

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10704 OF 2022

Paramjitsingh Tirathsingh Sawhney ...Petitioner

Versus

The State Of Maharashtra Through
The District Collector And Another ...Respondents

Mr. P.A. Rathod h/f. Mr. A.R. Rathod, Advocate for the petitioner.
Mr. R.B. Bagul, AGP for State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th APRIL, 2023

ORDER :

1. By this petition, the petitioner seeks direction for refund of amount of Rs. 3,00,000/- deposited by him.

2. Petitioner filed Regular Civil Suit No. 588/2017 for specific performance of contract in respect of Plot No. 219, admeasuring 1990 square feet, out of Gat No. 97, Deolali, Aurangabad, on the basis of agreement to sale dated 01.01.2016 executed by respondent No. 2/original defendant. According to the petitioner, earnest amount of Rs. 2,00,000/- was paid and Rs. 3,00,000/- was to be paid at the time of sale deed. The suit was decreed on 13.02.2018.

3. The petitioner filed Regular Darkhast No. 84/2018 for execution of decree. Petitioner deposited remaining consideration amount of Rs. 3,00,000/- in the Executing Court and after said deposit final sale deed was executed in favour of the petitioner by the officer of the Court. Thereafter, the petitioner realized that the suit plot was already sold by respondent No. 2/original defendant, prior to the execution of sale deed in favour of the petitioner. The petitioner therefore filed criminal proceeding against respondent No. 2.

4. The petitioner thereafter filed application Exhibit-14 in Regular Darkhast No. 84/2018 seeking withdrawal of amount of Rs. 3,00,000/-, which is rejected by the Executing Court. Hence, the present petition.

5. Heard the learned advocate for the petitioner and learned Assistant Government Pleader for State. Perused the grounds raised in the petition, documents annexed thereto and the impugned order.

6. It is the contention of the learned advocate for the petitioner that since fraud was played by respondent No. 2, the

execution of sale deed in favour of the petitioner by Executing Court is itself is nullity and therefore, same is *void ab initio* and therefore, the petitioner is entitled for refund of amount of Rs. 3,00,000/-, which he has deposited at the time of execution of said sale deed. Learned advocate for the petitioner relied on decision of learned Single Judge of this Court in Writ Petition No. 4359 of 2021 in support of his submissions.

7. The Executing Court has rejected the application holding that unless the status of sale deed executed in favour of the petitioner is decided, whether it is void or *void ab initio* and/or it is cancelled, the petitioner is not entitled to get refund of amount as the registered document is executed in his favour.

8. The approach of the Executing Court is just, legal and proper and is in consonance with the legal position. Unless, the sale deed is cancelled and/or set aside, the petitioner is not entitled to get refund of amount of Rs. 3,00,000/-.

9. The decision in Writ Petition No. 4359 of 2021 (*supra*) is rendered in different fact situation. It is in respect of rectification and/or correction in the sale deed. Said decision is not applicable to the facts of the present case.

10. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to exercise extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]