IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11703 OF 2018

Tata Chemicals Limited
Through Power of Attorney-
Mr. Rajiv Chandan
Age : 53 Years, Occu. : Service,
Having its registered office at
Bombay House, 24, Homi Mody
Street, Mumbai – 400 001. .. Petitioner

Versus

1. The State of Maharashtra,
Through the District Collector,
Parbhani, Taluka Parbhani,
District Parbhani.

2. Abdul Khader S/o Sk. Amir,
Age – Major, Occupation-Agri and Business,

3. Sk. Javed Ahmed S/o Abdul Khadar,
Age – Major, Occupation-Agri and Business,

4. Sk. Naved Ahmed S/o Abdul Khadar,
Age – Major, Occupation – Business,

5. Sk. Farid Ahmed S/o Abdul Khadar,
Age – Major, Occupation – Business,

6. Salimunnisa Begum W/o Abdul Khadar,
Age – Major, Occupation – Household,

Through Power of Attorney Holder,
Chetan S/o Gopalrao Sawarikar,
Age – Major, Occupation–Agri & Business,

All R/o Farid Manjil, Khawja Colony,
Taluka Parbhani and District Parbhani... Respondents

Shri Amit A. Yadkikar, Advocate for the Petitioner.
Shri R. B. Bagul, A.G.P. for the Respondent No. 1.
Shri N. K. Tungar, Advocate for Respondent Nos. 2 to 6.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 20TH JANUARY, 2023.

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Heard.

3. The challenge in the petition is to the order dated 20th June, 2018 passed by the Collector, upon an application filed by the respondent Nos. 2 to 6 seeking re-conveyance of the sale deed dated 29th August , 2007 and 22nd February, 2008 executed by respondent Nos. 2 to 6 with the petitioner in respect of land gut No. 651 admeasuring 10H and 02H respectively on the ground that as per the order of sanction dated 30th July, 2007, the petitioner has not put the land to industrial use within a period of 10 years and as such the respondent Nos. 2 to 6 being the original land owners are entitled to repurchase the land at the price for which it was originally sold.

4. The facts of the case are as under:

The respondent Nos. 2 to 6 were owners of the subject land bearing gut No. 651. In the year 2007, the petitioner and the respondent Nos. 2 to 6 entered into two registered sale deeds bearing No. 3140/2007 dated 29th August, 2007 and 811/2008 dated 22nd February, 2008 for purchase of the land admeasuring 10H and 02 H respectively for production of ethanol chemical.

The Collector granted permission by order dated 30th July, 2007, wherein the specific condition was imposed that the purchaser has to put the land for industrial use within a period of 15 years from the date of purchase, failing which original land owners will be entitled to purchase the land from the Petitioner at the price at which it was initially sold. The other condition which is relevant for our purpose is that in event within a period of five years the land is not put to *bonafide* industrial purpose, then for putting the land to industrial use within the balance remaining period of 15 years, the land owner has to pay three times non agricultural tax payable, as per the provisions of Section 47A of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short 'Tenancy Act'),

5. Admittedly the land was not put to industrial use within the period of five years and on 19th March, 2018 an application was moved by the respondent Nos. 2 to 6 seeking re conveyance on the ground that there is violation of condition of sanction. The application came to be allowed by the Collector by the impugned order taking into consideration the amended provisions of the Tenancy Act which provided that in event the land is not put to actual industrial use within period of five years or after payment of non agricultural tax, if the land is not put to bonafide industrial use within total period of 10 years, the land can be resumed on giving notice of one month.

6. Learned counsel for the petitioner submits that the Collector erred in taking into consideration the amended provisions of the Tenancy Act, which came into force by Amendment Act of 2016 and hence was inapplicable to the case

of the petitioner as the sanction order was passed on 30th July, 2007. He would further submit that as the impugned order directed the petitioner to hand over the land to the State Government, the present petition came to be initiated in the year 2018 and pursuant to order of this Court dated 22nd November, 2018, the petitioner has deposited an amount of Rs. 22,60,136/- with the Deputy Collector (Land Reforms) Parbhani, which is recorded in the order of this Court dated 03rd January, 2019.

7. Per contra, learned counsel for the respondents submits that although as per the provisions of Section 47A of Tenancy Act, as it stood on the date of grant of sanction, period of 15 years was provided for putting the land for bonafide industrial use, the second proviso provides that if within the period of five years from the date of purchase, the land was not put to actual industrial use, the payment of additional amount equal to 49 per cent of the price for which it was originally purchased and three times of an annual assessment of non-agricultural tax payable under the Maharashtra Land Rvenue Code, 1966 as non utiliztion tax per year was required to be paid and it is only thereafter balance remaining period out of the total 15 years would come into play. He would further submit that in any event period of 15 years from the date of execution of sale deeds expired in the year 2022 and no such application having been preferred for making the payment as provided in the second proviso, the petitioner has lost its entitlement to the land and the respondents are entitled to reconveyance.

8. I have considered the rival submissions of the parties.

9. The issue in the present case pertains to the provisions of Section 47A of the Tenancy Act, which has been amended from time to time. In the present case, as the sale deeds are of the year 2007 and 2008 and as the Collector's sanction is of 30th July, 2007, the position of the Tenancy Act as on the date of sanction is required to be considered.

