



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2539 OF 2003

Smt. Muktabai Bhagwan Kumbhar,
Adult - Occu. - Household
Residing at village Nandeshwar, Tal.
Mangalwedha, Dist. Solapure.

...Petitioner

Versus

1. Shri. Narayan Yashwant Kamble,
Adult : (Sinde deceased)

a. Shri. Maruti Narayan Kamble, Age 29 yrs,

b. Shri. Balbhim Narayan Kamble, Age 34 yrs,

c. Shri. Laxman Narayan Kamble, Age 32 yrs,

d. Shri. Ankush Narayan Kamble, Age 30 yrs,

e. Smt. Kaushalya, w/o Ramchandra Kamble,
Age 29 yrs,

f. Miss. Archana Narayan Kamble, Age 16 yrs.

g. Miss. Reshma Ramchandra Kamble

Age 14 yrs. Nos. 1a to 1g are residing
at Nandeshwar. Tal. Mangalwedha,
Dist. Solapur.

(Nos. **1f & 1g** through Guardian)

Kaushalya, w/o Ramchandra Kamble.

h. Mrs. Dwarkabai Chandrakant Kunchekar.

Age 44 yrs, Residing at Dharmagaon, Tal.
Mangalwedhe, Dist. Solapur.

i. Mrs. Parubai Dagdu Randive
Age 42 yrs, Residing at Tawashi,
Tal. Pandharpur, Dist. Solapur.

j. Mrs. Chandan Arjun Khilare
Age 41 yrs, Residing at Kasegaon,
Tal. Pandharpur, Dist. Solapur.

k. Mrs. Mirabai Pralhad Vaidande
Age 29 yrs Residing at C/o Pralhad
Anand Vaidande, Behind Talengi
Church, Manik Nagar, At & Post Miraj,
Dist. Solapur.

2. Smt. Awadabai Narayan Kamble,
Age 64 yrs, Residing at Nandeshwar,
Tal. Mangalwedhe. Dist. Solapur.

3. Smt. Mangubai Bhairu Bhosle,
Adult-Occu- Agriculture, Both (1 '1' and 2)
residing at village Nandeshwar
Tal, Mangalwedhe. Dist. Solapur.

4. The Dy. Collector, ROHAYO, Solapur.

5. The Talathi, Nandeshwar,
having his office at Nandeshwar.
Tal. Mangalwedhe. Dist. Solapur.

6. The Audl. Collector. Solapur.

7. The State of Maharashtra
Notice to be served on Secy.
to Revenue Dept., State of Maharashtra
having its office at Mantralaya, Mumbai.

...Respondents

Adv. Sucheta D. Ghaisas for the Petitioner.

*Adv. R. P. Pawar, Manoj Agare and Samiksha Pawar for the Respondent.
Adv. Priyanka Chavan, AGP for the State.*

Coram : Sharmila U. Deshmukh, J.

Date : August 8, 2024.

ORAL JUDGMENT :

1. Rule was issued by order dated 11th July, 2006.
2. The present Petition has been filed challenging the orders dated 30th May, 1995 passed by the Deputy Collector, Solapur, certification of the Mutation Entry No. 1622 and 7/12 extract for year 1994-1996 and order of Addl. Collector dated 26th December, 2001 holding that the sale transaction in favour of the present Petitioner is bad in law in view of Section 5(3) of the Maharashtra Inferior Village Watans Abolition Act, 1958 (Abolition Act).
3. The case of the Petitioner is that the Respondent No. 1 who is the legal heir of the original watandar was re-granted the subject land on 13th January 1964 after enactment of the Abolition Act. The subject land was sold to the Respondent No. 2 by the Respondent No. 1 after obtaining necessary permission. The Respondent No. 2 submitted an application to convert the subject land from new grant to old grant and paid twenty times the assessment value. The subject land was purchased by the present Petitioner from the Respondent No. 2 vide registered sale deed dated 16th February, 1989.

Subsequently, Mutation Entry No. 1097 was certified on 31st May, 1989 in favour of the Petitioner. Respondent No. 2 and the Petitioner had filed an application being Application No. वतन—कावि—92/91 before the Tahsildar for deletion of the remark in the 7/12 extract to the effect that the re-grant was impartible on new terms. The Tahsildar after hearing the respective parties, passed an order dated 5th December, 1991 allowing the application and holding that the transaction entered into in respect of Gat No. 12 is legal and the remark noted in the 7/12 extract be deleted. Being aggrieved by the order passed by the Tahsildar, the Respondent No. 1 filed an Appeal being RTS Appeal No. 303 of 1993 before the Deputy Collector, Solapur. The Deputy Collector by judgment and order dated 30th May, 1995 set aside the order of the Tahsildar dated 6th December, 1991 and directed necessary action to be taken.

4. The order of Deputy Collector was challenged by the Petitioner before the Collector by way of R.T.S. Second Appeal No. 43 of 1996, which came to be dismissed by the impugned order dated 26th December, 2001 upholding the order of the Deputy Collector dated 30th May, 1995.

5. Heard Ms. Ghaisas, learned counsel for the Petitioner and Adv. Pawar, learned counsel for the Respondent.

6. Learned counsel for the Petitioner has taken this Court through the provisions of Abolition Act and would submit that after the abolition of the watan, the land was re-granted to the holder of the watan. She submits that subsequently, the land was sold to Respondent No. 2 and from the Respondent No. 2 the Petitioner has purchased the land by way of a Registered sale deed. She would further point out that an assessment equivalent to 13 times of the occupancy charges was paid and therefore, the right to alienate the land was granted. She submits that the Tahsildar by order dated 5th December, 1991 has considered that the Petitioner and the Respondent No. 2 has paid the required assessment value for the purpose of converting the land to the old tenure and therefore there is no breach of the conditions of grant. She would further submit that the legal heir of the original watandar has consented to the sale and therefore, the Tahsildar has rightly held that the transaction in respect of the subject land is legal. She submits that the Deputy Collector and the Collector has not considered the fact that the 13 times assessment value has been paid and therefore the land was converted to old tenure and accordingly was sold by registered sale deed to the Petitioner. She draws support from decision on the Division Bench of this Court in the case of ***Vitthal Kondalkar vs. The State of Maharashtra [1981 Bom. C.R. 32]***.

