

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5982 OF 2003**

Trimurti Sahakari Griha Nirman Sanstha Limited
R.S. No. 204/2, E-Ward,
Near Hotel Elegant, Kolhapur,
through its Chairman Shri Shubhchandra
Shantinath Takkalki

... Petitioner

vs.

1. The Additional Commissioner
Pune Division, Pune.
2. The Additional Collector, Kolhapur.
3. The Sub-Divisional Officer,
Karveer Division, Karveer, District: Kolhapur. ... Respondents

Mr. Nikhil Adkine a/w. Avinash Bailmare I/B. Chaitanya Kulkarni,
for Petitioner.

Mr. Y.D. Patil, AGP for Respondents-State.

CORAM : GAURI GODSE, J.

RESERVED ON : 14th MARCH, 2024

PRONOUNCED ON : 11th JUNE 2024

JUDGMENT :-

1. This petition arises out of an order passed by the Sub Divisional Officer ("SDO") directing the resumption of land in the Government on the ground of breach of the condition of the order of regrant and breach of Section 63 of the Bombay Tenancy Act and

Agricultural Lands Act, 1948 (now Maharashtra Tenancy and Agricultural Lands Act)(‘Tenancy Act’).

Petitioner’s case:

2. The land, which is the subject matter of the proceedings, was originally Inam land, which was in the possession of one Keshav Laxman Jadhav-Sarnaik. After the death of Keshav, the names of his sons were entered in the revenue record on 24th October 1953 vide mutation entry no. 3306. On 30th April 1964, an order was passed recording the regrant of the land to the heirs and legal representatives of deceased Keshav on payment of Nazrana amount. The land was thereafter converted from Inam land to “Rayatwa Lands” on certain terms and conditions. The terms and conditions of the regrant were recorded by way of mutation entry no. 6273 dated 8th December 1964. The members of the family of deceased Keshav sold the land to one Patel family by a registered sale deed dated 11th February 1970. Pursuant to the said sale deed, mutation entry no. 7412 was effected on 25th May 1970.

3. The petitioner-society was formed in the year 1979. The petitioner made an application to the Assistant Registrar, seeking permission to open a bank account, and by order dated 19th March

1979, permission was granted to the petitioner to open a bank account. A sale deed was executed on 14th November 1985 in favour of the petitioner in respect of the said land. Thereafter, on 7th August 1986, the petitioner society was registered, and the registration certificate was issued. The petitioner was classified as a tenant/ownership society with a total of 33 members. On 4th August 1986, a no objection certificate was issued by the Kolhapur Municipal Corporation for sanitation and health for the layout of the petitioner. A mutation entry no. 13212 was effected on 4th April 1987 for recording the name of the petitioner as proposed society in respect of the subject land. By way of mutation entry no. 16139, the name of the petitioner was corrected in the revenue record by removing the word 'proposed'. The corporation thereafter sanctioned a layout plan for 33 plots for the members of the petitioner in the subject land. As per the sanctioned layout, the society allotted plots to 33 members and handed over actual physical possession of the respective plots.

4. Members of the society made an application to enter their names in the revenue record with respect to the respective plots allotted to them. By mutation entry no.16950, the names of the members were entered into the revenue record on 21st July 1994 as

against their respective allotment of plots. On 7th November 1988, a few members of the petitioner applied for the conversion of their respective plots to non-agricultural use. Since there was no response received on the said application, the petitioner considered it as deemed permission under Section 44(3) of the Maharashtra Land Revenue Code 1966 ("MLRC"). By order dated 13th September 1989, the learned Collector passed an order granting permission for non-agricultural use for plot no. 7, and by order dated 21st December 1990, permission for non-agricultural use was granted for another plot no. 29.

5. A show cause notice was issued by the learned Tahsildar on 30th January 1997 to the petitioner for breach of terms and conditions of the regrant, and if the society was willing to pay 50% of the market value as Nazrana for non-agricultural use, the petitioner was called upon to submit consent letter. The petitioner-society replied to the said show cause notice on 6th February 1997, showing their willingness to pay Nazrana amount for regularizing the alleged breach. On 25th March 1997, the petitioner filed a fresh application in the prescribed format for non-agricultural use of the subject land. There was no response to the said application. Hence, the petitioner-society proceeded on the deeming section for grant of

non-agricultural use. A show cause notice was issued by the learned Collector on 29th September 1997, alleging breach of various provisions of the Tenancy Act. The said show cause notice was replied to by the society on 13th October 1997.

