

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7915 OF 2015**

Vasantkumar Dahyalal Raval & Ors.

...Petitioners

Versus

The Sub-Divisional Officer,  
Thane Division, Thane & Anr.

...Respondents

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**Mr. Rohit D. Joshi** for Petitioners.

**Ms. Maithili Prabhu** i/b. MDP & Partners for suspended Director –  
Respondent No.2.

**Mr. P. P. Pujari**, AGP for Respondent No.1 - State.

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**CORAM: SANDEEP V. MARNE, J.**

**DATE : 18 AUGUST 2023.**

**ORAL ORDER:**

By this petition, Petitioner challenges judgment and order dated 12 May 2015 passed by the Maharashtra Revenue Tribunal, Mumbai in Revision Application 684 of 2013 as well as the communication dated 19 July 2013 of the Sub-Divisional Officer, Thane. The communication dated 19 July 2013 is addressed by the Sub-Divisional Officer, Thane (**SDO**) to Tehsildar, Kalyan, holding that the transfer of land bearing Survey No. 4/5 Adm. 0.25 R (**land**) is in

violation of provisions of Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**Act of 1948**) and Tehsildar is directed to vest the land in the name of the State Government. SDO's action is traceable to Section 84-C of the Act of 1948. Petitioner's Revision against SDO's decision has been rejected by the Tribunal by judgment and order dated 12 May 2015.

2. Petitioner Nos. 2 to 20 are the tenant-purchasers in respect of the land. They executed power of attorney dated 01 November 2012 in favour of Petitioner No.1, in pursuance which, Petitioner No.1 filed application under Section 43 of the Act on 26 November 2012 before SDO seeking permission to develop the land.

3. It appears that Respondent No.2-M/s. Nirmal Lifestyle (Kalyan) Pvt. Ltd. filed an objection/complaint dated 31 August 2012 objecting the grant of permission in favour of Petitioners. The objection of Respondent No.2 was premised on Power of Attorney dated 15 January 2008 and Development Agreement dated 15 January 2010 allegedly executed by Petitioner Nos. 2 to 20 in favour of Respondent No. 2.

4. In the application filed by Petitioner No. 1, SDO issued notices to all Petitioners as well as Respondent No.2 on 26 February 2013 inviting their responses. However, instead of deciding that application, SDO proceeded to initiate *suo moto* action under Section 84-C of the Act of 1984 for vesting of the land in the name of State of

Maharashtra holding that the Power of Attorney dated 15 January 2008 was in violation of the provisions of Section 43 Act of 1948. Accordingly, show cause notices were issued Petitioners as well as Respondent No.2 on 19 June 2013 and their responses were sought. It appears that before Petitioners or Respondent No.2 could file their respective responses to the show cause notices, SDO without passing any order, proceeded to issue communication/letter dated 19 July 2013 to Tehsildar Kalyan directing him to initiate proceedings for vesting of the land in the name of State of Maharashtra under provisions of Section 84-C of the Act.

5. Aggrieved by the communication dated 19 July 2013 issued by the SDO-Thane to Tehsildar Kalyan, Petitioners instituted Revision Petition No.684 of 2013 before the President, Maharashtra Revenue Tribunal, Mumbai (**Tribunal**). By its judgment and order dated 12 May 2015, the Tribunal has proceeded to dismiss Revision Petition filed by the Petitioners. Petitioners have challenged the Tribunal's judgment and order dated 12 May 2015 as well as SDO's communication dated 19 July 2013 in the present petition.

6. Though Respondent No.2 is also aggrieved by SDO's communication dated 19 July 2013, it appears that Respondent No.2 did not file its independent Revision Petition before the Tribunal. Respondent No.2 has instead instituted Writ Petition No.265 of 2016 on Original Side of this Court challenging not just the communication of Sub-Divisional Officer dated 19 July 2013 but also the judgment and order dated 12 May 2015 passed by the Tribunal. By administrative

order, both the Writ Petitions were directed to be clubbed together.

7. When the present petition was listed before this court on 11 November 2022 the learned counsel appearing for Respondent No.2 as well as representing Petitioner in Writ Petition No.265 of 2016 brought to the notice of this Court that the application for initiation of Corporate Insolvency Resolution Proceedings (**CIRP**) has been admitted against Respondent No.2 by the National Company Law Tribunal, Mumbai by its order dated 16 June 2022. This Court accordingly passed following order on 11 November 2022.

