



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.72 OF 2024

Gayabai Murlidhar Thore

VERSUS

Ashok Savleram Avhad And Others

...

Advocate for applicant : Mr. S.S. Bora

Advocate for Respondent No.1 : Mr. N. P Bangar

AGP for respondent nos. 2 to 5 : Mr. D.B. Bhange

Advocate for Respondent Nos.6,7 : Mr. D.D. Pokharkar

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : December 20, 2024

FINAL ORDER :-

1. The applicant impugns the order dated 16.3.2024 passed by Civil Judge Senior Division, Newasa on application below Exhibit-45 in Regular Civil Suit No.754 of 2021, by which his prayer under order VII Rule 11 of the Civil Procedure Code for rejection of the plaint has been rejected. (Parties hereinafter are referred to as per their original status in the suit.)

2. Respondent no.1/original plaintiff instituted R.C.S. No.754 of 2021 before the Civil Judge Senior Division at Newasa contending that on 13.10.1998 he purchased land gat

no.162/2/A/1/E from defendant nos.5 and 6. Consequently, his name was mutated in revenue record. Since then, he is cultivating the land. He has dug a well and made development by laying pipe-line, electric motor, etc. In the year 2021 defendant no.7 obstructed his possession contending that her name is mutated as owner of the land and she would alienate same in favour of third party.

3. It is further contended that, in fact, suit land was received by his vendors on the basis of exchange order dated 18.2.1995 passed by the Collector. Name of his vendor was recorded in ownership column. Thereafter, he purchased the land under registered sale-deed. However, by order dated 4.11.2020 passed by Respondent no.1-Collector, order of exchange dated 18.2.1995 has been canceled. Plaintiff was not noticed about the proceedings initiated by respondent no.7 seeking cancellation of exchange order dated 18.2.1995. Even, mutation is effected in pursuance of the order dated 4.11.2020 passed by respondent no.1 without notice to him. The order dated 4.11.2020 is passed without following due process of law and in utter violation of principles of natural justice. Therefore, plaintiff seeks declaration that the order dated

4.11.2020 passed by defendant no.1 is illegal and not binding on right of the plaintiff. Plaintiff further seeks declaration against defendant nos.2 to 4 from interfering in his possession. Plaintiff has further prayed for perpetual injunction against defendant no.7 from not to create third party interest in suit property on the basis of mutation entry in her name.

4. Defendant no.7 appeared in the suit, filed written statement and an application Exhibit 45 under Order VII Rule 11 of the Civil Procedure Code seeking rejection of the plaint on the ground that jurisdiction of the Civil Court is barred under section 24 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short 'said Act'). Further, plaintiff has withdrawn earlier suit i.e. R.C.S. No.53 of 2021. Therefore, present suit is barred by law. Plaintiff contested application Exhibit 45 by filing say at Exhibit 49 refuting averments in the application. The learned Civil Judge Sr. Division, Newasa after hearing parties rejected the application of defendant no.7 vide order dated 16.3.2024 observing that the suit would be maintainable.

5. Mr. Bora, learned advocate appearing for the applicant vehemently submits that order dated 4.11.2020 has

been passed by respondent no.1 being Rehabilitation Officer in exercise of powers under the said Act. By referring to the provisions of section 24 of the said Act, he would submit that jurisdiction of the Civil Court is specifically barred in respect to any question which required to be decided, settled or dealt by the Project Authority, Collector, Commissioner or the State Government. Plaintiff is seeking declaration that such order is illegal, therefore, suit is directly hit by specific bar en-grafted under section 24 of the said Act. Mr. Bora, would also point out that plaintiff has availed alternate remedy and raised challenge to the very same order in writ petition no.3145 of 2023 before this Court. He would further submit that cause of action shown in the suit is illusory, which ought to have been dealt by applying rigors of Rule 11 of Order VII of the Civil Procedure Code.

6. Mr. Bora, in support of his contentions relies upon decisions of the Supreme Court of India as well as this Court, which are as under :-

- i. Anil Bhanudas Bhamaikar and others Vs. Gurudas Bhamaikar reported in MANU/MH/3057/2024.
- ii. Namdev Rajaram Gawade and others Vs. Waman Sadashiv Joshi and others reported in MANU/MH/2605/2023.

- iii. Commissioner, Sangli Miraj Kupwad Cities Municipal Corporation Vs. Bhide and Sons Pvt. Ltd., reported in MANU/MH/1151/2006.
- iv. N.D.M.C. V. Satish Chand (Deceased) by Lr. Ram Chand reported in MANU/SC/0703/2003.
- v. Dhruv Green Field Ltd., Vs Hukam Singh and ors. Reported in MANU/SC/0643/2002.
- vi. Prathamesh Tower Cooperative Housing Society Limited Vs. Gorai Road (Borivali) Shree Ganesh Cooperative Housing Society Ltd., and others reported in MANU/MH/0303/2013.
- vii. Gangadhar Sonu Sonaware and others Vs. Namdeo Bhausingh Sonawane and others reported in MANU/MH/2557/2024.
- viii. Kumud Kumar Vs. Central Bank of India and others reported in MANU/SC/0948/2000.
- ix. Madhyamam Broadcasting Limited Vs. Union of India and others reported in 2023 SCC online SC 366.

