Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1112 OF 2021

1. **Ashalata Prabhakar Joshi @ Dikshit**
Age : 75 Years, Occu: Housewife,

2. **Sudhir Prabhakar Joshi @ Dikshit**
Age : 54 Years, Occ: Agri.
Both R/o. Moreshwar House,
2nd Floor, Plot No.35, Society Scheme,
Panvel, District Raigad. .. Petitioners

Versus

Varadoli Agrofarms Pvt. Ltd.
Through Navneet K. Mehata
R/o. 80, Solitar, 2nd Floor,
S.V. Road, Santacruz, Mumbai. .. Respondent

WITH
WRIT PETITION NO. 1113 OF 2021

Sudhir Prabhakar Joshi @ Dikshit
Age : 54 Years, Occ:
R/o. Moreshwar House,
2nd Floor, Plot No.35, Society Scheme,
Panvel, District Raigad. .. Petitioner

Versus

Varadoli Agrofarms Pvt. Ltd.
Through Navneet K. Mehata
R/o. 80, Solitar, 2nd Floor,
S.V. Road, Santacruz, Mumbai. .. Respondent

....

- Mr. Kishor Patil, Advocate for Petitioners.
- Mr. Tejas D. Deshmukh a/w. Mr. H.D. Chavan, Advocate for Respondent.

....

CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 31, 2023.

JUDGMENT:

1. Both Writ Petitions are disposed of by this common order.

2. Both Writ Petitions take exception to the order dated 17.03.2021 (identical but passed in separate proceedings) by the Maharashtra Revenue Tribunal, Mumbai (for short "**MRT**") in Revision Proceedings under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short "**the said Act**"). Petitioner in Writ Petition No.1112 of 2021 is the sister of Petitioner in Writ Petition No.1113 of 2021. Facts are absolutely identical. For convenience and reference, facts in Writ Petition No.1112 of 2021 are referred to herein.

3. Such of the relevant facts which are necessary for deciding the *lis* between the parties are outlined herein under:-

(i) The *lis* is with respect to immovable properties in respect of 7 Survey Numbers / Gat Numbers having different areas situated in Village Vardoli, Tal. Panvel, District Raigad. The description of the subject properties is given in paragraph No.2 of the Writ Petition. Record reveals and it is an admitted position that the subject properties originally belonged to the ownership of Prabhakar Trimbak Joshi, father of both

Petitioners. By a registered conveyance dated 04.08.2006 the subject properties were transferred and sold to the Respondent – Varadoli Agrofarms Pvt. Ltd.. Mutation Entry No.1482 dated 05.10.2006 came to be registered which was subsequently set aside on 01.12.2006. Subsequently on 19.01.2010 another Mutation Entry No.1755 was registered, but vide order dated 15.10.2010 the said Mutation Entry was removed. In the order dated 15.10.2010, Tahsildar held that the said Mutation Entry was carried out without adhering to the provisions of Section 63 of the said Act which required the parties to obtain permission of the Competent Authority for sale / transfer of agricultural land under Section 63 of the said Act.

(ii) Being aggrieved, Respondent filed Revision Application before the Additional Commissioner, Konkan Division under Section 257 of the Maharashtra Land Revenue Code, 1966 (for short "**MLR Code**") against the above order. Vide order dated 36.04.2011 the Additional Commissioner allowed the Revision and directed restoration of the name of the Respondent in the Revenue Record and directed that appropriate inquiry under the provisions of Section 84C of the said Act as contemplated was required to be undertaken to establish whether on the date of transfer of the subject properties as to whether the Respondent was an agriculturist or otherwise. The Additional Commissioner directed the Tahsildar to inform all parties to the proceedings to approach the appropriate authority for a decision on the above issue in accordance with law. As a consequence of the order passed by the Additional Commissioner dated 30.04.2011, fresh Mutation Entry No.1812 was carried out and name of the Respondent was once again mutated.

(iii) Petitioners being aggrieved with the above order filed statutory Appeal / Second Revision under Section 74 of the said Act before the State Government. After hearing the parties the State Government held that the order passed by the Additional Commissioner dated 30.04.2011 deserved to be set aside. Both Mutation Entry Nos.1755 and 1822 were set aside and both parties namely Applicants and Respondents were directed to approach the appropriate Competent

Authority for determination of their substantive rights in respect of the subject properties. Thus, liberty was given to both the parties to take out appropriate proceedings under Section 84C of the said Act seeking appropriate inquiry and decision.

