits of village Shivade, Tq. Karad, Dist. Satara.

3 The land in question is Mahar Watan land. One Jalindar Mahar paid the occupancy price of the writ property. Upon payment of the occupancy price, the said property was resumed on 18th April 1970. Jalindar Mahar executed an agreement of sale in favour of the present Petitioner. An Application was filed for permission to sell the land on 12th August 1994. The Respondent Authorities did not respond to the Application and eventually a registered sale deed was executed in favour of the present Petitioner on 14th January 1997 by Jalindar Mahar. The name of the Petitioner was mutated in the revenue record vide Mutation Entry No.1344 dated 15th September 1997. The Petitioner filed Application for regularization. The statement of the Petitioner was recorded before the Tahasildar. The Tahasildar, Tq. Karad directed the Petitioner to pay Najrana of Rs.30,000/- (Rs. Thirty Thousand only). The Petitioner was issued with a Challan. The Petitioner deposited the Najrana amount on 17th February 2003 amounting to Rs.30,000/- (Rs. Thirty Thousand only). The Petitioner sought regularization. The Tahasildar replied that the powers vest with the Collector only to regularize the sale deed. The Dy. Collector, on 7th

December 2018 communicated to the Petitioner that the land being Mahar Watan and the transaction of sale was without permission, the sale deed cannot be regularized.

4 The learned Counsel for the Petitioner submits that the Petitioner has paid Najrana as directed by the Tahasildar. The transaction of the sale is of the year 1997. There is no prohibition for the transfer under the provisions of the Bombay Inferior Village Watans Abolition Act 1958 (for short "**Abolition Act**"). There was no impediment to regularize the sale deed. The transaction is certainly governed by the provisions of the Abolition Act. The learned Counsel relies on the judgment of the Division Bench of this Court in the case of *Vithal Kondhalkar Vs. State of Maharashtra & Ors.*¹. So also the judgment of the Learned Single Judge of this Court in the case of Bhagwanrao @ Bhagwan @ Bhagwat s/o. Mahadu Munjane (Since deceased by Lrs. Vs. State of Maharashtra & Ors.)²

5 The learned AGP for the Respondents submits that as per Section 5(4) of the Abolition Act, the occupancy of the Mahar Watan land regranted under Sub Section (1), shall

1 1981 Bom.C.R.32

2 2011(2) ALL MR 335

not be transferable or partible by meets and bounds without previous sanction of the Collector and except on payment of such amount as the State Government may, by general or special order determine. In view of the said provision, the sale deed cannot be regularized. No provision exists for *post facto* sanction of the transaction of sale.

6 We have considered the submissions canvassed by the learned Counsel for the parties.

7 The factual matrix as narrated above is not disputed. The land in question was regranted to Jalindar Mahar who had paid occupancy price as directed by the State authority. The land in question is Mahar Watan land. The same is restricted land.

8 The land in question is an inferior Watan. All inferior Watans stood abolished and the same were resumed to the Government. As per Section 5(3) of the Abolition Act, the occupancy of the land regranted under Section (1) shall not be transferable without previous sanction of the Collector and on payment of amount determined by the State Government. However, in the year 2002, Sub Section (3) of Section 5 was amended and all the lands governed by the

Abolition Act and other Acts were made transferable by the occupant for agricultural purpose and no previous sanction or No-Objection Certificate from the Collector or any other authority is necessary.

9 Sub Section (4) further casts an exception about the Mahar Watan land. It says that the permission would be necessary. Prior to the amendment of Section 5(3) also the permission was necessary for the transfer.

10 The Division Bench of this Court in the case of Vithal Kondhalkar (supra) has observed that it is a statutory duty of the Collector to grant sanction on payment of requisite amount. It is held by the Division Bench of this Court in the said case that the Collector is not very much concerned with the lawful or unlawful nature of transaction in respect of any land so as to exercise the powers under Section 59 of the Maharashtra Land Revenue Code Code (for short “**the Code**”). If any breach of provision of Section 5(3) of the Abolition Act is detected, an immediate action of summary eviction under Section 59 of the Code is not to be initiated by the Collector before implementation of the Government directives as per its Circular. It was further observed that

the Collector will act ultimately under Section 59 of the Code only in light of general observations regarding passing of appropriate orders under Section 5(3) of the Act in first instance and thereafter to regularize the transaction under Government Circulars.

11 It is observed that the occupant may get occupancy rights by making payment of ten times occupancy charges by way of Najrana. In the case of **Sheikh Lal Vs. Malhari**³ the Division Bench of this Court held that the sanction, as contemplated under Section 5(3) of the Abolition Act can be granted even subsequently and therefore the occupant in possession of the land, in contemplation of grant of such sanction under Section 5(3) of the Abolition Act, cannot be regarded as unauthorised possessor.

12 The Petitioner has already paid amount of Rs.30,000/- (Rs.Thirty Thousand only) as directed by the Tahasildar for the purpose of regularization. The Petitioner was required to pay 50% of the market value as on the date of transfer and the Petitioner has already paid that amount.

13 In the light of the above, the Respondent Authority

shall pass an order for regularization of the transaction of sale in accordance with the policy. The same shall be done preferably within four months.

14 Rule is made absolute in the above terms.

15 The Writ Petition stands disposed of. No costs.

(VINAY JOSHI, J.)

(S.V. GANGAPURWALA, J.)