10. Section 47A of the Tenancy Act as it stood in the year 2007 reads as under :

The Hyderabad Tenancy and Agricultural Lands Act, 1950

1. ....
2. ....

[**47A.** (1) Notwithstanding anything contained in section 47, it shall be lawful for a person to sell land, without permission of the Collector, to any person who is or is not an agriculturist and who intends to convert the same to a bona fide industrial use [2][or for special Township Project, as the case may be.] where such land is located within–

[Provided also that, the purchaser who fails to put the land to bona fide industrial use within five years from the date of the purchase, and is on the date of coming into force of the Maharashtra Tenancy and Agricultural Lands Laws (Amendment) Act, 2004, holding such land without having been put to the bona fide industrial use, shall be permitted to put such land to bona fide industrial use within the remaining period from the total period of fifteen years, subject to the condition that,––

(a) if the land purchased under sub-section (1) was held by the seller as the Occupant Class-II, such purchaser landholder shall pay an additional amount equal to 48 per cent of the price for which it was originally purchased and three times of an annual assessment of non-agricultural tax payable under the

> Maharashtra Land Revenue Code, 1966 as a non-tilization tax per year;
>
> (b) if the land purchased under sub-section (1) was held by the seller as the Occupant Class-I, the purchaser landholder shall pay three times of an annual assessment of the non-agricultural tax payable under the Maharashtra Land Revenue Code, 1966 as a non-utilization tax per year :
>
> Provided also that, the provisions of this sub-section shall not apply to the areas notified as the Eco-sensitive Zone by the Government of India] :
>
> Provided also that, where the land being sold belongs to a person belonging to the Scheduled Tribe, such sale of land shall be subject to the provisions of sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 and of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

11. The Collector, by the impugned order, has taken into consideration the subsequent amendment of the year 2016, which reduces the period provided U/Sec. 47A for putting the land to industrial use from 15 years to 10 years and has observed that a period of ten years and nine months has passed without the land being put to industrial use and no application for extension of time after payment of additional non agricultural tax has been filed by the Petitioner. Based on these findings the Collector directed resumption of the land.

12. The relevant dates in the present case are not in dispute. The sale deeds are dated 29th August, 2007 and 22nd February 2008 and hence the period contemplated under the provisions of Section 47A of the Tenancy Act, as applicable, expired after the period of 15 years on 28th August, 2022 and 21st February, 2023. Under orders of this Court the Petitioner has deposited the

amount of Rs 22,60,136/ with the Deputy Collector (Land Reforms) Parbhani, as recorded in the order of this Court dated 3rd January, 2019. The impugned order dated 20th June, 2018 was stayed during the pendency of the Petition.

13. The contention of the Learned Counsel for the Respondent is that after expiry of period of five years no application for payment of additional amount was made and as such the balance remaining period of 15 years cannot inure to the benefit of the Petitioner. Plain reading of the second proviso shows that a purchaser who has not put the land to bonafide industrial use within a period of five years from the date of purchase shall be permitted to put such land to bona fide industrial use within the remaining period from the total period of fifteen years subject to payment of amount equal to three times of an annual assessment of non agricultural tax payable under the Land Revenue Code. Learned Counsel for the Respondent interprets the second proviso to mean that if the additional amount is not paid after expiry of period of five years, then the balance remaining period out of the total 15 years stands forfeited.

14. In my opinion, upon plain reading of the proviso , it is clear that the land owner after five years without payment of additional amount cannot put the land to industrial use within the balance period remaining out of total 15 years. The payment of additional amount is condition precedent for putting the land to industrial use at any time after the expiry of period of five years and before the expiry of period of 15 years. The proviso does not contemplate filing of an application or payment of amount immediately after the expiry of the period of five years.

In the amendment of the year 2016, the second proviso has been amended to provide that after the expiry of period of five years an extension of time not exceeding further five years may be granted by the Collector on payment of non-utilisation charges. I do not find any such condition of filing of an application and payment of additional amount after expiry of period of five years in the unamended provision.

15. In my view, in absence of any such clear intention of the legislature, the submissions of the respondents as well as the Assistant Government Pleader that in the absence of payment of additional amount after expiry of five years, the land could not have been put for bonafide industrial use for the remaining period of total years is liable to be rejected.

16. In the present case, after the impugned order was passed in the year 2018 present petition was preferred. The amount as contemplated in the second proviso to Section 47A of the Tenancy Act has been deposited in this Court and the pendency of the petition precluded the Petitioner from putting the land to industrial use and as such period of 15 years has expired in the 2022. It will be worthwhile to take into consideration the fact that due to Covid 19 pandemic the period of limitation stood extended by order of the Apex Court.

17. Learned counsel for the respondents pointed out that the petitioner had tried to sell the property by giving paper notice on 03rd February, 2012, pursuant to which the respondents had filed a Civil Suit and obtained restrain orders, which has been denied by the learned counsel for the petitioner. Be that as it may, the

Petition challenged the impugned order of Collector dated 20th June, 2018 directing resumption of land and in that context the amended and unamended provision of Section 47A of the Tenancy Act were required to be examined. The submission of the Respondent that upon expiry of period of five years for non payment of amount stated in the second proviso to Section 47A of the Tenancy Act further period of ten years stood forfeited, is answered above.

18. For the reasons stated above, the petition succeeds. The impugned order dated 20th June, 2018 is hereby quashed and set aside. Rule is made absolute in above terms. There shall be no order as to costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23