

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3450 OF 2020

Namdeo Bapu Metkari,
deceased through LRs.

... Petitioner

V/s.

Ambubai Maruti Jadhav & Ors.

... Respondents

Mr. Mandar Limaye i/by Mr. Amey Sawant for the
petitioner.

Mr. Shrishail Sakhare for respondent Nos.1, 2 & 4 to 9.

Mr. Makarand Kale i/by Mr. Samadhan Kashid for
respondent Nos.15 & 16.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 13, 2024

P.C.:

1. The petitioner is challenging order passed by the Maharashtra Revenue Tribunal (“MRT”) allowing revision application of the respondents, setting aside order passed by the Authorities under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (“the said Act”) in exercise of powers under Section 43 of the said Act.

2. The petitioner filed an application before the Tahsildar contending that the property in dispute, i.e. Gat No.3247 at Mouje Mangalwedhe, Taluka Mangalwedhe was allotted in a compromise

recorded by the MRT in its order dated 12 March 1965. According to the petitioner, despite such property being allotted to the respondents in a proceeding arising out of declaration of tenancy, the allottees on 16 November 1995 sold southern 41-Are portion in favour of one Appasaheb Maruti Kashid and balance northern portion in favour of Sushila Tanaji Jadhav.

3. According to the petitioner, therefore, in absence of permission under Section 43 of the said Act, such alienation was void.

4. The first two Authorities under the said Act declared such alienation as void for lack of permission under Section 43. However, the MRT recorded a finding that the allotment in favour of vendor was under a compromise before the MRT. Such compromise cannot be termed as purchase under Section 32-G of the said Act. In absence of such purchase under Section 32-G of the said Act, Section 43 of the said Act has no application.

5. Section 43(1) of the said Act reads thus:

“43. Restriction on transfers of land purchased or sold under this Act. — (1) No land purchased by a tenant under sections 32, 32F, 32-I, 32-O, 33C or 43-1D or sold to any person under section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances, and subject to such condition, as may be prescribed by the State Government:

Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society

registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, for raising a loan for effecting any improvement of such land.

Provided further that, no such previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sections mentioned in this sub-section, subject to the conditions that,-

- (a) before selling the land, the seller shall pay a *nazarana* equal to forty times the assessment of the land revenue to the Government;
- (b) the purchaser shall be an agriculturist;
- (c) the purchaser shall not hold the land in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961; and
- (d) the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 shall be violated.”

6. On perusal of the said provisions, it appears that the embargo contained in the said Section is applicable to the purchase of land by the tenant under the provisions enumerated therein. Based on material on record and the averments in the application by the petitioner, allotment in favour of the vendor cannot be termed as purchase under the provisions of either Section 32-G or any other provision of the said Act. Therefore, the finding recorded by the MRT that in absence of purchase under the provisions of the said Act, the compromise shall file under sub-

clause (3) of Section 32-G of the said Act. Therefore, there is no legal infirmity in the impugned order.

7. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)