



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 1023 of 2021

Prakash S/o Tukaram Dhoran and others

Versus

The State of Maharashtra, Ministry of Revenue and Forest Department,
through its Secretary, Mantralaya, Mumbai-400 032 and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.S. Kshirsagar, Advocate for the petitioners.

Ms. H.N.Jaipurkar, AGP for the respondent nos. 1 to 5.

Shri V.G.Bhambhurkar, Advocate for the respondent
no.6.

CORAM : ANIL S. KILOR, J.

DATED : 31st AUGUST, 2023.

The issue involved in the present petition is
as regards fragmentation.

2. The sale-deed executed in favour of the
petitioner on 31st December, 2001 of a land
admeasuring 0.15 HR was challenged on the ground of
fragmentation by making a complaint on 16th
September, 2016, which was allowed by Sub Divisional
Officer on 13th October, 2017.

3. The said order of Sub Divisional dated 13th
October, 2017 directing to hand over the land to the

Government was challenged in the revision before the Additional Commissioner, Amravati who has upheld the order of the Sub Divisional Officer vide order dated 28th May, 2018. Against the same second revision was filed before the Government and during the pendency of the said revision, a circular came to be issued by the Government, whereby, a proviso has been added to Sub-Section 3 of Section 9 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (in short hereinafter referred as 'Fragmentation and Consolidation Act'), permitting regularisation of the lands at the rate of 25% of the market value.

4. It is submitted accordingly, the application was filed by the petitioner addressing to the Sub Divisional Officer for regularising the land of the petitioner. It is submitted that the petitioner is ready to deposit 25% amount as required in compliance of proviso to Sub-Section 3 of Section 9 of the Fragmentation and Consolidation Act.

5. In the meantime, the Hon'ble Minister allowed the second revision filed by the petitioner. However, this Court in a writ petition filed by the respondent no.6, set aside the said order vide judgment dated 12th December, 2019 on the ground that the

revision filed before the Hon'ble Minister was not maintainable. Hence, the petitioner has filed the present writ petition.

6. As far as the findings recorded by the Sub Divisional Officer, Malkapur and Additional Commissioner, Amravati holding that the provision of Fragmentation and Consolidation Act would attract to the sale-deed in question and accordingly declared the transaction as illegal, I do not find any error in the said order.

7. However, considering the subsequent fact of amendment to proviso to Sub-Section 3 of Section 9 of the Fragmentation and Consolidation Act and as the petitioner has already filed an application on 11th December, 2019 which is pending, I am of the opinion that ends of justice would be subserved, if the writ petition is disposed of with a direction to Sub Divisional Officer, Malkapur to decide the application filed by the petitioner on 11th December, 2019, within one month from today. Accordingly, I pass the following order:

- i. Writ petition is dismissed.
- ii. Sub Divisional Officer, Malkapur is directed to take a decision on the application filed by the petitioner on 11th December, 2019 for regularisation of

his land in pursuance of proviso to Sub-Section 3 of Section 9 of the Fragmentation and Consolidation Act.

iii. Sub Divisional Officer, Malkapur is directed to decide the application in accordance with law without getting influenced to earlier orders which were passed prior to the addition of proviso.

[ANIL S. KILOR, J.]