6. Learned SDO passed an order on 30th May 1999, directing the petitioner society to hand over possession of the subject land on the ground that it vested in the State Government, in view of breach of Section 63 of the Tenancy Act. The order further recorded that the society failed to pay 50% of the Nazrana amount to the State Government; hence, there is a breach of the condition of the order of regrant. Being aggrieved by the said order dated 30th May 1999, the petitioner filed an appeal before the learned Collector under Section 247 of the MLRC. The learned Collector dismissed the appeal on 9th November 2001 by holding that non-agricultural use permission was granted only for plot no.7. Hence, there was a violation of section 63 of the Tenancy Act. Being aggrieved by the dismissal of the appeal, the society filed a revision application before the Additional Commissioner. The revision application was dismissed on 27th March 2003. Hence, the present petition.

Submissions on behalf of the Petitioner:

7. Learned counsel for the petitioner submitted that the impugned order rejected the society's application for non-agricultural use. While deciding the application, the learned SDO exceeded his jurisdiction and passed an order that the subject land has vested in the State Government. He submitted that even if there is any breach of any of the conditions of the order of regrant or breach of any of the provisions of the tenancy, in view of Section 84C of the Tenancy Act, proceedings could have been initiated by the Mamlatdar. Section 84B provides for the necessary procedures to be followed in the event a show cause notice was issued under Section 84C. Learned counsel for the petitioner further relied upon Section 70 of the Tenancy Act, which specifies the duties of the learned Mamlatdar for exercising powers under the various provisions of the Tenancy Act. He, thus, submitted that the issue with regard to the use of subject land could have been decided by the learned Mamlatdar by invoking powers under Section 84C. In the event such proceedings were initiated, the petitioner is entitled to respond the same and submit the explanation for justifying the action taken by the society and support the contention of the society that there was neither any breach of the conditions of the order of regrant nor there

is a breach of any of the provisions of the Tenancy Act.

8. Learned counsel for the petitioner further submitted that after the first notice was issued by the learned Tahasildar, the society replied the same and showed a willingness to pay the amount of Nazrana as called upon by the learned Tahasildar in the notice dated 30th January 1997. However, the learned Tahasildar failed to take further action pursuant to the said notice. He further submitted that the order passed by the learned SDO on 30th May 1999 indicates that the same was passed on the complaint filed by the Ex-Chairman of the society. He submitted that the contents of the order indicate that the same was passed on the application filed by the petitioner for permission for non-agricultural use. However, the learned SDO exceeded his jurisdiction and concluded that there was a breach of conditions of the order of the regrant and a breach of Section 63 of the Tenancy Act for want of necessary permission. He, thus, submitted that the order passed by the learned SDO amounts to an order under section 84C. He submitted that it is a well-established principle of law that for invoking jurisdiction under Section 84C, a show cause notice is required to be issued to enable the parties to make good their submissions that there is no breach of any of the provisions of the Tenancy Act. He submitted that no

such procedure prescribed under Section 84C read with Section 84B is followed. Hence, the impugned order passed by the learned SDO on 30th May 1999 is beyond the scope of his power and jurisdiction.

9. The learned counsel for the petitioner submitted that the learned Collector and the Additional Commissioner failed to appreciate the grounds of challenge raised by the petitioner society. Hence, the impugned order passed by the SDO is without jurisdiction and confirmation of the same by the learned Collector and the learned Additional Commissioner is illegal and contrary to the provisions of the Tenancy Act.

10. Learned counsel for the petitioner further submitted that the order of regrant is dated 30th April 1964; hence, the show cause notice issued by the Collector, alleging various violations of the terms and conditions of the order of regrant issued on 29th September 1997, is barred by the law of limitation. He submitted that the powers under Section 84C are to be invoked within a reasonable time. He, therefore, submitted that on the point of delay itself, the show cause notice issued by the learned Collector and order passed by the learned SDO deserves to be quashed and set aside. In support of his submissions, the learned counsel for the

petitioner relied upon the decision of the Hon'ble Supreme Court in the case of *Mohamed Kavi Mohamad Amin Vs. Fatimabai Ibrahim*¹ and the decisions of this Court in the case of *Appa Dadu Patil through its POA Vs. State of Maharashtra and Another*² and *Waman Atmaram Lavand and Anr Vs. Dattatraya @ Dattu Baba Lavand and Ors*³.

