

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

WRIT PETITION NO. 7377 of 2019

Pradip s/o Madhusudan Nand,
Aged about 60 years,
R/o. Kedia Plots, Akola,
Tahsil and District Akola.

..... **PETITIONER**

..V E R S U S..

1. The State of Maharashtra,
through its Secretary, Department of Revenue,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner (Revenue),
Amravati Division, Amravati.
3. The Collector,
Amravati.
4. The Sub-Divisional Officer,
Dharni, Tahsil and District Amravati.
5. Ms. Pavneet Kaur,
Collector, Amravati.

..... **RESPONDENTS**

Shri Anand Parchure, Advocate for petitioner.
Shri Amit Madiwale, Assistant Government Pleader for respondents.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.

ARGUMENTS WERE HEARD ON : 04.05.2023

JUDGMENT IS PRONOUNCED ON : 09.06.2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard by issuing *Rule* and making it returnable forthwith.

Amendment carried
out as per Hon'ble
Court's order dated
19.01.2023
Sd/-C.F.Petitioner.

2. The petitioner claims to have purchased land bearing Survey No.9 located at Mouza-Lavada, Tahsil Chikhaldara, District Amravati, admeasuring 3 Hectares and 26 R pursuant to registered sale deed dated 13.05.1996. It is the case of the petitioner that his predecessor-in-title, Ramaji Yevale had sought prior permission from the Competent Authority for selling the said land which was accordingly granted on 31.03.1996. The petitioner thereafter on 02.02.2000 moved an application before the Sub-Divisional Officer, Dharni, seeking permission to change the status of the said land from occupancy Class-II to Class-I. Such permission was accordingly granted by the Competent Authority on 10.02.2000. Thus, according to the petitioner by virtue of the order dated 10.02.2000, the aforesaid land stood converted to occupancy Class-I. It is also the case of the petitioner that on 04.05.2000 the Sub-Divisional Officer, Dharni passed similar orders granting permission for converting other lands from occupancy Class-II to Class-I. However, in view of a subsequent order dated 14.08.2000 passed by the Sub-Divisional Officer the permission to convert the said lands came to be revoked. Being aggrieved, the land owners of the said lands initiated proceedings under the Maharashtra Land Revenue Code, 1966 (for short, the Code of 1966). The orders passed by the Divisional Commissioner on 11.02.2014 and 20.02.2014 refusing to grant permission to convert the said lands came to be challenged under Section 257 of the Code of 1966 before the Honourable

Minister of State (Revenue). By the order dated 12.09.2014 the Honourable Minister of State allowed the appeal preferred by the land owners and set aside the orders dated 11.02.2014 and 20.02.2014 passed by the Divisional Commissioner. It was held therein that the initial order dated 04.05.2000 passed by the Sub-Divisional Officer, Dharni, was legally correct and hence the order thereafter passed by the Additional Collector on 29.12.2003 affirming the earlier order was also legal and valid. It was directed that the Collector, Amravati should undertake necessary action with regard to conversion of lands into Class-I by following the prevailing Rules and Regulations with respect to similarly situated lands. The aforesaid order was sought to be reviewed at the instance of the Divisional Commissioner, Amravati. However on 26.10.2016 the Honourable Minister of State (Revenue) dismissed the said review petition that was filed under Section 258 of the Code of 1966 and observed that the original order dated 12.09.2014 did not call for any review. The petitioner seeks to rely upon the aforesaid orders to support the prayer that conversion of the land to Class-I could not have been now denied by the Authorities.

3. The petitioner on 27.03.2017 filed proceedings before the Divisional Commissioner, Amravati, seeking implementation of the orders dated 12.09.2014 and 26.10.2016 insofar as land bearing Survey No.9 situated at Mouza Lavada, Tahsil Chikhaldara, District Amravati was

