



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5153 OF 1993

Smt.Yesabai Dattu Mandle

... Petitioner.

Versus

Shri Shankar Dhondi Patil and Anr.

... Respondents.

Mr. Kalpesh U. Patil for the Petitioner.

Mr. Umesh Mankapure, for Respondent Nos.1 and 2.

Mr. Nilesh Wable for Respondent No.3.

Coram : Sharmila U. Deshmukh, J.

Date : December 12, 2024

P. C. :

1. Rule was issued on 17th January, 1994.
2. By the present Petition, exception is taken to the order dated 23rd September, 1993 passed by the Officer on Special Duty in Revision Application No.31 of 1993, order of the Divisional Commissioner dated 21st December, 1998, order of Collector dated 25th April, 1985 and the order of Sub Divisional Officer in Appeal No.10 of 1980 and for restoration of the order passed by the Tahsildar dated 11th January, 1979.
3. Briefly stated, facts of the case are that the Petitioner's predecessor was one Yesubai, who was re-granted *Inaam* land i.e. Gat Nos.73 and Gat No.97 after the enactment of the Bombay Inferior Village Watans Abolition Act, 1958 [for short, "**Abolition**

Act”]. The subject lands were sold by her to Shankar Dhondi Patil and Mohan Ganpat More by registered Sale-Deed dated 26th June, 1968 and 27th July, 1968. Alleging absence of prior permission, *Suo-Motu* proceeding were initiated by the Tahsildar and by order dated 11th January, 1979, the Tahsildar held that said transactions are made without prior permission and without payment of *Nazarana* and therefore, the possession of the land should be restored to the original holder i.e. Yeshubai w/o. Dattu Mandle, after evicting the purchasers who are in possession. As against this the Appeal was filed by the subsequent purchasers who are the Respondents herein before the Sub Divisional Officer, which came to be allowed and the restoration was set aside by noting that the original Watandar had credited *Nazarana* equal to 10 times the assessment on 26th June, 1968 and thereafter, executed the Sale-Deeds.

4. Aggrieved by the decision of the Sub Divisional Officer, the Petitioner’s predecessor preferred an Appeal before the Collector which came to be allowed quashing the order of the Sub Divisional Officer which was passed in favour of the Respondent Nos.1 and 2 and the land was directed to vest in the Government. Against the order of the Collector which directed the land to vest in the Government, two Revision Applications came to be filed by the Petitioners as well as the Respondent Nos.1 and 2. By order dated

21st December, 1988, the Revisional Authority allowed the Revision of the Respondent Nos.1 and 2 and by order of 23rd September, 1993 dismissed the Revision preferred by the Petitioner.

5. Heard Mr.Patil, learned counsel for the Petitioner, Mr.Mankapure, learned counsel for Respondent Nos.1 and 2 and Mr.Wable, learned counsel for Respondent No.3.

6. Learned counsel appearing for the Petitioner has taken this Court through the orders passed and would submit that *suo-moto* proceedings initiated by the Tahsildar were rightly initiated as there was no prior permission obtained and no payment of *Nazarana*. He submits that the property was rightly directed to be restored to the original holder which was interfered with by the Collector. He submits that if the prior permission was not granted the property was required to be restored to the original owner. He submits that against the order of the Collector, the Revision Application filed by the present Petitioner came to be rejected on the ground that it is obligatory on the part of the Collector to remove the restriction mentioned under Section 5(3) of the Abolition Act. He submits that as there was no previous sanction of Collector, the Tahsildar has rightly passed the order.

7. *Per contra*, learned counsel appearing for the Respondent would submit that the issue is no longer *res integra* and has been

settled by the decision of this Court in the case of ***Vithal Kondhalkar vs. The State of Maharashtra, [1979 SCC OnLine Bom 105]***, where this Court has held that once the *Nazarana* has been paid, the conversion is a matter of formality and must be passed. He submits that when the payment is made to the Collector, the Collector are bound to pass the order under Sub-section (3) of Section 5 of the Abolition Act and the duty being cast upon the Collector and the finding having been arrived at by the Sub Divisional Officer that the *Nazarana* has been paid, the order passed in suo-moto proceedings initiated by the Tahsildar were rightly set aside. He submits that the Officer on Special Duty and Secretary has rightly considered the settled position in law and has allowed the Revision Application of the subsequent purchasers while dismissing the Petitioners' Revision Application.

8. I have considered the submissions and perused the record.

9. Although in the *suo-moto* proceedings which were initiated by the Tahsildar, the Tahsildar has noted that the sale transaction is made without prior permission and without payment of *Nazarana* equal to 10 times the assessment, the Sub Divisional Officer on re-appreciation of the records have held that the original Watandar had credited the *Nazarana* equal to 10 times the assessment on 26th June, 1968. The Sale-Deeds which were executed in favour of the subsequent purchasers were executed on 26th June, 1968 and 27th

July, 1968, which would credence to the fact of payment of assessment on that particular date of 26th June, 1968. Based on the said findings, the Sub Divisional Officer has treated the transaction as regularised and had quashed and set aside the order of the Tahsildar directing the restoration of the lands.

10. It cannot be disputed that the Collector has taken into consideration the amended Section 5A(1) of the Abolition Act which was amended in the year 1983 and was thus, inapplicable. Based on incorrect application of amended statute, the Collector has passed the order for the land to be restored to the Government. The Officer on Special Duty has rightly taken into consideration the payment of the *Nazarana* which has not been disputed and has upheld the order of Sub Divisional Officer.

11. The issue, as rightly pointed out by Mr.Mankapure, has been settled in the case of ***Vithal Kondhalkar*** (supra), where this Court has held that the moment payments are made by the ex-watandar or ex-inaamdar, the order of conversion is a matter of formality. It was further held that once the payment of 10 times the assessment has been made, the Collector must pass an order under Section 5(3) of the Abolition Act, relaxing the conditions. In facts of that case the Collector had not passed requisite order under Section 5(3) of the Abolition Act and in that context the Court has held that upon the payment being made to the Collector, it is the first and

foremost duty of the Collector to pass such an order. Considering the present case, where the Sub Divisional Officer has arrived at a finding that the *Nazarana* has been paid, it was the duty of the Collector to pass the order of conversion under Sub-section (3) of Section 5 of the Abolition Act, which is a mere formality.

12. In light of the discussion above, there is no merit in the Petition. Petition stands dismissed. Rule is discharged.

13. In view of dismissal of Petition, Civil/Interim Applications taken out in this Petition, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]