(iv) Petitioners did not take any steps pursuant to the order dated 20.09.2013. Respondent filed an Application under Section 63 of the said Act seeking regularization of the transaction between the predecessor-in-title of the Petitioners and Respondent by depositing 50% of the total market value of the subject properties and taking recourse to the Government Notification dated 07.05.2016 whereby Section 84C of the said Act came to be amended and Sub-section 6 came to introduce therein. By order 04.06.2018, the Tahsidlar validated the registered sale deed dated 04.08.2006 subject to fulfillment of certain conditions as set out in the said order.

(v) Petitioners filed appeal under Section 74 of the said Act against the above order before the Sub-Divisional Officer (for short "**SDO**") on the ground that no notice was issued to the Petitioners and power for validation /

regularization of the sale deed was within the jurisdiction of the Collector and the Tahsildar could not have exercise such powers. By order dated 06.12.2018, the SDO allowed the Appeal and set aside the order dated 04.06.2018 passed by the Tahsildar.

(vi) Being aggrieved, Respondent filed Revision Application against the above order before the MRT. The MRT by the order dated 17.03.2021 set aside the order dated 06.12.2018 passed by the SDO and confirmed the order dated 04.06.2018 passed by the Tahsildar.

(vii) Hence, the present Writ Petitions.

4. Mr. Patil, learned Advocate for the Petitioners in both Writ Petitions would contend that the original transfer / conveyance of the subject properties has admittedly taken place in breach and contravention of the provisions of Section 63 of the said Act and if this be the position, the impugned order is not sustainable on any ground whatsoever. He would submit that the order dated 20.09.2013 passed by the State Government in revenue proceedings categorically holds that transfer of the subject lands to the Respondent is in contravention of Section 63 of the said Act. He would submit that even if it is assumed that the transfer is valid, still in the facts and circumstances of the present case the Tahsildar has no powers and jurisdiction to regularise lies such a transfer and any such power to regularise with the Collector only. Therefore, he would submit that the order dated 04.06.2018 is unsustainable in law. Next he would submit that Respondent - Company is not an agriculturist and this fact goes to the root of the matter since it has not produced any material on record to show that Respondent has obtained exemption under the provisions of the said Act. He would submit that this Court and the Supreme Court has consistently held that if there is breach of the provisions of Section 63 of the said Act, the subject properties have to be forfeited under the provisions of Section 84 of the said Act. Hence, he would submit that the impugned order passed by the MRT deserves to be set aside and the order dated 06.12.2018 passed by the SDO deserves to be upheld.

5. ***PER-CONTRA***, Mr. Deshmukh, learned Advocate appearing for the Respondent has drawn my attention to the Affidavit-in-Reply dated 09.07.2021 filed by Respondent and contended that the Petitioners in the present case have no locus whatsoever to challenge the regularization order dated 04.06.2018 passed by the Tahsildar. He would submit that pursuant to the execution of the registered conveyance and transfer of the subject properties to the Respondent all rights of the original owner of the land namely Prabhakar Trimbak Joshi i.e. father of the Petitioners stood extinguished. He would submit that even today, assuming whilst denying, if the subject properties are to be forfeited, same can only be done by raising a *lis* between the State Government and the answering Respondent. He would submit that pursuant to the order dated 20.09.2013 passed by the State Government, liberty was granted to parties to seek appropriate inquiry by filing Application under Section 84C of the said Act. He would submit that the Petitioners did not file the Application seeking inquiry and therefore Petitioners have no right to question the order passed by the MRT under regularization. He would submit that out of the 7 parcels of land comprising the subject properties, Petitioners / their predecessor-in-title (father) had no nexus with one of the property namely Gat No.79/7 and therefore the said Gat Number / parcel of land cannot be the subject matter of *lis* in the present proceedings in any view of the matter. He would submit that the predecessor-in-title of Petitioners i.e. their father did not challenge the registered conveyance dated 04.08.2006 nor did the Petitioners pursuant to the order dated 20.09.2013 approach the Competent Authority for seeking inquiry under Section 84C of the said Act. He would submit it was incumbent upon the Petitioners to file the Application seeking inquiry under Section 84C of the said Act within a reasonable time and therefore the challenge to the impugned order is not maintainable. He would next submit that the State Government by the Maharashtra Amendment Act No.20 of 2016 introduced and amendment Section 84C of the said Act and introduced Sub-section 6 under which it was provided that any transfer of land shall not be declared invalid, if proceedings under Section 84C of the said Act initiated after enactment of the Amending Act of 2016 and if the transferee pays an amount equal to 50% of the market value of such land as per the Annual Statement of Rates. He would submit that the answering Respondent has paid the aforementioned amount of 50% of the market value as determined by the Competent Authority in the appropriate enquiry and therefore in that view of the matter, the order dated 17.03.2021 deserves to be upheld. He would submit that Respondent filed Application dated 25.04.2018 with the Tahsildar seeking regularization of the sale deed by placing reliance on the amended provisions of Section 84C of the said Act. He would submit that after confirming the market value of the subject properties the Tahsildar called upon the Respondent to deposit 50% of the market value of the subject properties and only when the same was deposited the transaction was validated without exercising any power under Section 63 of the said Act. He would submit that there is no provision whatsoever under Section 84C of the said Act by which the original transferor of the land can get the land back / resume the said land and therefore the Petitioners have no *locus standi* in the present proceedings. Hence, he would submit that the Writ Petitions be dismissed.