7. *Per contra*, learned counsel for Respondent No. 1 would point out Section 5(3) of the Abolition Act which provides that the occupancy of the Mahar watan land re-granted under sub-section (1), shall not be transferrable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may, by general or special order determine and would submit that admittedly in the present case, there was no previous sanction obtained of the Collector and the requirements not having been satisfied, the Tahsildar could not have declared the same to be legal. He submits that the jurisdiction vests exclusively with the Collector to accord prior sanction to the said transaction and therefore, the order of the Tahsildar has been rightly corrected by the Deputy Collector and the Collector. He would further submit that the decision in the case of ***Vitthal Kondalkar*** (supra) in fact notes that the Collector's prior sanction must be obtained and in the present case, the same has not been done.

8. Considered the submissions and perused the record.

9. It is not disputed that the subject land is former inferior watan land before the watan was abolished by the Abolition Act. It is also not disputed that subsequently the land was re-granted to the original watandar who has thereafter alienated the same in favour of

Respondent No. 2 and thereafter in favour of the present Petitioner. The Petitioner has by way of a registered sale deed purchased the said land. However, it is not with the prior sanction of the Collector. Reliance placed upon the payment of 13 times assessment value would not assist the case of the Petitioner for the reason that Section 5(3) of the Abolition Act provides for twin conditions to be satisfied before the occupancy of the re-granted land is transferred and i.e. the previous sanction of the Collector and payment of the amount as the State Government may determine. In the present case, admittedly what has been paid is 13 times of assessment value which would therefore satisfy only one of the condition of Section 5(3) of the Abolition Act and would not satisfy the second condition of the prior sanction of the Collector. In that regard, if the decision of the Division Bench in the case of ***Vitthal Kundalkar*** (supra) is perused, the Division Bench has held that the mere payment of 10 times the assessment value is not enough. The Collector's prior sanction must always be obtained. It further held that if payment of 10 times the assessment is made then the Collector is bound to pass the necessary orders and if the Collector fails to do so and is requested by an application but still does not take cognizance, a mandamus could be issued. It is therefore clear that though the condition of the payment is satisfied in the present case, admittedly there was no application made to the

Collector for converting the land on old tenure basis. The Division Bench has struck a note of caution that non-transferability and impartibility without the Collector's sanction and acceptance of payment of such amount as has been determined by the State Government is a condition attached to the occupancy of land granted to ex-watandar and that is the main point to be remembered so as far as the re-grant is concerned. In the present case, nothing has been brought on record to demonstrate that an application was made for the sanction of the Collector upon payment of the 13 times assessment value and that despite thereof, the order was not passed by the Collector, in which case appropriate relief could be granted in light of decision of Division Bench in ***Vitthal Kundalkar*** (supra).

10. The singular distinguishing feature of the decision in the case of ***Vitthal Kundalkar*** (supra) is that after payment of the Nazarana of the 10 times the assessment, the applicant therein had also made an application to the Collector for conversion of the land to old tenure. It is in the facts of that case that the Division Bench has considered that the provisions of Section 59 of the Code invoked by the Collector could not have been done so.

11. Learned counsel for the Petitioner would lay emphasis on the said decision which holds that by virtue of an Government Circular dated 12th November, 1955, all the Collectors were informed that such

a release was always automatic on payment of necessary nazarana by the holder thereof and the Collector had no discretion to refuse to release the land if the nazarana was paid by the holder. Apart from the fact that the memorandum is not placed on record, the observations in the decision of the Division Bench would indicate that the Government Circular provided that the Collector, wherein, application has been made for releasing the land is vested with no discretion. The Circular does not say that no prior sanction of the Collector was required in event the nazarana decided was paid. The Circular could not have so directed particularly considering the statutory provisions of Section 5(3) of the Abolition Act, providing for satisfaction of the twin conditions. What a Circular does is to ensure that the Collector does not refuse to release the land where nazarana was paid by the holder.

12. The Collector has considered that the suit land was a Inami varg -I(B) land or new tenure i.e. inalienable and impartible. The Collector has held that no prior permission of the Competent Authority was obtained and therefore the order of the Deputy Collector dated 30th May, 1995 has been rightly passed.

13. In light of the above, there is no infirmity in the order dated 26th December, 2001 passed by the Collector. Considering that by a

registered sale deed, the Petitioner has purchased the land and has also paid the required assessment charges, but the prior sanction of the Collector was not obtained, the same is an irregularity which can be regularised if so permissible as per law. It is open for the Petitioner to file a necessary application before the Collector seeking regularization of the said transaction. The said Application to be filed before the Collector within a period of four weeks from the date of uploading the order on the official website.

14. Considering that the sale deed has been executed almost 40 years back, the Collector is requested to decide the Application expeditiously and in any event within a period of eight weeks from date of filing of the Application. By order dated 6th February 2014 this Court had directed both the parties to maintain *status quo* pending the Petition. The order of *status quo* to continue till the final adjudication by the Collector.

15. Petition is dismissed with the above liberty. Rule stands discharged.

[Sharmila U. Deshmukh, J.]