

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

WRIT PETITION NO.5247 OF 2018

Mahadeo Madho Satpute .Vs. Swami Vivekanand Gruha Nirman Sahakari Sanstha,
Gadchandur through Damodhar Jangluji Gawargur through LRs

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

Court's or Judge's Order

Shri Madhur Deo, Advocate for the petitioner.

Shri S.M. Nafde, Advocate for the respondent Nos.1 and 2.

Ms. H.N. Jaipurkar, A.G.P. for the respondent/State.

CORAM : ANIL S. KILOR, J.

DATED : 02/05/2023

1. Heard.

2. In this writ petition the challenge is raised to the order dated 17.04.2018 passed by the respondent No.3 allowing the appeal and thereby setting aside the order of the Additional Commissioner, Nagpur dated 18.12.2000, allowing the revision and thereby setting aside the order of the Additional Commissioner dated 23.11.2004 and the order of the Sub-Divisional Officer dated 03.02.2003 and further upholding the order of the Tahsildar dated 05.01.1994 rejecting the mutation entry 542.

3. The petitioner is the original owner of the suit property and the respondent No.1 allegedly purchased the property in question vide registered sale deed dated

15.01.1993. In pursuance to the same, the Talathi mutated entry and issued notices to the interested persons.

4. The present petitioners filed the objections on 13.09.1993 and the same was registered at 552 in the register of the disputed entry. Thereafter, it was placed before the Tahsildar respondent No.7.

5. The Tahsildar after hearing both the parties allowed the objection and rejected the mutation entry vide order dated 05.01.1994. The Tahsildar while rejecting the mutation entry 542 has observed that because the petitioner would become landless, the permission from the competent authority is necessary which was not obtained.

6. The respondent/society feeling aggrieved by the same preferred an appeal before the Sub-Divisional Officer who has set aside the order of the Tahsildar and remanded the matter back to the Tahsildar for enquiry under Section 150 as per the provisions of the Maharashtra Land Revenue Code, 1966 as well as Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Act of 1950").

7. The learned Additional Collector dismissed the appeal and maintained the order of the Sub-Divisional Officer. Thereupon, the petitioner filed a revision application before the Additional Commissioner who

allowed the revision application and set aside the order of the Additional Collector and Sub-Divisional Officer dated 23.11.2004 and 03.02.2003 respectively and confirmed the order dated 05.01.1994. The respondent/society thereupon filed an appeal before the respondent No.3 Principal Secretary who has allowed the revision and set aside the order of the Additional Commissioner dated 18.12.2000 and remanded the matter back to the Tahsildar.

8. The respondent No.3 allowed the appeal filed by the respondents on the ground that the revenue authorities have no power to declare the sale deed as null and void and accordingly, it was remanded back to the Tahsildar. Hence, this petition.

9. The learned counsel for the petitioner submits that if the sale deed is void *ab initio*, then no declaration is necessary. He submits that, it is an admitted fact that the petitioner would become landless because of transfer of land in question in favour of the respondents and in such cases, permission of the competent authority is necessary which was not obtained in the present case while executing the sale deed. He, therefore, submits that the respondents No.3 has committed error in allowing the appeal.

10. On the other hand, the learned A.G.P. supports the case of the respondent No.3 and prays for dismissal of the present writ petition.

11. Shri Nafde, learned counsel for the society submits that under the provisions of Section 98C (1) and (2) of the Hyderabad Tenancy and Agricultural Lands Act, 1950, even in case of any alienation, transfer or acquisition of any land made on or after the commencement of the Amending Act, 1957, the Tahsildar *suo motu* or on the application of any person interested in such land has reason to believe that such alienation, transfer or acquisition is or becomes invalid under any of the provisions of the Act, the Tahsildar shall issue a notice and hold inquiry.

12. It is pointed out that the present proceeding was not initiated under Section 98C of the Act of 1950 as *suo motu* or on the application of the petitioner and therefore, it is submitted that, the respondent No.3 Principal Secretary has rightly quashed and set aside the order of the Additional Commissioner.

13. In light of the rival contentions, I have perused the record and the impugned order passed by the respondent No.3.

14. Admittedly, in the present matter the objection filed by the petitioner before the Tahsildar was not under Section 98C of the Act of 1950 or the Tahsildar has not *suo motu* initiated the action under Section 98C of the Act of 1950. Whereas, the Tahsildar has treated the sale deed as

illegal on the ground that it was executed without obtaining the permission, which is required in case the vendor becomes landless after transfer of the land.

15. Undisputedly, Section 98C (1) and (2) of the Act of 1950, stipulate inquiry before declaring any transaction as illegal. In the present matter, the same was not done.

16. Hence, I do not find any error committed by the respondent No.3 while holding that the Tahsildar has no authority or power to declare the sale deed in question as illegal.

17. At this juncture, it is to be noted that a suit for permanent injunction was filed by the respondents/society against the petitioners was decreed without touching the issues in respect of title.

18. Thus, in the circumstances, as no error has been committed by the Principal Secretary, the writ petition is accordingly, **dismissed**.

JUDGE