concerned. On 17.06.2017 the Divisional Commissioner directed the Collector as well as the Sub-Divisional officer, Dharni to implement the order dated 26.10.2016 in its true letter and spirit by following the Rules that were prevailing as on date. Despite aforesaid direction, it is the grievance of the petitioner that the said orders have not been implemented. In the meanwhile, the provisions of Section 29 A of the Code of 1966 came to be inserted by virtue of Maharashtra Act No.XVII of 2016 that came into effect on 29.04.2016. As per the said provision, conversion of occupancy rights was permitted on payment of conversion premium and after following the prescribed procedure as well as subject to terms and conditions as prescribed. Based on the aforesaid provision, the Revenue and Forest Department on 08.03.2019 issued a Notification and introduced the Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold Lands into Occupancy Class-I Lands) Rules, 2019 (for short, the Rules of 2019). Conversion premium payable was prescribed in the said Rules. On the basis of the Rules of 2019, an amount of premium of Rs.22,05,841/- came to be demanded from the petitioner and it is the case of the petitioner that the aforesaid amount has been deposited by him. Despite aforesaid since necessary steps for conversion of the lands in question into occupancy Class-I were not taken by the respondents, the present writ petition has been filed seeking a direction that the orders of conversion as initially passed and thereafter confirmed by the Honourable Minister of State (Revenue) dated

12.09.2014 be implemented. By amending the writ petition, the petitioner has sought a direction that the Notification dated 08.03.2019 was not applicable to the lands of the petitioner since the order of conversion was passed prior to it coming into force.. As a consequence, the orders dated 13.12.2021, 26.05.2022 and 15.11.2022 have also been challenged. The petitioner also seeks refund of the amount of conversion premium paid by him alongwith interest.

4. Shri Anand Parchure, learned counsel for the petitioner submitted that permission for conversion of land bearing Survey No.9 admeasuring about 3 Hectares 26 R at Mouza-Lavada, Tahsil Chikhaldara, District Amravati had already been granted on 10.02.2000. In view of this order the Revenue Authorities ought to have taken necessary steps of treating the said land as occupancy Class-I. However, relying upon certain orders passed in respect of other lands in Chikhaldara Tahsil, the petitioner was not being given benefit of the permission that was already granted to convert the said land into occupancy Class-I. He submitted that even in the litigation pertaining to such other lands, the Honourable Minister of State for Revenue on 12.09.2014 and thereafter on 26.10.2016 had held that the initial order of conversion passed with regard to the other lands on 04.05.2000 was correct. In the light of that adjudication, necessary consequential steps ought to have taken by the Revenue Authorities. However by relying upon a

subsequent Notification dated 08.03.2019 the Revenue Authorities sought recovery of conversion premium and denied the benefit of the earlier orders to the petitioner. Since the permission for conversion to occupancy Class-I was granted on 10.02.2000, the petitioner's rights would be governed by that order and not by the subsequent events as well as subsequent enactments in that regard. The respondents erred in relying upon the Rules of 2019 while imposing conditions on the petitioner in the matter of conversion of the said lands. These Rules did not have any retrospective operation so as to bind the petitioner. It was therefore submitted that the Revenue Authorities ought to be directed to implement the orders passed by the Honourable Minister of State for Revenue on 12.09.2014 as well as on 26.10.2016. The subsequent orders dated 13.12.2021, 26.05.2022 and 15.11.2022 holding otherwise were thus liable to be set aside. It was thus prayed that the writ petition be allowed and the impugned orders be set aside.

5. Shri Amit Madiwale, learned Assistant Government Pleader for the respondents opposed the writ petition. Relying upon the written notes placed on record, it was submitted that though permission had been granted initially to convert the lands into occupancy Class-I, various complaints were received by the Revenue Authorities in respect of alleged irregularities in the conversion of said lands. Based on those complaints the matter was

re-examined in the context of lands in Tahsil Chikhaldara. Though orders had been passed on 12.09.2014 and 26.10.2016 by the Honourable Minister of State for Revenue, in the meanwhile the provisions of Section 29 A of the Code of 1966 came to be inserted. Opinion of the State Government was accordingly sought and based on such response as well as the Rules of 2019, necessary steps were taken by the Revenue Authorities in the matter of conversion of the land in question as occupancy Class-I. The petitioner had deposited the requisite amount in terms of the orders as passed being Rs.22,05,841/- as per valuation. It was further submitted that insofar as the grievances raised by the petitioner with regard to lands at Mouza-Motha, Tahsil Chikhaldara, District Amravati was concerned, the petitioner could avail appropriate statutory remedy as available under the Code of 1966. It was thus submitted that the petitioner was required to act in accordance with the Rules of 2019 while seeking conversion of his lands from occupancy Class-II to occupancy Class-I. Hence no relief could be granted to the petitioner.

