

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2014 OF 2022**

Shivaji Shankarrao Kale	...	Petitioner
versus		
Arun Chhotelal Ghiya and Ors.	...	Respondents

Mr. Atul Damle, Senior Advocate i/by Mr. S.A.Vhavan for Petitioner.
Ms. Gauri Jadhav for Respondent No.1.
Mrs. V.S.Nimbalkar, AGP for State.

CORAM: N.J.JAMADAR, J.

DATE : 20 APRIL 2023

P.C.

1. Heard the learned Counsel for the parties.
2. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.
3. This Petition assails the legality, propriety and correctness of an order dated 13 January 2021 passed by the learned Designated Member, Maharashtra Revenue Tribunal (MRT) at Pune, whereby the learned Member rejected the application preferred by the Petitioner seeking permission to file revision against an order dated 26 July 2019 passed by the Additional Collector, Pune, for granting permission under Section 63-1A of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (the Act of 1948) to transfer the land for bonafide industrial use.
4. The land bearing Gat No.339/2/11 (Old) Gat No.339/2/A (new)

admeasuring 2H situated at Mhalunge, Tal. Khed, Dist. Pune (the subject land) was allotted by the government to Mahadeo Shankar Barge, a landless ex-serviceman, upon a new tenure. Later on, Mr. Mahadeo Shankar Barge executed a registered agreement for sale of the subject land in favour of the Petitioner and thereby agreed to sell the suit land for a consideration of Rs.17,50,000/-. Subsequently, Mr. Mahadeo Shankar Barge executed a registered Sale Deed of the subject land on 24 December 2010 in favour of Respondent No.1. Since the subject land was of restricted tenure, Respondent No.1 preferred an application under Section 63-1A of the Act, 1948 for conversion of the land.

5. The Petitioner gave an application on 6 January 2011 objecting to grant of permission under Section 63-1A of the Act, 1948 on the ground that the vendor had already executed an agreement for sale in favour of the Petitioner. Thereupon the District Collector directed the competent authority to conduct appropriate inquiry before granting the permission. Notices were issued to the Petitioner and the Respondent No.1. The Petitioner lodged his objection. However, no decision was taken on the application of the Respondent No.1.

6. As the things thus stood, the Respondent No.1 preferred Writ Petition bearing No.169 of 2016 with a grievance that the authorities were not deciding the application preferred by the Respondent No.1. By an order dated 17 October 2016, the Competent Authority was directed to pass an order on the application of the

Respondent No.1 within three months, if not already decided.

7. Thereupon, by an order dated 26 July 2019, the Additional Collector without providing any opportunity of hearing to the Petitioner, granted permission under Section 63-1A of the Act, 1948 despite the fact that the Petitioner had lodged an objection and he had summoned in the said proceedings.

8. Being aggrieved, the Petitioner preferred an Application No.40 of 2019 before the MRT and sought leave to file Revision Application assailing the order passed by the Additional Collector. By the impugned order, the learned Designated Member, MRT was persuaded to dismiss the Application at the threshold, opining that the said application was not maintainable as the agreement for sale in favour of the Petitioner did not create any right and interest in the subject land.

9. I have heard Mr. Damle, learned Senior Advocate for the Petitioner, Ms.Gauri Jadhav, learned Counsel for Respondent No.1 and Mrs. Nimbalkar, learned AGP for the State. With the assistance of the learned Counsel for the parties, I have perused the material on record.

10. Mr. Damle, learned Senior Advocate, would urge that the learned Member, MRT has proceeded on an erroneous premise that the permission under Section 63-1A of the Act, 1948 was for conversion of the property from Class II to Class I occupancy. Likewise, according to Mr. Damle, the learned Member, MRT was in error in holding that the Petitioner, in whose favour an agreement for sale was

executed prior in point of time, could claim nothing more than the rights which emanated under Section 53A of the Transfer of Property Act, 1882. Instead, Mr. Damle would urge, the learned Member ought to have taken into account the fact that the Petitioner was initially provided an opportunity of hearing in the very same application and, subsequently, pursuant to the order passed by this Court in Writ Petition No.169 of 2016, the application came to be allowed without providing an effective opportunity of hearing. Thus, according to Mr. Damle, there has been a substantial defect in procedure which rendered the impugned order unsustainable.

11. As against this, the learned AGP would support the impugned order. Ms. Jadhav, learned Counsel for the Respondent No.1 submitted that the Petitioner's attempt is to obtain the reliefs which he could not obtain in the civil suit instituted for the specific performance of the contract contained in the agreement dated 17 January 2017 purportedly executed by the vendor in favour of the Petitioner. Since the said suit is subjudice, the learned Member, MRT was fully justified in declining to grant permission to file Revision against the order passed by the Additional Collector as the remedies of the Petitioner lay before the civil court.

12. Evidently, the Petitioner stakes claim over the subject land on the strength of an agreement for sale executed in his favour by the vendor on 17 January 2017. Undisputedly, the vendor conveyed the subject land to Respondent No.1 under a registered Sale Deed dated 3 August 2010. It is incontrovertible that the Petitioner

instituted a Special Civil Suit No.285 of 2014 seeking specific performance of the contract contained in Agreement for Sale dated 7 January 2017 and a declaration that the Sale Deed executed in favour of Respondent No.1 on 3 August 2010 was void, illegal and does not bind the Petitioner. In the said suit the Petitioner had taken out an application for temporary injunction, which came to be rejected by an order dated 28 February 2020.

13. In the backdrop of the aforesaid uncontroverted facts, the submissions canvassed across the bar deserve to be appreciated. It is true that the Petitioner had lodged an objection for grant of permission under Section 63-1A of the Act, 1948 to the Respondent No.1. Pursuant thereto, notices were issued. Eventually, as noted above, the order came to be passed apparently without hearing the Petitioner.

14. In the aforesaid context, the submission of Mr. Damle based on denial of effective opportunity of hearing, at the first blush, appears attractive. However, on a close scrutiny, the submission does not merit countenance. The learned Member, MRT, was justified in probing into the nature of the claim of the Petitioner. Surely, it emanated from the agreement for sale. It is trite the agreement for sale does not create any interest in the property.

15. Post the execution of the agreement for sale in favour of the Petitioner, the vendor executed a conveyance in favour of Respondent No.1. In view of the said development, the Petitioner was constrained to institute a suit for specific

performance of the contract contained in the agreement for sale executed in his favour. The said suit is comprehensive, in the sense that, the Petitioner has also sought a declaration that the sale deed executed in favour of Respondent No.1 is invalid and does not bind the Petitioner.

16. In the aforesaid view of the matter, the learned Member, MRT was within his rights in arriving at the conclusion that the Petitioner had to workout his remedies before the civil court, and no locus in opposing the application for grant of permission under Section 63-1A of the Act, 1948. The fate of the Petitioner's claim depends upon the outcome of the suit for specific performance. In the event the civil Court grants a decree for specific performance, the Respondent No.1 would be made to join in the execution of the conveyance by the vendor in favour of the Petitioner.

17. Mr. Damle would urge that by the time the said suit is decided, the situation would become irreversible. The submission does not carry conviction as the application for temporary injunction came to be rejected by the Civil Court. The Petitioner cannot obtain a result indirectly, which he could not obtain directly by filing an application for temporary injunction. Consequently, the impugned order does not suffer from such infirmity as to warrant interference in exercise of extra-ordinary jurisdiction of this Court.

18. Hence, the following order.

ORDER

- (i) The Petition stands dismissed with costs.
- (ii) Rule stands discharged.

(N.J.JAMADAR, J.)