6. I have heard Mr. Patil, learned Advocate for Petitioners and Mr. Deshmukh, learned Advocate for Respondent and with their able assistance perused the pleadings in the present case. Submissions made by Advocates have received due consideration of this Court.

7. At the outset, it needs to be stated that the impugned order passed by the MRT emanates from the order dated 04.06.2018 passed by the Tahsildar. As seen above, there is no dispute on the facts of the case. The order dated 04.06.2018 clearly refers to the order dated 20.09.2013 passed by the State Government in revenue proceedings, *inter alia*, pertaining to Mutation Entry Nos.1755 and 1812 in respect of the subject properties and directing both parties to take appropriate steps before the Competent Authority. Petitioners though were parties to the said proceedings in 2013 did not take any steps whatsoever thereafter. Out of the three original Petitioners namely Ashalata P. Joshi, Sudhir P. Joshi and Nitin P. Joshi, two of the Petitioners namely Ashalata and Sudhir have challenged the order dated 04.06.2018.

8. It is seen that the answering Respondent for the first time made an Application dated 25.04.2018 after the order dated 20.09.2013. The order dated 04.06.2018 passed by the Tahsildar regularises the transaction dated 04.08.2006 in respect of the subject properties after ascertaining the market value of the subject properties from the Sub-Registrar of Assurances, Panvel, 1 and payment of 50%

of the said market value by the answering Respondent. Perusal of the order dated 04.06.2018 would reveal that it has been categorically held in the order that even if the transaction has been regularized, by virtue of the said order the answering Respondent does not become an agriculturist. The said order categorically records that the 7/12 extract cannot be used by the answering Respondent as proof of being an agriculturist and accordingly the entries should be made in the revenue record. Further it is seen that by the said order the Mandal Officer is directed to take appropriate steps in accordance with law and carry out the inquiry.

9. In this view of the matter, submission of the Petitioners that the answering Respondent has got the benefit of being declared as an agriculturist stands squarely rejected. Perusal of record clearly shows that pursuant to the Application dated 25.04.2018 filed by the answering Respondent, inquiry under Section 84C of the said Act has been conducted. I have perused the Notification dated 07.05.2016 issued by the State Government in the official gazette in respect in the Maharashtra Amendment Act No.20 of 2016 amended Section 84C of the said Act by introducing Sub-section 6 to Section 84 of the said Act. It is seen that by virtue of the aforesaid amended provision if proceedings under Section 84C of the said Act after enacting of the Amendment Act are undertaken and if the transferee pays an amount equal to 50% of the market value of such land as per the Annual Statement of Rates, then the transfer of such land cannot be declared as invalid. It is pertinent to note that the transaction of sale has been regularised by the Tahsildar subject to specific conditions which clearly state that the Tahsidlar has not exercised any power under Section 63 of the said Act. It is seen that the powers under Section 63 and Section 84C of the said Act operate in two different fields.

