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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12350 OF 2022

1. Tadavi Yasin Supdu
Age : 66 Years, Occupation : ...Petitioner
Agriculturist, Residing at Hissa
No.338, Kusube (Khurd) Jalgaon,
District : Jalgaon.

2. Dilip Trimbakrao Channawar,
Age 55 Year, Occupation :
Agriculturist, Residing at Flat No.4,
Krish Apartment Mahabal Chauk,
Jalgaon, Taluka & District : Jalgaon.

3. Shashikala Ramesh Kolate,
Age : 56 Years, Occupation :
Agriculturist, Residing at Hari Om Villa,
Plot No.P-95/22. Bajaj Nagar, MIDC,
Walung, Taluka & District – Aurangabad.

...Versus...

1. The Additional Collector, Raigad,
District Raigad.

2. The State of Maharashtra,
Through the Department of Revenue
And Forest, Mantralaya (Main Building)
1st Floor, Madam Kama Marg, Hutatma
Rajguru Chowk, Mumbai – 400 032.

3. Jaywant Mahadu Shid,
Age : 45 Years, Occupation :
Agriculturist, Residing at Kharabachi Wadi,
Wakrul, Tal.Pen, District - Raigad

...Respondents

Mr.Vivek V. Salunkhe for the Petitioners.

Ms.M.S. Bane, AGP for the State – Respondent Nos.1 and 2.

Mr.Pratap Patil for the Respondent No.3.

CORAM: R.D. DHANUKA &
GAURI GODSE, JJ.
DATE: 26TH APRIL 2023.

ORAL JUDGMENT :- (Per Gauri Godse, J.) :-

- 1) Rule. Ms.Bane learned AGP waives service for Respondent Nos.1 and 2. Mr.Patil waives service for the Respondent No.3. Rule is made returnable forthwith. By consent of the parties, the petition is taken up for hearing and final disposal.
- 2) This Petition is filed to challenge condition no.1 incorporated in the Order dated 25th March 2021 issued by Respondent No.2 and for modification of the condition by issuing necessary directions for considering the market value of the subject land as per the ready reckoner existing as on the date of the application dated 7th July 2012. The Petitioners also challenged the consequential Order dated 5th July 2022 passed by Respondent No.1 to the extent of condition no.1, by which the valuation of the subject land has been taken as per the ready reckoner of the year 2022-2023. The Petitioners thus seek a modification of condition no.1 in both the Orders by directing to consider the valuation of the subject land as per the ready reckoner as on the date of the Application dated 7th

July 2012.

- 3) It is the case of the Petitioners that Respondent No. 3, who is a tribal person, wanted to sell the subject land. In the year 2010, it was thus agreed between the Respondent No. 3 and the Petitioners to transfer the subject land to the Petitioners. Hence, they filed an application on 7th July 2012 for prior permission under Section 36-A of the Maharashtra Land Revenue Code, 1966 ("MLR Code"). The application filed by the Petitioners was processed, and after holding the necessary inquiry, the Circle Officer submitted a report to the learned Tahsildar on 11th December 2012, recommending grant of permission.
- 4) On 28th December 2012, the learned Tahsildar forwarded his report/recommendation to Respondent No. 1. On 31st December 2013, Respondent No. 1 forwarded his report/recommendation to the learned Divisional Commissioner. On 17th February 2014, the Divisional Commissioner forwarded his report/recommendation to Respondent No. 2. However, the application for grant of prior approval was not decided by Respondent No. 2 till 25th March 2021.
- 5) It is submitted on behalf of the Petitioners that after keeping

the application pending for almost seven years, Respondent No.2, on 25th March 2021, granted approval for grant of permission by imposing certain conditions. As per condition no.1, it is directed to consider the valuation of the subject land as per the ready reckoner prevailing on the date of the Order. Pursuant to the said approval granted by Respondent No.2, an Order dated 5th July 2022 is passed by Respondent No.1, thereby granting necessary permission under Section 36-A of the MLR Code on certain terms and conditions. By condition no.1 of the said Order, it is directed to consider the valuation of the subject land as per the current ready reckoner and thus issued necessary directions for payment of consideration amount as per the prevailing ready reckoner rate of 2022-2023. As per the said order, necessary compliance was to be done within three months from the date of the said order failing which the effect of the permission would lapse.