11. Learned counsel for the petitioner further submitted that the society had filed an application for permission for non-agricultural use. The first application was filed on 7th November 1988 by 11 members of the society. However, there was no response to the said application. Hence, in view of sub-section (3) of section 44 of MLRC, permission was deemed to have been granted on expiry of 90 days from the date of application. He further submitted that the society had filed an application on 25th March 1997 in the prescribed format seeking permission for non-agricultural use. Even the said application was not responded. Hence, in any case, there was deemed permission on expiry of 90 days from the date of application, i.e. 25th March 1997. In support of his submission regarding deemed permission for non-agricultural use, learned counsel for the petitioner relied upon the decisions of this Court in

1 (1997) 6 SCC 71

2 (2011) 2 Mah LJ 739

3 (2009) 5 Mh LJ 442

the case of *Ganesh Ginning and Pressing Company Ltd. Jalna Vs. State of Maharashtra and Others*⁴ and *State of Maharashtra and Ors Vs. Shri Narayan Agro Udyog Pvt. Ltd*⁵.

12. Learned counsel for the petitioner thus submitted that the show cause notice issued by the Tahasildar on 30th January 1997, the show cause notice issued by the learned Collector on 29th September 1997, and the order dated 30th May 1999 passed by the learned SDO suffers from delay and latches. In any case, the order dated 30th May 1999 passed by the learned SDO invoking power under section 84C of the Tenancy Act was beyond the scope of his power and jurisdiction. So far as the show cause notice issued by the learned Tahasildar and learned Collector is concerned, the alleged breach with regard to the breach of the conditions of the order of regrant passed on 30th April 1964 and breach of the provisions of section 63 of the Tenancy Act, he submits that both the allegations were barred by law of limitation. The sale deed was executed in favour of the society on 14th November 1985 based on the order of regrant dated 30th April 1964. Hence, the allegations made against the society in the show cause notice issued in the year 1997 amounts to exercising power beyond the reasonable

4 2005(4) MH LJ 263

5 1996(2)Mh.L.J 731

time. Hence, the show cause notice and the order passed by the learned SDO are liable to be quashed and set aside.

Submissions on behalf of Respondents:

13. Learned AGP supported the impugned show cause notice and the impugned orders. He submitted that in view of the terms and conditions of the order of regrant, the transfer of the land to the non-agriculturist was in breach of section 63 of the Tenancy Act. He submitted that the society being non-agriculturist execution of the sale deed required prior permission under section 63. According to the learned AGP, the notice dated 29th September 1997 was not only a show cause notice, but it was a rejection of the application of the society for permission for non-agricultural use and a show cause notice under section 84C. The notice dated 29th September 1997 was a show cause notice as there was a breach of the provision of the Tenancy Act by transferring the land to the non-agriculturist. The first application for non-agricultural use was filed only by 11 members of the society. Hence, to cure the defect, a second application was filed by the society. The learned SDO passed an order dated 30th May 1999 in response to the notice dated 29th September 1997, which was the show cause notice under section 84C. Learned AGP submitted that, admittedly, no documents were

produced by the society to support the sale deed as a valid transfer in favour of the society.

14. Learned AGP relied upon sub-section (10) of section 2 of the Tenancy Act and submitted that a Mamlatdar includes any other officer whom the State Government may appoint to perform the duties of a Mamlatdar. Hence, even the SDO had the power to invoke Section 84C of the Tenancy Act. He submitted that there is no delay in the action taken by the authorities against the breach of conditions of the order of regrant and breach of the provisions of section 63 of the Tenancy Act. In view of the subsequent application filed by the society, the learned Collector issued a show cause notice. Since the conditions were not complied with, the learned Sub Divisional Officer was justified in passing the impugned order directing that the subject land be vested in the Government.

