

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.427 OF 2023

SHIVHAR UMAKANT DHANBA AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY

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Mr. Ram S. Shinde (Boralkar), Advocate for the Petitioners.
Mr. R.B. Bagul, AGP for the Respondent/State.

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CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 18, 2023.

PER COURT :

1. By this petition, the petitioner is aggrieved by the order dated 16.09.2022 passed in Civil M.A. No.19 of 2021, whereby the application of the petitioners seeking permission to execute the sale deed under the provisions of sub-section (2) of Section 8 of the Hindu Minority and Guardianship Act, 1956 (for short, “the Act”), came to be rejected.

2. Heard learned counsel for the parties.

3. By the application, the grandmother of the minor children had sought permission to sell the plot of land bearing Plot No.31 admeasuring 1350 sqr.ft. , part of Survey No.68/3 situated at

village Malkapur, Taluka Udgir, District Latur. It is the case of the Petitioner that the minors are under the care and custody of the grandmother and out of her own income she had purchased this property in the name of the minors out of love and affection. It is further stated that as she has fallen into financial crises, for the purposes of the children's education and for their future, permission to sell is being sought.

4. The application has been rejected on the ground that prior to the filing of the application, an agreement of sale has been entered into, which is a violation of the provisions of the Act and in absence of any document, such as the particulars of the tuition fees, school fees etc., it is not possible for the Court to be satisfied that the alienation of the property is essential for the education of the minors and their well-being. The Court appears to have taken a hyper technical view of the entire matter and has rejected the application.

5. It is required to be noted that this application has been made by the grandmother of the minors, who is aged about 69 years and taking care of the minor children. The sale-deed in respect of the said property shows that the property was purchased in the name of the minors under the guardianship of the grandmother.

6. Considering the age of the grandmother burdened with

the responsibility of raising two minor children still studying in school, in my view, the alienation is necessary for the purpose of education of the minors and for their well-being. The application has been rejected on the ground that there are no documents have been produced. The minors are aged about 13 years and 5 years respectively and note can be taken of the fact that the grandmother, who does not have any source of income has to look after the education and day-to-day expenditure of the minors.

7. Considering the above, in my opinion, it is in the interest of justice that the permission to alienate the property be granted. The impugned order dated 16.09.2022 is hereby quashed and set aside.

8. The permission as contemplated under sub-Section (2) of Section 8 of the Act is granted for alienating Plot No.31 admeasuring 1350 sqr.ft. part of Survey No.68/3 situated at village Malkapur, Taluka Udgir, District Latur.

9. Writ Petition is accordingly disposed of.

(SHARMILA U. DESHMUKH, J.)