



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO.6 OF 2023
WITH
CIVIL APPLICATION NO.1004 F 2023**

1. Ajay Shantilal Lalwani,
Age : 55 years, Occu.: Business &
Agriculture, R/o.: 56, Jai Nagar,
Devdarshan Apartment, Jalgaon
Tq. & District : Jalgaon
 2. Sumit Prakashchand Mutha,
Age : 46 years, Occu.: Business &
Agriculture, R/o.: Mutha Ceramic,
Ring Road, Jalgaon, Dist. Jalgaon
- **APPELLANTS**
(Original Plaintiffs)

VERSUS

1. Shrikant Vitthalrao Mahale,
Age : 49 years, Occu.: Service,
R/o.: Mehrun, Jalgaon,
Tq. & District : Jangaon
2. Sandeep Vitthalrao Mahale
Age : 47 years, Occu.: Service,
R/o.: Mehrun, Jalgaon,
Tq. & District : Jangaon
3. Ravindra Vitthalrao Mahale,
Age : 45 years, Occu.: Service,
R/o.: Mehrun, Jalgaon,
Tq. & District : Jangaon
4. Milind Vitthalrao Mahale
Age : 43 years, Occu.: Service,
R/o.: Vastu-Samruddhi Apartment,
Flat No.7, Bhosale Nagar,
Hadapsar, Pune, Dist. Pune
5. Shri Shri Infrastructure Pvt. Ltd., Jalgaon,
A company registered under Companies Act
77, Jai Nagar, Kavyaratnawali Chowk,

Jalgaon, Taluka & Dist.: Jalgaon

6. Shrikant Gopaldas Khatod,
Age : 51 years, Occu.: Business,
R/o.: 77, Jai Nagar, Kavyaratnawali Chowk,
Jalgaon, Taluka & Dist.: Jalgaon
7. Shriram Gopaldas Khatod,
Age : 58 years, Occu.: Business,
Director of Shri Shri Infrastructure Pvt.Ltd.
77, Jai Nagar, Kavyaratnawali Chowk,
Jalgaon, Taluka & Dist.: Jalgaon
8. Aditya Shriram Khatod,
Age : 32 years, Occu.: Business,
Director of Shri Shri Infrastructure Pvt.Ltd.
77, Jai Nagar, Kavyaratnawali Chowk,
Jalgaon, Taluka & Dist.: Jalgaon
9. Akshay Shriram Khatod,
Age : 29 years, Occu.: Business
Director of Shri Shri Infrastructure Pvt.Ltd.
77, Jai Nagar, Kavyaratnawali Chowk,
Jalgaon, Taluka & Dist.: Jalgaon
10. Samarth Shrikant Khatod,
Age : 28 years, Occu.: Business,
Director of Shri Shri Infrastructure Pvt.Ltd.
77, Jai Nagar, Kavyaratnawali Chowk,
Jalgaon, Taluka & Dist.: Jalgaon
11. Shri Shri Infrastructure Pvt. Ltd., Jalgaon
Through its authorized signatory,
Purushottam Jamunadas Madhwani,
Age : 53 years, Occu.: Agri. & Business,
R/o.: Gayatri Nagar, Jalgaon,
Tq. & Dist. : Jalgaon

... **RESPONDENTS**
(Original Defendants)

....

Advocate for the Appellants : Mr. Girish S. Rane
Advocate for Respondent Nos.1 to 4 : Mr. Mukul Kulkarni
Advocate for Respondent No.7 : Mr. J. R. Shah h/f
Mr. S. H. Tripathi

....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 05/02/2024

PRONOUNCED ON : 23/04/2024.

JUDGMENT :

1. The appellants, who are the original plaintiffs in Special Civil Suit No.37 of 2020, have challenged the order below Exhibit-6 dated 22/09/2022 passed by the learned 3rd Joint Civil Judge (Senior Division), Jalgaon. Under the impugned order, the learned trial court has rejected the application of the appellants / plaintiffs for not to create third party interest over the suit land during pendency of the suit.

