



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 WRIT PETITION NO. 8987 OF 2022

Jitendra Murlidhar Kesekar

VERSUS

Nannyabai Alias Nanibai Hari Pawar And Others

...

Advocate for the Petitioner : Mr. Dixit Satyajeet S.

AGP for Respondent/State : Mrs. P.R. Bharaswadkar

Advocate for Respondents 1 to 10, 9, 18 & 19 : Mr. K.N. Shermal

...

CORAM : ARUN R. PEDNEKER, J.

Dated : February 05, 2024

PER COURT :-

1. The learned counsel for the petitioner, on instruction, seeks leave of this Court to withdraw the writ petition.
2. Writ petition is dismissed as withdrawn.
3. The learned counsel for the respondents submits that at para 25, in the proceedings between the parties, before the Hon'ble Supreme Court i.e. in the case reported as **1995 AIR SCW 2224 (Murlidhar Dayandeo Keskar Vs. Vishwanath Pandu Bardu & Anr.)**, the Hon'ble Supreme Court has given following direction :-

'25. It is seen that prior permission for alienation of the land was a condition precedent. Before permission is given, the competent authority is enjoined, by operation of Article 46 of the Constitution, to enquire whether such alienation is void under law or violates provisions of the Constitution and whether permission could be legitimately given. In that behalf, the competent authority is enjoined to look to the nature of the property, subject-matter of the proposed conveyance and pre-existing rights flowing thereunder and whether such alienations or encumbrances violate provisions of the Constitution or the law. If the answer is in the positive, then without any further enquiry the permission straightaway would be rejected. Even in case the permission is granted, it would be decided on the anvil of the relevant provisions of the Constitution and the law. In this case, the authorities, though had not adverted to the aspect of the matter, broadly refused permission on the ground that the assigned land cannot be permitted to be sold or converted to non-agricultural use. The action

refusing permission, therefore, is in consonance with the Constitutional scheme in Part IV of the Directive Principles. The agreement is, therefore, void under S. 23 of the Contract Act as opposed to public policy vide judgment in DTC v. DTC Mazdoor Congress, 1990 (suppl.) 1 SCR, 192, by one of us Ramaswamy, J. with whom Sawant and Ray, JJ. agreed by separate but concurring judgment and the permission was rightly refused to be given for alienation. The possession is unlawful. Section 53-A of Transfer of Property Act is not attracted. The appellant's possession continues to be unlawful and he is not entitled to any improvement made on the lands. The Collector is directed to resume the lands immediately and assign the same to the legal representatives of first respondent, if found eligible or to any other eligible tribal.'

4. The learned counsel for the respondent submits that the Collector has not yet acted on the direction of the Supreme Court 'to resume the land forthwith' and to assign the same to the legal representatives of first respondent if found eligible or to any other eligible respondent. The Collector to act forthwith in terms of the directions of Hon'ble Supreme Court.

5. The learned AGP is directed to bring the above directions of Hon'ble Supreme Court in the case cited above to the notice of Collector.

6. The Civil M.A. No. 30/2014 is pending for long period of time. The learned Civil Judge, Senior Division, Sangamner is directed to decide the legal heirship proceeding bearing Civil M.A. No. 30/2014 expeditiously and in any event within six months from today.

(ARUN R. PEDNEKER, J.)

ssc/