15. Learned AGP submitted that the society was not registered on the date of execution of the sale deed. Hence, was not entitled to claim any benefit under section 64A of the Tenancy Act. In support of his submission, the learned AGP relied upon the decision of this court in the case of *Vinayak Ratangiri Gosavi and Another Vs. State of Maharashtra*⁶

6 2011(2) Mh.L.J 740

16. Learned AGP further referred to section 45 of the MLRC and submitted that the members of the society had already started non-agricultural use. Hence, the deeming provision under sub-section 4 of section 44 of the MLRC would not apply. He submitted that the society failed to comply with the order dated 21st December 1990; hence, the society was not entitled to claim any benefit by relying upon the same. He submitted that by order dated 30th May 1999, the learned Sub Divisional Officer has, in clear terms, recorded the details of the breach committed by the members of the society.

17. The individual member of the society filed a separate application seeking permission for non-agricultural use by relying upon NOC given by the society. However, subsequently, society filed an application for non-agricultural use without following the procedure, hence, there was no question of the society claiming benefit under the deeming provision. Learned AGP thus submitted that the illegal non-agricultural use of the subject land by the members of the society has caused huge revenue loss to the State Government. He, therefore, submitted that the learned Sub Divisional Officer has rightly invoked powers under section 84C and, after taking into consideration the reply of the society, passed an order recording a breach of the terms and conditions of the order of

regrant and the provision of section 63 of the Tenancy Act. Thus, the order passed by the learned SDO directing the vesting of the land in the State Government is within the scope and power under section 84C. He, therefore, submitted that there is no merit in the submissions made on behalf of the petitioner and that the petition deserves to be rejected.

Analysis:

18. I have considered the submissions. Perused the papers. It is not disputed that the subject land was originally Inam land. The land was regranted on 30th April 1964 on payment of Nazrana amount. The terms and conditions of the regrant are recorded in the mutation entry no. 6273. The terms and conditions include a restriction on the use of land only for agricultural purposes, and if the lands are used for non-agriculture purposes without any permission, then the occupant shall be liable to pay 50% of the market value of the land as contemplated in the condition no. 4.

19. Thus, one of the conditions for regrant was agricultural use; the conditions clearly stated that if the lands were to be used for non-agricultural purposes, the occupant would be liable to pay 50% of the market value of the land. The conditions further indicated that

if there is any breach of the above conditions, the amount of penalty would be recovered, and the land would be taken back into possession of the State Government. It is not in dispute that in view of the order of regrant, the heirs and legal representatives of the original holder sold the property by a registered sale deed to one Patel family. Thus, the terms and conditions of the order of regrant were binding upon the subsequent purchaser. The terms and conditions of the regrant did not restrict any transfer. However, there were specific conditions for the use of land as agricultural land. For the purpose of non-agricultural use, a specific condition was imposed for payment of 50% of the market value.

20. The subject land was subsequently transferred by the Patel Family to the petitioner society. Thus, the terms and conditions of the order of regrant were also binding upon the society. It is the petitioner's case that the society was classified as a tenant ownership society with a total of 33 members. Admittedly, a few members of the society filed an independent application for non-agricultural use. The society had issued NOC to the members for seeking non-agricultural use permission. Though the corporation had sanctioned the layout for 33 plots, there was no permission taken by the society for non-agricultural use. Hence, as per the

sanctioned layout, different plots were allotted to the members of the society, and the possession of the same was handed over to the members. It is a matter of record that mutation entry no. 6957 was certified recording the names of the members as against their respective plots.

21. The society initially filed an application for permission for non-agricultural use on behalf of the 11 members. It is not the case of the society that the said application was filed in the prescribed format. An order dated 13th September 1989 refers to the application dated 11th August 1988, on behalf of the society, for grant of non-agricultural use permission. By order dated 5th October 1989, the learned Collector decided the said application by exercising power under section 44 of the MLRC granting permission to the society for non-agricultural use of plot no. 7 on the terms and conditions mentioned in the order. Thus, on the application dated 11th August 1984, permission for non-agricultural use was granted only with respect to plot no.7.