6. We have heard the learned counsel for the parties at length and with their assistance, we have perused the documents on record. It is not in dispute that insofar as the land bearing Survey No.9 of Mouza-Lavada, Tahsil Chikhaldara, District Amravati is concerned, the petitioner had purchased the same to the extent of 3 Hectares 26 R on 13.05.1996 pursuant to the

permission granted by the Divisional Commissioner to the original owner to sell the said land. On 10.02.2000 permission was granted to convert the said land from occupancy Class-II to occupancy Class-I. This was pursuant to the petitioner's application dated 02.02.2000. It is thus clear from the record that the order dated 10.02.2000 passed by the Sub-Divisional Officer, Dharni, permitting conversion of the said land under Section 29(2)(c) of the Code of 1966 has attained finality. The record indicates that in view of complaints received by the Revenue Authorities the issue with regard to the conversion of land in Tahsil Chikhaldara was re-opened by the said Authorities which resulted in the aggrieved parties challenging the said action under the Code of 1966. In these proceedings while exercising jurisdiction under Section 257 of the Code of 1966 the State Government on 12.09.2014 held that the order dated 04.05.2000 permitting conversion of such lands to Class-I was correct. A further direction was issued that with regard to similarly situated lands necessary steps be taken for having them converted into occupancy Class-I in the light of the observations made in the order. In further exercise of power of review under Section 258 of the Code of 1966, the order dated 12.09.2014 came to be confirmed on 26.10.2016 by the State Government. Even that adjudication has now attained finality.

From the aforesaid, it becomes clear that firstly the petitioner was granted permission to convert the land from Survey No.9 of Mouza-Lavada into occupancy Class-I on 10.02.2000. Further the State Government also

directed the Revenue Authorities while upholding a similar order of conversion to see that other similarly situated lands were also accordingly converted.

7. It is also to be noted that after the aforesaid adjudication under Sections 257 and 258 of the Code of 1966, the petitioner sought implementation of the order of conversion by approaching the Divisional Commissioner. On 17.06.2017 the Divisional Commissioner, Amravati directed the Collector as well as the Sub-Divisional Officer, Dharni to implement the order dated 26.10.2016 passed by the State Government in its true letter and spirit by following the law as well as the Rules applicable as on date. This would indicate that the Revenue Authorities were duty bound to implement the earlier orders passed by the State Government upholding conversion of the lands as occupancy Class-I. It however appears that in the meanwhile the provisions of Section 29 A came to be inserted in the Code of 1966 with effect from 29.04.2016. Thereafter on 08.03.2019 the Rules of 2019 were brought into force. Acting on the aforesaid statutory enactments, the matter with regard to conversion of the petitioner's land at Mouza-Lavada to occupancy Class-I came to be examined. This has resulted in passing of the order dated 26.05.2022 by the Collector wherein the petitioner's land came to be valued in terms of Section 29 A of the Code of 1966 as amended. The market value was thus determined and by applying

the Rules of 2019 an amount of Rs.22,05,841/- came to be demanded from the petitioner. Though the petitioner moved representations in that regard, he was required to deposit the aforesaid amount which he did on 16.03.2022. It is thus clear that insofar as the land bearing Survey No.9 at Mouza-Lavada is concerned, the steps for its conversion into Class-I have been taken by relying upon the Rules of 2019.

8. A perusal of Section 29 A of the Code of 1966 indicates that it prescribes the manner in which conversion of occupancy of land belonging to various categories can be undertaken. The same requires payment of conversion premium in that regard. On a plain reading of the aforesaid provision, it can be seen that the same is not intended to have any retrospective operation. In other words, with regard to lands which have already been permitted to be converted from occupancy Class-II to occupancy Class-I, conversion premium has not been prescribed. The said provision is intended to apply prospectively while converting such lands. On the basis of said provision that has been incorporated on 29.04.2016, conversion premium is being demanded from the petitioner though the order of conversion was already passed on 10.02.2000. This position is further clear on reading the Rules of 2019 which prescribe the manner in which such conversion of occupancy Class of the land can be sought. It is thus clear that insofar as land bearing Survey No.9 of Mouza-Lavada is concerned, it was

