

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

37 WRIT PETITION NO.701 OF 2023

VASANT PUNDLIK DESHMUKH
VERSUS
ABASAHEB BABURAO DESHMUKH AND ANOTHER

Mr. Narendra D. Sonavane, Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 23, 2023.

PER COURT :

1. Heard.
2. The Petition challenges the order dated 13th July, 2022, passed in RCS No.694 of 2015, rejecting the petitioner's application seeking a reference to the Revenue Authority for detailed report under the Maharashtra Land Revenue Code, 1966 (for short, "**MLR Code**"). RCS No.694 of 2015 has been filed by the Respondent No.1 seeking declaration of ownership on the ground that by sale deed dated 24th November, 1995, the respondent No.1 is the owner of the suit property and the property is in his possession and that the mutation entry No.2226, mutated in favour of the Petitioner, by virtue of a decree in RCS No.13 of 2015 is illegal.
3. In the said suit, an application came to be filed by the Petitioner, based on the averments in the plaint that the suit

property is a watan land. In the application it is submitted that without the sanction of the Collector, the watan land could not be sold and hence, the sale deed of the year 1995 executed in favor of the respondent No.1, is nothing but breach of the conditions of grant of watan land.

4. Learned counsel for the Petitioner by referring to the provisions of Section 61 of the MLR Code and the provisions of Section 5 of the Maharashtra Hereditary Offices Act, 1874, contends that without the sanction of the Collector, the transfer could not have been effected and as such, the certificate to that effect given under the seal and signature of the Collector is required under the provisions of the said Act. He would further contend that without certificate of the Collector, the sale deed itself is illegal and great prejudice would be caused to the Petitioner, if the report from the Collector is not obtained.

5. The provisions of Section 61 of the MLR Code provides for protection of certain occupancies from the process of the Courts, and lays down that where the occupancy is not transferable, without the previous sanction of the Collector and such sanction has not been granted to a transfer which has been made or ordered by a civil Court or on which the court's decree or order is founded, such occupancy shall not be liable to the process of any court and such transfer shall be null and void, and the court on receipt of a certificate under the hand and seal of the collector to the effect that any such occupancy is not transferable without his previous

sanction, shall remove any attachment or other process placed on or set aside any sale of, or affecting such occupancy.

6. The provisions of Section 5 of the Maharashtra Hereditary Offices Act, 1874, provides that without the sanction of the State Government, it is not competent for a watandar to alienate any watan or any interest therein to any person, who is not watandar of the same watan land.

7. I have considered the submissions of the learned counsel for the Petitioner.

8. The respondent No.1 claims a right to the suit property on the basis of sale deed of the year 1995 executed in his favour, whereas, the Petitioner seeks a right in respect of the same property, based on decree passed in partition suit bearing RCS No.443 of 1987. It is for the respondent No.1 to prove the legality of the sale deed of the year 1995 and the legality which will also include the aspect as regards the prohibition of transfer of the suit property without the appropriate sanction from the Collector. The reference to section 61 of the MLR Code by the counsel for the petitioner is misconceived, as the same deals with the protection of certain occupancies from the process of the Courts. In the present case, the suit is at final stage and the burden is upon the respondent No.1 has to prove his claim to entitle him to the relief sought. The petitioner is entitled to examine witnesses to prove that the previous sanction of the Collector is required before the sale

deed could have been executed in respect of the suit property and for that purpose reference to the Collector is not required.

9. The sale deed of the year 1995 has been executed without obtaining the sanction of the Collector and if the pre-requisite is obtaining of sanction, then the respondent no.1 would not succeed in his claim.

10. In my opinion, the application filed by the petitioner seeking an enquiry by the Revenue Authority is clearly misconceived, as the enquiry is not warranted by the statutory provisions.

11. As a result the Petition fails and is dismissed.

(SHARMILA U. DESHMUKH, J.)