2. The background facts are as under :

The suit property i.e. Survey Nos.424/A and 424/B (City Survey No.5570), admeasuring 3 Hectors, is situated at village Mehrun, District : Jalgaon. The aforesaid property was allotted to father of defendant Nos.1 to 4 i.e. one Vitthalrao Mahale on 28/07/1982 for occupancy on new and impartible tenure being an ex-serviceman. As such, the suit land cannot be transferred without prior permission of the Collector and payment of *Nazrana*. A mutation entry No.13372 was also certified on 08/09/1982 indicating the conditions of allotment in the record of rights of the suit land. The land was allotted for specific purpose for carrying out business of fishery and poultry. On demise of Vitthal Mahale,

defendant Nos.1 to 4 being his successors, inherited the suit land. On 09/03/2013 defendant Nos.1 to 4 executed an agreement to sell in respect of suit land in favour of the appellants / plaintiffs for a consideration of Rs.4,09,00,000/- by accepting an earnest money of Rs.79,00,000/-. Thereafter, they moved an application for permission and conversion of user of the suit land and at that time, the appellants / plaintiffs showed their readiness to pay an amount of *Nazarna* about Rs.3,70,00,000/-. Thereafter on 13/04/2015, a fresh agreement to sell of similar nature with an enhanced amount of consideration of Rs.4,50,00,000/- was again executed between the appellants / plaintiffs and defendant Nos.1 to 4.

However, during pendency of proposal for permission, defendant Nos.1 to 4 executed a sale deed of the suit land on 25/01/2018 in favour present respondent No.5 – Company and that too during the subsistence of prior agreement to sell executed by them in favour of the appellants / plaintiffs. Therefore, on 08/06/2020 the appellants / plaintiffs filed RCS No.37 of 2020 for getting decree of specific performance in respect of the suit land and for declaration of sale deed dated 25/01/2018 being illegal against all the concerned defendants and during pendency of the suit, the appellants / plaintiffs claimed temporary injunction vide application Exhibit-6 against the respondents restraining them from carrying out any illegal act or transferring the suit property. The said

application has been rejected by the learned trial court and hence this appeal.

3. The learned counsel for the appellants / plaintiffs submits that the agreement to sale in respect of the suit land executed by respondent Nos.1 to 4, is still subsisting but those respondents with an intention to deprive the appellants / plaintiffs from their rights, have executed illegal sale deed of the suit land in favour of respondent No.5-Company by defeating the legal provisions. He further pointed out as to how the learned trial court has drawn wrong inferences in respect of the documents on record. Besides his oral submissions, he relied on following judgments.

- i) ***Mrs. Chandnee Widya Vati Madden vs. Dr. C. L. Katial and others, reported in AIR1964 SC 978;***
- ii) ***Maharwal Khewaji Trust (Regd.) Faridkt vs. Baldev Dass, reported in AIR 2005 SC 104;***
- iii) ***N. Srinivasa vs. M/s. Kattukaran Machine Tools Ltd., reported in AIR 2009 SC 2217;***
- iv) ***Nathulal vs. Phoolchand, reported in AIR 1970 SC 546;***
- v) ***Vishwa Nath Sharma vs. Shyam Shanker Gela and another, reported in (2007) 10 SCC 595 and***
- vi) ***Dev Prakash and another vs. Indra and others, reported in AIR 2017 SC 3608.***

4. On the contrary, the learned counsel for respondent Nos.1 to 4 strongly opposed the submissions made on behalf of the appellants / plaintiffs. He pointed out various documents on record, which indicate that how the proposal for permission to sell the suit land to the appellants / plaintiffs by respondent Nos.1 to 4, has been rejected by the concerned authority. According to him, the appellants / plaintiffs had in fact challenged the sale transaction of the suit land between respondent Nos.1 to 4 and respondent No.5-Company before Collector, Jalgaon but it was refused. According to him, this fact has been concealed by the appellants / plaintiffs. As such, he prayed for dismissal of the appeal.

5. The learned counsel for respondent No.7 also supported the impugned judgment by relying on the judgment of Division Bench of this Court in the case of **Chetak Co-Operative Housing Society Ltd., Mumbai vs. Sandhu Builders, Mumbai and others, reported in AIR 2019 (NOC) 378 (BOM.)**, wherein it has been observed that the discretion exercised by court of first instance needs to be kept intact unless it is found arbitrary or perverse.