7. Per contra, Mr. Bangar, learned advocate appearing for respondent no.1 would support the impugned order contending that the District Collector has passed the order dated 04.11.2020 cancelling earlier order dated 18.02.1995 regarding exchange of land by defendant no.7 with defendant nos.5 and 6. In pursuance to said order, name of defendant nos.5 and 6 was recorded as owner. They executed sale-deed in favour of plaintiff in the year 1999. Defendant no.7 raised her grievance after 25 years as regards to the order of exchange passed in 1995 by filing application in the year

2020 and the District Collector entertained such challenge behind back of the plaintiff and recalled exchange order passed in year 1995. He would submit that plaintiff is sought to be dispossessed on the basis of such order. In this background, suit of the plaintiff is maintainable and bar under said Act would not apply in the facts of this case. In support of his contentions, he relies upon following judgments.

- i. Dhulabhai etc. Vs. State of M.P. and mother reported in AIR 1969 Supreme Court 78.
- ii. Shrihari Hanumandas Totala Vs. Hemant Vithal Kamat reported in AIR online 2021 SC 474.
- iii. Manu Babu Patel Vs. Prakash Mohanlal Desai reported in AIR online 2022 Bom 891.

8. Having considered the submissions advanced and on perusal of the documents, it is eminent that plaintiff purchased the suit property under registered sale-deed in the year 1999 from his vendors. The land was originally allotted to defendant no.7-Gayabai under rehabilitation scheme. Thereafter, on 18.2.1995 an order was passed permitting defendant no.7-Gayabai to exchange her land received under rehabilitation scheme with defendant nos.5 and 6, who were holding their private land at village Jambhali Tq. Pathardi in gat no.278. The defendant nos.5 and 6 received possession of

gat no.162/2 that was allotted to Gayabai under rehabilitation scheme. In pursuance of exchange order, mutation was effected in the name of defendant nos.5 and 6. Thereafter, they transferred said land to the plaintiff under registered sale-deed. Defendant no.7-Gayabai first time raised complaint in the year 2020 alleging fraud exercised against her and she could not receive possession of exchanged land from defendant nos.5 and 6. In said application only defendant no.5-Popat Bhapkar was added as party. Plaintiff was not served with any notice of proceeding, although his name was appearing in 7/12 extract as owner and possessor.

9. Finally, respondent no.1 passed order dated 04.11.2020 cancelling exchange order dated 18.2.1995. In pursuance to this order, mutation entry has been taken in the name of Gayabai. According to plaintiff, even at this stage, he was not noticed about change of mutation. Aggrieved Plaintiff approached Civil Court seeking declaration against the order dated 4.11.2020 passed by defendant no.1-Additional Collector, firstly on the ground that order is passed in gross violation of principles of natural justice and same to be

otherwise invalid as has been passed after more than 25 years to recall the order passed in 1995.

10. The applicant/defendant no.7 contends that the suit is barred in view of section 24 of the said Act. Section 24 of the said Act reads thus :-

“Sec.24. No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the project authority, Collector, Commissioner or the State Government.”

11. Plain reading of the aforesaid provision depicts that jurisdiction of the Civil Court is barred in respect of the matters required to be settled, decided and dealt with under Rehabilitation Act by the Authorities mentioned therein. It is, therefore, necessary to examine whether the order in respect of which declaration is sought in the suit is an order passed under Rehabilitation Act. It is not out of place to mention here that defendant no.7-Gayabai was allotted 40R land from gat no.162/2 situated at Pimpri Shahali, Tq. Newasa as per decision dated 17.5.1991. She had deposited the requisite amount towards possessory right was cultivating the same. It is therefore apparent that so far as allotment of the land is

concerned, entire procedure under rehabilitation act was complete.

12. Thereafter, defendant no.7 sought permission for exchange of land with private land holder i.e. defendant no.5. Accordingly, exchange was permitted by order of District Collector dated 18.2.1995. It can be observed that while permitting exchange, reference of an order passed by General Administration Department bearing no. RPA/1071/occupancy/RI dated 26.6.1973, clause no.82 of the Maharashtra Land Revenue Code has been given. However, under scheme of said Act or Rules framed, there is no provision permitting exchange of land allotted under Rehabilitation Scheme with private land holder. Essentially the order dated 18.2.1995 permitting exchange or order dated 04.11.2020 recalling to permission exchange cannot be treated as order passed under Rehabilitation Act, 1999. Therefore, *prima facie*, it is difficult to hold that Bar under Section 24 of said Act would attract in the facts of this case.

13. Plaintiff has specifically pleaded that he was not noticed before passing the order dated 4.11.2020. It is not in dispute that plaintiff's name has been mutated as owner in

revenue record under mutation entry no.7522 certified in the year 1999 itself. Therefore, it was for the Authorities to at least issue notice to the plaintiff before entertaining application seeking cancellation of exchange order. In this background, *prima facie*, when defendant no.1 has ignored basic principles of natural justice or order is not in conformity with fundamental principles of natural justice, jurisdiction of Civil Court would not be excluded to examine validity of such order. Although, it is contended on behalf of the applicant that plaintiff has also resorted to remedy of filing the writ petition, that itself cannot be treated as bar to entertain the suit. Nonetheless, such objection may be available in writ petition, which is filed later in point of time. It is not out of place to mention here that, plaintiff will have to exhaust either of the remedy and prosecute single proceeding.

14. In peculiar facts, case laws cited and relied by the parties would have no application in this case.

15. Consequently, there is no merit in this civil revision application. No jurisdictional error is found in the impugned order. Hence, Civil revision application stands

dismissed. No costs. Pending civil application, if any, also stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa- (f)