- 6) Learned counsel for the Petitioners submitted that the valuation as directed to be considered of the land as per ready reckoner on the date of the Order is illegal. He submitted that the valuation as of the date of the application is required to be taken into consideration for the purpose of deciding the consideration amount for the transaction of the subject land. In

support of his submission, learned counsel for the Petitioners relied upon the decision of this Court dated 21st December 2017 passed in Writ Petition No.15018 of 2017 in the case of ***Dineshkumar Prabhatilal Agrawal & Anr. vs. The State of Maharashtra & Ors.***¹ as well as the decision in case of ***Maganlal Kalubhai Patel vs. State of Maharashtra & Ors.***²

- 7) Learned counsel for the Petitioners submitted that the application for permission under section 36-A of MLR Code was filed on 11th December 2012. Pursuant to the said application, learned Tahsildar has submitted the report before Respondent No.1 – Collector for the purpose of processing the application. The said proposal of the Petitioners for grant of permission was submitted before Respondent No. 2 - State Government on 25th March 2021. Learned counsel for the Petitioners submitted that the Petitioners are aggrieved by condition no.1, thereby directing the valuation of the subject land as per the current ready reckoner. He submitted that the Agreement between the Petitioners and Respondent No.3 is of the year 2012. He submitted that the application filed by the Petitioners in the year 2012 was pending only because it was not processed by Respondent Nos. 1 and 2 in time. He

1 Writ Petition No.15018 of 2017 dated 21.12.2017

2 2020 SCC OnLine Bom.3872

submitted that there was no default on the part of the Petitioners. He further submitted that it is not the case of Respondent Nos. 1 and 2 that the application of the Petitioners was defective. He thus submitted that the delay in processing the application was not due to any default on the part of the Petitioners. Hence the Petitioners cannot be penalised for the delay caused in processing the application.

- 8) Learned counsel for the Petitioners invited our attention to the Order dated 10th October 2014 passed by this Court in Writ Petition No.8741 of 2014 in the case of **Smt.Chhaya Rajendra Zende & Anr. vs. The State of Maharashtra & Ors.**³ along with a group of Petitions. The said decision of this Court deals with the aspect of delay on the part of the Authorities in processing the application for permission under Section 36-A of the MLR Code. In the said decision, this Court has issued directions to the State Government to ensure that all applications/proposals for grant of prior approval under clause (b) of sub-section (1) of Section 36-A of the MLR Code are not kept pending for a long time, and an endeavour shall be made to take the appropriate decision on such proposals within a period of four months from the date on which the

3 Writ Petition No.8744 of 2014 dated 10.10.2014

proposal is received from the Divisional Commissioner.

- 9) Learned counsel thus submitted that considering that there were no objections raised on the application filed by the Petitioners for the grant of permission, there was no reason on the part of the Respondent Nos. 1 and 2 to delay the process of granting necessary permission under Section 36-A of MLR Code.
- 10) The learned AGP submitted that Respondent No.1 has passed the necessary Order on the basis of condition no.1 incorporated in the Order dated 25th March 2021 passed by Respondent No.2. She submitted that the Order dated 5th July 2022 is a conditional permission subject to compliance of the conditions within three months from the date of the order. The conditional time of three months from 5th July 2022 has already expired. Hence, the permission has already lapsed. However, the facts of the case as submitted by the Petitioners are not much disputed. It is not pointed out that there is any deficiency in the application of the Petitioners.
- 11) Learned counsel for Respondent No.3 supported the submissions made on behalf of the Petitioners opposing the condition imposed for the valuation of the subject land as per the current ready reckoner. However, he submitted that

necessary directions be issued to the Petitioners for completing the remaining conditions of the permission granted under Section 36-A of MLR Code for making payment of the balance consideration amount as per the ready reckoner prevailing on the date of application.

12) We have considered the submissions made by the parties.

We have gone through the record of the present Writ Petition as well as the decisions of this Court relied upon by the learned counsel for the Petitioners. It is not disputed that the Petitioners' application filed in the year 2012 was kept pending without there being any fault on the part of the Petitioners. There is nothing shown to us with respect to any requisition issued to the Petitioners for processing the application. There is no defect in the application filed by the Petitioners. Thus, the delay caused in processing the application for the grant of permission under Section 36-A of the MLR Code is not attributed to the Petitioners. The delay that occurred in granting permission as per the application filed in the year 2012 is only due to the delay in processing the application.

13) Pursuant to the report submitted by the learned Tahsildar, District Collector had submitted a report on 31st December 2013 before the Divisional Commissioner. Pursuant to the said

proposal received, the Divisional Commissioner forwarded the proposal to the State Government in the month of February 2014. The application was further processed by the State Government, and the necessary Order was passed on 25th March 2021. By the said order, the State Government has granted prior approval by imposing the condition for the valuation of the subject land as per the prevailing ready reckoner. Action on the part of Respondent No.1 by imposing condition for the valuation of the subject land as per the prevailing rates cannot be justified when the application of the Petitioners is of the year 2012, and there is no fault found on the part of the Petitioners for the delay in processing application. Thus, the impugned condition is unjust, unreasonable and illegal. A perusal of Section 36-A of MLR Code does not permit imposing such a condition.