already permitted to be converted to occupancy Class-I on 10.02.2000. The statutory provision that has been enacted after about fifteen years from such orders of permission cannot be applied retrospectively in absence of any statutory provision in that regard. It is thus clear that the rights of the petitioner would be governed by the position as prevailing when the permission for conversion was granted. In any event, the order passed by the Divisional Commissioner on 17.06.2017 in the proceedings preferred by the petitioner seeking implementation of the orders passed by the State Government, it was held in clear terms that the orders of conversion ought to be implemented by following the Rules as applicable on the relevant date. Thus in the present facts the Rules of 2019 could not have been relied upon while taking consequential steps for implementing the order of conversion dated 10.02.2000. It is reiterated that the present is a case where the petitioner is seeking implementation of the order of conversion dated 10.02.2000 insofar as the land bearing Survey No.9 of Mouza-Lavada, Tahsil Chikhaldara District Amravati is concerned and is not seeking any permission for its conversion. Consequentially, the order directing the petitioner to deposit an amount of Rs.22,05,841/- towards conversion premium is unsustainable since the Rules of 2019 are being sought to be applied retrospectively to the order of conversion dated 10.02.2000.

As a consequence the earlier order dated 13.12.2021 passed by the Additional Collector directing the petitioner to deposit sum of Rs.22,05,841/-

with regard to land bearing Survey No.9 located at Mouza-Lavada, Tahsil Chikhaldara, District Amravati is also liable to be set aside.

9. Insofar as challenge raised to the order dated 15.11.2022 is concerned, it is seen that the said order has been passed with regard to lands of the petitioner located at Mouza-Motha, Tahsil Chikhaldara, District Amravati. It holds that since the said land came to be transferred without permission of the Competent Authority, the petitioner's application for conversion of that land to occupancy Class-I was rejected. In this regard, we find that since the order dated 15.11.2022 pertains to a different land located at Mouza-Motha, the petitioner needs to be directed to avail the statutory remedy available under the Code of 1966 if he is aggrieved by the rejection of his application seeking conversion of the said land to occupancy Class-I. The said proceedings being independent of the proceedings pertaining to land located at Mouza-Lavada, we are not inclined to permit the petitioner to by-pass the statutory remedy available in that regard.

10. In the light of the aforesaid discussion, the following order is passed:

- (i) The orders dated 13.12.2021 and 26.05.2022 insofar as they pertain to land bearing Survey No.9 Mouza-Lavada, Tahsil Chikhaldara, District Amravati are set aside since the said orders seek to retrospectively apply the Rules of 2019 while implementing

the order dated 10.02.2000 passed by the Sub-Divisional Officer, Dharni permitting conversion of said land from occupancy Class-II to occupancy Class-I. Consequentially the amount of Rs.22,05,841/- shall be refunded to the petitioner within a period of two months from today failing which the said amount shall liable to be refunded with interest @4% per annum from the date of the judgment till its realisation.

- (ii) The respondent no.2 shall ensure that its order dated 17.06.2017 passed in Appeal Case No.41/ LND-38/ Aladhoba/ Chikhaldara/ Amravti 2016-2017 is duly implemented by considering the statutory provisions as applicable when the order of permission was passed.
- (iii) The respondent nos. 3 and 4 shall take all necessary steps to implement the order dated 10.02.2000 passed by the Sub-Divisional Officer, Dharni, which permits conversion of land bearing Survey No.9 Tahsil Chikhaldara, District Amravati from occupancy Class-II to occupancy Class-I.
- (iv) The petitioner is at liberty to challenge the order dated 15.11.2022 passed by the Collector, Amravati in respect of the land bearing Survey No.22, Mouza-Motha, Tahsil Chikhaldara, District Amravati by availing the statutory remedy prescribed under the Code of 1966. If such remedy is availed of by the petitioner within 60 days

from today, such proceedings shall be entertained on merits without going into the aspect of delay and shall be decided on its own merits and in accordance with law.

- (v) Rule is made partly absolute in aforesaid terms leaving the parties to bear their own costs.

(M. W. CHANDWANI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..