6. Heard rival submissions. Also perused documents on record.

7. It is not in dispute that present respondent Nos.1 to 4 had entered in to agreements to sell with the appellants / plaintiffs on

09/03/2013 and 13/04/2015 and that those agreements to sell were without delivery of possession. Admittedly, permission of the Collector was required for selling the suit land. It is extremely important to note that respondent Nos.1 to 4 had filed a proposal for such permission, wherein it was mentioned that the said permission was required for residential purpose. It is not in dispute that the appellants / plaintiffs were ready and willing to deposit an amount of *Nazrana*. However, the documents on record clearly indicate that such permission was refused by the concerned authority. Admittedly, the letter dated 20/01/2018 issued by the Assistant Director, Town Planning, Jalgaon City Corporation, Jalgaon indicates that the suit land is reserved for Children's Park, Boat Park, Auditorium and Cafeteria etc. Further, the internal correspondence of Revenue and Forest Department indicates that as per the proposal, the suit land was to be used for the purpose other than the purpose for which it is reserved as aforesaid. Under the said correspondence it was also asked for opinion as to whether it is permissible to use the suit land for residential purpose and the Town Planning Department of Government appears to have given negative opinion on such query. There is one another correspondence on record which shows that the residential purpose of the suit land was not permissible. As such, from the documents on record it is clearly evident that the proposal filed by respondent

Nos.1 to 4 in respect of agreement to sell executed in favour of the appellants / plaintiffs and for getting permission to sell the land, has been rejected being not permissible considering the reservation over the suit land.

8. On the other hand, the documents on record indicate that the sale deed executed by respondent Nos.1 to 4 in favour of respondent No.5 – Company appears to have executed after obtaining legal permission in view of provisions under Section 61(A1) of Bombay Tenancy and Agricultural Lands Act, 1948 by the concerned authority and for the same purpose for which the suit land is reserved for. It is extremely important to note that the appellants / plaintiffs had in fact filed an application being Revenue Land Application No.74 of 2018 in respect of sale transaction between respondent Nos.1 to 4 and respondent No.5 -Company. The said application is produced on record which indicates that similar reliefs as claimed in the instant suit were also claimed in that application which was before the Collector, Jalgaon. It is further evident that the said application was tried by the Additional Collector, Jalgaon on merit and by considering rival submissions, it was ultimately dismissed on 30/04/2020. On perusal of the said judgment dated 30/04/2020 it is clearly evident that the Additional Collector, Jalgaon has held the sale transaction between respondent Nos.1 to 4

and respondent No.5 -Company perfectly legal and without contravention of any provisions under the law. It is specifically held by the Additional Collector, Jalgaon that respondent No.5 – Company was entitled for purchase of the suit land under Section 63-1A Sub-clause-1 of Bombay Tenancy and Agricultural Lands Act, 1948 without permission of Collector for *bonafide* industrial purpose. Further, the order indicates that respondent No.5 – Company had in fact paid the required stamp duty as well as *Nazrana* as per the provisions of law. Thus, after having defeated in the first round, the appellants / plaintiffs appear to have filed this suit for the similar relief. However, the suit of the appellants / plaintiffs will be decided on its own merit but at this juncture, apparently there is no *prima facie* case in favour of the appellants / plaintiffs since after refusal of their proposal for getting permission from the Collector, the suit land has been transferred in favour of respondent N.5-Company by adopting legal procedure. So far as recovery of *Nazrana* and fine amount, the provisions are already there in Section 61(1A) of Bombay Tenancy and Agricultural Lands Act, 1948. Therefore, in the light of peculiar facts of the case, the object of specific performance and its enforceability can be considered during the trial and the judgments relied upon by the learned counsel for the appellants / plaintiffs as mentioned above, can also be considered at the relevant time. In view of the same, it appears that the appellants

/ plaintiffs have failed to establish three main ingredients in their favour namely; *prima facie* case, balance of convenience and irreparable loss. Considering all these aspects, the impugned judgment and order needs no interference. Accordingly the Appeal from Order stands dismissed and disposed of.

9. In view of dismissal of the Appeal from Order, civil application No.1004 of 2023 also stands disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)