- 14) In the decision of this Court in the case of ***Dineshkumar Prabhatilal Agrawal & Anr.*** (supra) this Court had relied upon the decision of the Supreme Court in case of ***Union of India & Anr. vs. Mahajan Industries Limited***⁴ and held that the rates would be charged as prevailing on the date of the application. This Court has referred to the decision of this Court at Nagpur

4 (2005)10 SCC 203

Bench in the case of **Trimbakrao Mugutrao Deshmukh vs. State of Maharashtra & Anr**,⁵ and held that the Nazrana that would be paid as per the valuation of the property has to be on the date of application. This Court, by referring to the aforesaid decisions, had directed to pay Nazrana on the valuation of the property as of the date of the application. This Court, in the decision in the case of **Maganlal Kalubhai Patel** (supra) has held that the legal position regarding the valuation of the land in question for the grant of permission is as on the date of the application. This Court, in the aforesaid decisions, has held that the Applicants should not be put to any inconvenience by paying higher market value prevailing on the date of grant of permission. The view taken by this Court in the aforesaid decisions squarely applies to the present case.

- 15) A perusal of the proposal submitted before Respondent Nos. 1 and 2, as well as the Order passed by Respondent Nos.1 and 2, shows that as per the application made by the Petitioners, the consideration amount paid as per the agreement between the Petitioners and the Respondent No.3 was Rs.70,00,000/-. The valuation of the property as per the ready reckoner was Rs.1,83,00,000/-. However, Respondent

⁵ 2009 (2) Bom.C.R. 467

No.2, while granting approval by an order dated 25th March 2021, has imposed the condition for valuing the subject land as per the current valuation for the purpose of payment of consideration. Respondent No.1, while granting permission by an order dated 5th July 2022, has imposed condition no.1 and held that the valuation of the subject land as per the prevailing market rate of the year 2022-2023 is Rs.3,09,27,000/-. Hence Respondent No.1 has fixed the consideration amount to be paid by the Petitioners to Respondent No.3 as Rs.3,09,27,000/- after deducting the consideration amount already paid by the Petitioners to the Respondent No.3.

- 16) In so far as the rest of the conditions imposed by the order dated 5th July 2022 as well as Order passed by the Respondent No.2 on 25th March 2021 are not disputed by the Petitioners. The only grievance of the Petitioners is with respect to the condition for payment of consideration as per the ready reckoner of the year 2022-2023. Learned counsel for the Petitioners as well as Respondent No.3, agree that the consideration amount payable by the Petitioners to the Respondent No.3 will be as per the ready reckoner rate prevailing in the year 2012, which is valued at Rs.1,83,00,000/-. The Respondent No.3 agrees that an

amount of Rs.70,00,000/- is already paid by the Petitioners to him and the balance amount payable by the Petitioners to him will be Rs.1,13,00,000/-. Learned counsel for the Petitioners, on instructions, states that the said amount of Rs.1,13,00,000/- will be paid by the Petitioners to Respondent No.3 within three months from today. Statement is accepted.

17) The submissions made by the learned AGP that the Petitioners are not entitled to challenge the conditions imposed by Respondent No.2 have no merit in view of the law laid down by this Court in the decisions referred to above. Since we have already taken the view that the condition imposed by Respondent Nos. 1 and 2 is illegal and needs modification, the submission made by the learned AGP that the permission has lapsed due to non-compliance of the conditions is rejected.

18) The challenge to the Orders dated 5th July 2022 and 5th March 2021 is only to condition no.1 for the valuation of the subject land, the rest of the conditions are not challenged by the Petitioners. We have already held that condition no.1 imposed by both the impugned orders is illegal and needs to be modified. Hence, the conditional time granted by the impugned Order passed by Respondent No. 1 for compliance with the conditions is modified by granting an extension of time

for a period of three months from today by directing to value the subject land as per the ready reckoner rate of the year 2012. In so far as the remaining conditions imposed by orders dated 5th July 2022 and 25th March 2021 are not altered. The Petitioners are directed to comply with all the conditions, including condition no.1 as modified by the present order.

19) Hence the following Order is passed:

- i) Writ Petition is allowed in terms of prayer clauses (a) and (b), which read as follows:
- ii) In view of the modification of condition no.1, the valuation of the subject land for payment of consideration amount is to be treated as Rs.1,83,00,000/-. The Petitioners shall pay the balance amount of Rs.1,13,00,000/- to the Respondent No.3 within a period of three months from today.
- iii) Except the condition no.1, the rest of the conditions in the orders dated 5th July, 2022 and 25th March 2021 are not altered. The time for compliance with the conditions is extended by a period of three months from today.
- iv) It is made clear that if the conditions as per the order dated 5th July 2022 are not complied with within a period of three months from today, consequences provided in the Order dated 5th July 2022 will follow.

- v) Rule is made absolute in the above terms.
- vi) All parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(R.D. DHANUKA, J.)