“PC:-

1. Heard learned counsel for the parties.
2. The order passed by learned President of Maharashtra Revenue Tribunal is under challenge. The Sub-Divisional Officer has directed the Tahsildar to take action under the provisions of section 84C of the Maharashtra Tenancy and Agricultural Lands Act, 1948. Petitioner No.1 claims to be the purchaser of the land from remaining Petitioners, whereas Respondent No.2 (who is Petitioner in connected Petition) claims to be developer of the land. There is an order of moratorium passed and as such now the Resolution Professional is appointed. It will take some time to hear that Petition. Hence, there is request to detag present Writ Petition from Writ Petition No.265 of 2016.
3. On the next date, the Court will consider request for de-tagging of this Petition.
4. Stand over to 25th November 2022.
5. Interim relief granted earlier to continue till the next date.”

8. Writ Petition No.265 of 2016 is not listed today alongwith the present petition despite order for tagging both the petition. However, this Court by its order dated 11 March 2022 proposed de-tagging of both the petitions in the light of the fact of initiation of CIRP against Respondent No.2. Considering the nature of order that I propose to pass in present petition, in my view, the present petition need not be kept pending any further for clubbing of Writ Petition No.265 of 2016. I accordingly proceeded to hear the submissions by the learned counsels of the parties.

9. Mr. Joshi, the learned counsel appearing for Petitioners would invite my attention to the provisions of Section 43-C of the Act of 1948, under which provisions of Section 43 are not made applicable to any land which falls within the jurisdiction of a Municipal Corporation. He would submit that the land covered by the impugned order falls within the jurisdiction of Kalyan-Dombivali Municipal Corporation. That since provisions of Section 43 are not applicable to the land in question, there is no requirement of seeking prior permission of SDO before carrying out any development on the land. He would therefore submit that the judgment and order passed by the Tribunal as well as communication of the SDO dated 19 July 2013 are required to be set aside.

10. The learned AGP appearing for State Government would oppose the petition and support the order passed by the Tribunal as well as SDO's communication. He would submit that the Tribunal has

recorded a specific finding that the proceedings under Section 84-C are summary in nature and that Petitioners as well as Respondent No.2 were served with show cause notices inviting their responses. That neither Petitioner nor Respondent No.2 submitted any reply in pursuance of the show cause notice dated 19 June 2013. He would further submit that prior permission before execution of the transaction dated 15 January 2008 has admittedly not been obtained and that therefore there is violation of provisions of Section 43(1) of the Act. That there being no perversity in the order passed by the Tribunal, the Petition deserves dismissal.

11. Ms. Prabhu, the learned counsel appearing on behalf of suspended board of Directors-Respondent No.2 would place on record the copy of order dated 16 July 2022 passed by National Company Law Tribunal, Mumbai admitting CIRP against Respondent No.2. She would further submit that despite communicating *factum* of pendency of the present petition as well as Writ Petition No.265 of 2016 to the IRP, he has not given any instructions for defending present petition or for prosecuting Writ Petition No.265 of 2016. She would further submit that additionally, by separate order passed in Writ Petition No.265 of 2016, this Court issued notice to IRP, which has remained unresponsive. That in view of admission of CIRP against Respondent No. 2, no legal proceedings can be continued against it.

12. I have considered the submissions canvassed by the learned counsels for parties. So far as the issue about initiation of CIRP against

Respondent No. 2 is concerned, Respondent No. 2 is merely a formal party to the present Petition. Petitioners have challenged SDO's action in ordering vesting of the land in the name of State Government. It appears that Respondent No. 2 is also equally aggrieved by SDO's action and has instituted its own petition, which cannot be prosecuted by the suspended directors of Respondent No. 2. It is for IRP to take necessary steps for prosecution of Writ Petition No.265 of 2016. The Petition is pending since the year 2015 and therefore the same cannot be kept pending indefinitely. Since Respondent No. 2 is merely a formal party to the present Petition, determination of validity of SDO's order cannot be deferred till fate of Respondent No. 2 is decided by the NCLT.