10. In view of the above observations and findings, I am inclined to accept the findings given by the MRT in Paragraph No.9 to 13 of the order dated 17.03.2021 which read thus:-

> *"9. On hearing the parties & advocates perusal of record, it is explicit that in the order of Ld. Revenue Minister dated 20th September, 2013, he had directed the parties to take action in terms of section 84C of the Tenancy Act, 1948 before competent authority. It was in this spirit, the application was entertained by the Ld. Tahsildar as the applicant had volitionally indicated to remit charges as per Government decision for breach of sale transaction.*
>
> *10. The matter was obliviously between the State & the applicant, consequently there was no need to inform the respondent of the proceedings. This is more so, the respondent has after the Sale deed in favour of applicant has no legal right to the suit property. The enquiry under section 88B by notice to respondent was not imperative.*
>
> *11. The provision of section 84C (6) of the Tenancy Act which has come into force in 2016 needs to be scanned. Basically, the purchase transaction by the applicant of the different properties was of 2006 & in the light of Government Circular, notification & judgment in the matter* ***Mohammad Kavi Mohammad Amin V/s. Fatmabai Ibrahim (1997) 6 SCC 71:-***
>
> *It is settled legal position that even if the statute does not prescribe any period of limitation, action has to be taken within a reasonable time. The Apex Court, while considering the provisions of Section 84C of the Act had in a case where the transfer had taken place in December, 1976, held that the*

power under Section 84-C of the Act had not been exercised by the Mamlatdar within a reasonable time.

The applicant bonafidely paid & deposited Rs. 38,89,937/- on 2/6/2018 to the State by Challan as directed by Tahsildar, Panvel.

12. The Ld. Sub Divisional Officer, Panvel should have been alive to the fact of remittance of above amount by the applicant & without considering the same, illegally directed taking possession of the suit property, without any indication as to refund of Rs. 38,89,937/- received from applicant. Such order, naturally surrounded of illegality & does not stand to reason. The Ld. Sub Divisional Officer, Panvel did not consider that for breach of section 63 action under section 84C is provided but it does not blankedly allow to take property in Government possession, that too, under section 84C.

13. The Ld. Tahsildar had in his order taken recourse to observation in Para. 4 of Ld. Revenue Minister to record under order u/s. 84C of the Tenancy Act, which was naturally an administrative order. The order was clearly taking recourse to section 84C in the light of amendment dated 7th May, 2016 in section 84C (6) of Tenancy Act 1948. In fact the effect of amendment would be prospective and could not have been applied to the transaction of 2006, still the applicants to get rid of mental harassment toed to the order."

11. In so far as Writ Petition No.1113 of 2021 is concerned, in the facts of the said case, the findings returned by the MRT are in paragraph Nos.4 to 10 of the order dated 17.03.2021 are sustained. The said findings read thus:-

"4. Inspite of above details, the respondent who has no concern with the property, approached Ld. Sub Divisional Officer on 4/8/2018 requesting him to take the suit property in Government possession. The grievance from the applicant is, there was no power to the Ld. Sub Divisional Officer, in terms of Section 84C of the Tenancy Act 1948 however, Ld. Sub Divisional Officer, did not bother about lack of authority and jurisdiction.

5. On perusal of order & hearing the advocates, I find that the order of Ld. Sub divisional Officer, is not maintainable for lack of jurisdiction and non-appreciation of record.

6. The scheme of Tenancy Act for action under section 84C there of provide exclusive jurisdiction to Mamalatadar to *entertain application when there is any invalid transaction under the provision this act, the Mamalatadar shall issue a notice and hold enquiry as provided u /s. 84B & decide whether the transfer is or is not invalid.*

7. Insptie of clear mandate Ld. Sub Divisional Officer, Panvel had haste to record the subject order & to take the property in Government possession though already there was order of Ld. Tahsildar referred earlier for some of the properties.

8. The Ld. Sub Divisional Officer, Panvel, was made aware that the respondents are hell bent to harass the applicant & they have no right to do so still he entertained the application.

9. The order of Ld. Sub Divisional Officer Panvel about not to transfer or alienate the suit property dated 18/9/2018 was questioned before the Ld. Add. Collector, Raigad-Alibag & the Ld. Add. Collector has on 7/5/2019, stayed the proceeding which was communicated to the Ld. S.D.O. on 28/5/2019. Inspite of knowledge of such stay by superior authority the Ld. Sub Divisional Officer, with aggressiveness, proceeded ahead and closed the matter for orders & on 12/6/2019 recorded the same.

10. The exercise of power by the Ld. Sub Divisional Officer, was apparently illegal & can't be countenanced as it is not in legal frame. The order smack of illegality and will not be sustainable hence needs interference. The order is set aside."

12. I do not find any reason to disturb the above findings.

13. The Judgment / Order dated 17.03.2021 (passed separately) is therefore upheld in both the Writ Petitions.

14. Writ Petition No.1112 of 2021 and Writ Petition No.1113 of 2021 are accordingly dismissed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
Date: 2023.06.02 16:33:34 +0530