

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

WRIT PETITION 7614 OF 2022

Petitioners : 1. Ramdas Mahadeo Gotmare,
Aged 66 years, Occ. Cultivator,
R/o Akot, Dist. Akola.

2. Sachin Prataprao Khalokar,
Aged 34 years, Occ. Advocate,
R/o Nandipeth, Akot,
Tq. Akot, Dist. Akola.
– Versus –

Respondents : 1. Collector Akola, Dist. Akola.

2. Sub Divisional Officer, Akot,
Tq. Akot, Dist. Akola.

3. Sub Registrar Class-I,
Near Tahsil Office, Akot,
Tq. Akot, Dist. Akola.

Mr. V.B. Bhise, Advocate for the Petitioners.
Mrs. Kalyani Deshpande, A.G.P. for the Respondents.

CORAM : **ROHIT B. DEO AND Y.G. KHOBRADE, JJ.**
DATE : **7th FEBRUARY, 2023.**

J U D G M E N T : *(Per Rohit B. Deo, J.)*

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the parties.

02] The challenge in the petition is to the communication dated 12/05/2022 issued by the Sub-Divisional Officer, Akot and the communication dated 21/07/2022 issued by the Additional Collector, Akola, whereby the application preferred by the petitioners seeking permission under the provisions of the Maharashtra Prevention of the Fragmentation and Consolidation of Holdings Act (“Act” for short) for alienating the land admeasuring 0.17 ares from/of Field Survey 622/1 situated in Mouje Akot Part-II, is rejected on the premise that such alienation shall be in breach of the provisions of the Act.

03] The ground raised in paragraph 8 of the petition is that in view of Section 8B of the Act, the provisions of Sections 7, 8 and 8AA of the Act do not apply to the land situated within the limits of the Municipal Corporation or the Municipal Council, as the case may be, and according to the communication dated 28/07/2022 received from the Municipal Council, Akot, Survey 622/1 of Mouje Akot Part-II comes within the limits of the Municipal Council, Akot.

04] Section 8B of the Act reads thus :

“[8B. Sections 7, 8 and 8AA not to apply to land situated in certain areas.

Nothing in sections 7, 8 and 8AA shall apply to the land situated within the limits of a Municipal Corporation or a Municipal Council, or to the land situated within the jurisdiction of a Special Planning Authority or a New Town Development Authority appointed or constituted under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force, and also to any land allocated to residential, commercial, industrial or any other non-agricultural use in the draft or final Regional plan prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force :

Provided that, no person shall transfer any parcel of land situated in the areas specified above, which has area less than the standard area notified before the date of coming into force of the Maharashtra prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2015, unless such parcel is created as a result of sub-division or layout approved by the Planning Authority or the Collector, as the case may be, under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force].”

05] We called upon the learned Counsel Mr. Bhise for the petitioners to explain or clarify the import and implication of the proviso and the response is that the proviso to Section 8B of the Act, as a fact, does not apply to Section 8B and applies to the preceding Section 8A. In the interest of observing restraint and only as a courtesy to learned Counsel Mr. Bhise for the

petitioners, we do not make any observation on the said submission except recording that the submission misses the plain language and placement of the proviso.

06] We see no reason to interfere in writ jurisdiction.

07] However, we permit the petitioners to prefer an appropriate application or representation before the Collector and demonstrate that the subject land is within the Municipal Council, Akot and further that the proviso to Section 8B of the Act is not an impediment in granting the permission.

08] If such an application is preferred by the petitioners before the appropriate authority within the next 15 days, we expect the Collector/ Appropriate Authority to pass reasoned order on such application, after hearing the petitioner, within the next two weeks. The petition is disposed of in the aforesaid terms.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO, J.)

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