13. Adverting to the merits of the Petition, the short issue that Petitioner has raised in the Petition is about applicability of provisions of Section 43 of the Act of 1948 to the land in question. If provisions of Section 43 are inapplicable to the land, there would be no violation on the part of either Petitioners or Respondent No.2 in entering into various transactions without prior approval and accordingly the order passed under provisions of Section 84-C would be rendered illegal. It would therefore be apposite to refer to the provisions of Section 43-C, which reads thus:

**43-C.** Nothing in sections 31 to 32R (both inclusive) 33A, 33B, 33C and 43 shall apply to lands in the areas within the limits of—

- (a) Greater Bombay,
- (b) a municipal corporation constituted under the Bombay Provincial

Municipal Corporations Act, 1949,

(c) a municipal borough constituted under the Bombay Municipal Boroughs Act, 1925,

(d) a municipal district constituted under the Bombay District Municipal Act, 1901.

(e) a cantonment, or

(f) any area included in a Town Planning Scheme under the Bombay Town Planning Act, 1954 :

Provided that, if any person has acquired any right as a tenant under this Act on or after the 28th December 1948, the said right shall not be deemed to have been affected by the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1952, or by the Amending Act, 1955, notwithstanding the fact that either of the said Acts has been made applicable to the area in which such land is situate.

14. It is Petitioner's contention that the land is situated within the limits of Kalyan Dombivli Municipal Corporation. It is therefore contended that since Section 43 is inapplicable to the land in question, permission under that Section was not required.

15. However as observed above, Petitioner did not file reply to the show cause notice dated 19 June 2013. Since no reply was filed, the question of inviting attention of SDO to provisions of Section 43-C of the Act of 1948 did not arise. I have also gone through the Revision Petition filed by the Petitioner before the Tribunal and find that issue of non-applicability of provisions of Section 43 of the Act of 1984 to the land in question was not specifically raised by Petitioners in their Revision petition. Since point was not raised, there was no occasion for the Tribunal to go into that issue.

16. In ordinary course, Petitioners' failure to raise the issue of non-applicability of provisions of Section 43 of Act of 1984 before the Tribunal, would disentitle them from raising the same directly before this Court. However, at the same time, the issue of applicability of Section 43 of the Act to the land in question goes to the root of the matter. Petitioner therefore deserves to be granted an opportunity to raise the issue of non-applicability of Section 43 to the land in question. The very short time gap between the date of issuance of Show Cause Notice (19 June 2013) and date of taking decision by SDO (19 July 2013) also indicates undue hurry in taking decision having the effect of divesting tenant-purchasers of their rights in the land. This is yet another reason which would warrant grant of opportunity to Petitioners to raise all contentions.

17. However instead of this Court deciding the issue of applicability of Section 43 of the Act, it would be appropriate that the Tribunal should first considers and decides the said issue. To enable the Tribunal to decide the said issue, it would be necessary to remand the proceedings by granting an opportunity to Petitioners to raise the issue of non-applicability of provisions of Section 43 of the Act of 1948 before the Tribunal.

18. Since that I do not propose to pass any order adversely affecting the interests of Respondent No.2 herein, I do not consider it necessary to wait for response of IRP in pursuance of order passed by this Court in Writ Petition No.265 of 2016. Also, as the proceedings are being remanded to the Tribunal for fresh consideration, this petition

need not be kept pending any further for appearance of IRP for Respondent No.2. Similarly, this petition is required to be detagged from Writ Petition No.265 of 2016 which is filed by suspended board of Directors of Respondent No.2. As and when the IRP decides to prosecute said Writ Petition No.265 of 2016, the same can be taken up for hearing.

19. I accordingly proceed to pass following order.

- i) Judgment and order dated 12 May 2015 passed by the Maharashtra Revenue Tribunal, Mumbai in Revision Petition No.684 of 2013 is set aside.
- ii) Revision Petition No.684 of 2013 is remanded to the Tribunal and restored on its file for fresh decision.
- iii) Petitioners would be at liberty to amend their Revision Petition within a period of four weeks from today in order to enable them to raise the issue of non-applicability of provisions of Section 43 of the Act of 1948 therein.
- iv) Upon amendment of the Revision Petition by Petitioners, the Tribunal shall proceed to decide the Revision Petition on its own merits after hearing all the parties concerned and without being influenced by any of the observations made in this order. All rights and contentions of all parties are kept open.
- v) Petitioners to appear before the Tribunal on 28 August 2023.

vi) Interim order granted earlier by this Court on 28 March 2016 shall continue to operate till the disposal of Revision Petition No.684 of 2013.

20. With the above directions, Writ Petition is disposed of. There shall be no orders as to costs.

**SANDEEP V. MARNE, J.**

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