

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

WRIT PETITION NO. 12982 OF 2023

Piran Harchand Shirsath .. Petitioner

Versus

Jetvan Bhadekaru Malki
Hakk Gruhnirma Sah Sanstha
Ltd and others .. Respondents

Shri Suresh M. Kulkarni, Advocate for the Petitioner.

**CORAM : SHAILESH P. BRAHME, JJ.
DATE : 31ST OCTOBER, 2023.**

FINAL ORDER :

. Heard the learned counsel for the petitioner.

2. This petition is directed against order dated 21.03.2023 passed by the learned 02nd Jt. Civil Judge Senior Division, Nandurbar below Exhibit 66 in R.C.S. No. 67 of 2013, refusing to frame the issue as to whether the respondents are agriculturists or not. The petitioner is the original plaintiff who has filed suit R.C.S. No. 67 of 2013 for declaration and possession. The sale deed executed by the respondent No. 2 in favour of the rest of the respondents on 04.10.2010 is challenged.

3. The claim in the suit of the petitioner has been contested by the respondents. When application Exhibit 67 was filed for

framing of issue and referring it to the Tahsildar, Nandurbar even issues were not settled.

4. The controversy involved in the suit pertains to the allotment of plot to the petitioner and alienation of land gut No. 131/1A/2/1/2 admeasuring 81R of the land by the respondent No. 2 in favour of the respondent Nos. 3 to 6. The suit land was purchased by the respondent No. 1/Cooperative Housing Society on 06.02.1999 from the original owner. It was proposed to be converted into non agricultural purpose and laying the plots therein to be allotted to the members of the society for the residential purpose. The grievance of the petitioner in the plaint is that the respondent No. 2 deceived the petitioner and other members of the society and falsely alienated the suit land to remaining respondents.

5. Initially the subject matter was agricultural land. After purchasing it by the respondent No. 1/society on 06.02.1999, it was converted into non agricultural purpose and lay out was sanctioned by the competent planning authority on 30.09.2000. After preparing layout approval was solicited by the Municipal Council Nandurbar. Thereafter alleged mischief was committed by the respondent No. 2. It is not a dispute in respect of agricultural land, though originally suit land was of agricultural nature.

6. The original owner has no grievance regarding alienation

of the agricultural land to non agriculturist. The suit land appears to have been converted for non agricultural purpose and the plots have been laid therein. The controversy is no more within the purview of the Maharashtra Tenancy and Agricultural Lands Act (for short T. A. L. Act). Nobody is claiming tenancy in the agricultural land. The plots are to be allotted for the purpose of construction of residential premises.

7. Framing of the issues as proposed by the petitioner would be enlarging the scope of enquiry and that is not at all warranted to decide the controversy involved in the matter. The learned counsel for the petitioner has referred to paragraph No. 8 of the plaint to show that there is pleading that the alienation is illegal. If we go by the pleadings then even the purchasing of the suit land by the respondent/society can be said to be illegal. I am of the considered view that Section 63 of the T. A. L. Act has no application. The pleadings in paragraph No. 8 of the plaint would be of no assistance to the petitioner.

8. I find that the suit is of the year 2013 and has not been progressed much. The application Exhibit 67 has been made on 25.07.2022. The learned Judge has rightly rejected the application Exhibit 67. I do not find any perversity or jurisdictional error in the impugned order. The learned counsel for the petitioner has referred to the judgment rendered in Writ Petition No. 3504 of 2011, wherein application for framing issue was rejected. Thereafter further reference is made to the

judgment passed in L.P.A. No. 211 of 2011 challenging the order passed in the Writ Petition No. 3504 of 2011. The facts involved in that case are different than the case in hand. It was suit for specific performance of contract and the subject matter was agricultural land. Unlike the present facts, it was not a case that agricultural land was converted into non agricultural purpose and the plots laid out therein were proposed to be alienated. Just because the subject matter is originally agricultural land, does not warrant framing of issue about Section 63 of the T. L. A. Act and referring the same to the revenue authority.

9. I do not find substance in the writ petition. The writ petition is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

bsb/Oct. 23