22. Order dated 21st December 1990, indicates that the non-agricultural use permission was granted by the learned Collector, in respect of plot no. 29 on the terms and conditions mentioned in the said order. Thus, except for the aforesaid two orders with regard to

the plot nos. 7 and 29, admittedly, no permission was taken for non-agricultural use for the remaining plots of the subject land. A show cause notice issued by the learned Collector on 29th September 1997 alleges a breach of the provisions of section 63 of the Tenancy Act. The said show cause notice also refers to the order of regrant. Thus, by the said show cause notice, the society was called upon to show cause as to why action should not be taken for breach of provisions of section 63 and the terms and conditions of the order of regrant. Though the society responded to the said show cause notice on 13th October 1997, stating that there is no breach of any of the terms and conditions of the order of regrant, the society relied upon the individual orders of non-agricultural use permission granted with respect to the plot nos. 7 and 29.

23. With reference to the breach of provisions of section 63 of the Tenancy Act, society contended that the subject land was purchased for residential use, and the provisions of the Tenancy Act were not applicable. Society contended that the subject land was never agricultural land. Hence, the provisions of the Tenancy Act were not applicable. However, the society contended that by way of precaution, the application was made for permission for non-agricultural use; hence, the terms and conditions for the grant of

non-agricultural use would be binding upon the society. Thus, by relying upon non-agricultural use permission granted on 5th October 1999, the society requested to issue similar permission on the application filed by the society.

24. Thus, specific allegations in the show cause notice dated 29th September 1997, with regard to the breach of terms and conditions of the order of regrant, were not dealt with by the society. Hence, the learned Sub Divisional Officer passed an order on 30th May 1999, in reference to the show cause notice dated 29th September 1997, issued by the learned Collector, for breach of the condition of the order of regrant and section 63 of the Tenancy Act. Thus, the learned AGP has relied upon the terms and conditions of the order of regrant and the provisions of section 63 of the Tenancy Act to support the order passed by the learned SDO, directing the vesting of the subject land in the State Government.

25. Thus, the points to be considered are whether the sale deed executed in favour of the society is hit by the provisions of Section 63 of the Tenancy Act and whether the non-agricultural use started by the society and its members amounts to a breach of the condition of the order of regrant for want of payment of 50% of the market

value as contemplated in the condition no. 6 of the regrant order reproduced in mutation entry no. 6273.

26. So far as the breach of Section 63 of the Tenancy Act is concerned, it is not in dispute that the sale deed is executed in favour of the proposed society without permission under Section 63 of the Tenancy Act; hence, the society was not entitled to claim any benefit under section 64A of the Tenancy Act. Thus, the decision of this court in the case of *Vinayak Ratangiri Gosavi*, relied upon by the learned AGP, is squarely applicable to the present case.

27. However, the sale deed in favour of the petitioner is of the year 1985, and the show cause notice was issued in the year 1997. The order passed by the learned SDO in reference to the show cause notice is dated 30th May 1999. Though the order does not refer to the invocation of powers under Section 84C of the Tenancy Act on the ground of breach of Section 63, it is traceable to the provision of Section 84C. Thus, the action for breach of Section 63 ought to have been taken within a reasonable time. However, it is taken after a period of almost twelve years. Hence, in view of the legal principles settled in the decisions of *Mohamed Kavi Mohamad Amin*, *Appa Dadu Patil through its POA* and *Waman Atmaram*

Lavand, relied upon by the learned counsel for the petitioner, the authorities have committed an error in law by taking action of resumption beyond time on the ground of breach of Section 63 of the Tenancy Act.

28. The conditions of the order of regrant are binding upon the petitioner and its members. It is not in dispute that the members of the society have carried out construction and started non-agriculture use without payment of 50% amount of the market value as per the condition of the regrant order. Therefore, there is a clear breach of the condition of the regrant order. In response to the show cause notice dated 30th January 1997, the society replied by letter dated 6th February 1997, expressing willingness to make payment of the amount of 50% of the market value as per the condition of the regrant order. Thus, in view of the willingness expressed by the petitioner, if the amount was quantified as contemplated in condition no. 4 of the regrant order reproduced in Mutation Entry No. 6273 and the petitioner had paid the amount as called upon, there would have been no question of resumption of the land on the ground of breach of condition of the regrant order.

29. It is a matter of record that the applications were made for

permission for non-agricultural use and they were not decided. The petitioner seeks the benefit of the deeming provision under sub-section (3) of Section 44 of the MLRC. However, the deeming provision will not apply if otherwise, the application is not in accordance with the law. In view of the binding conditions of the regrant order, non-agriculture use was not permissible without payment of 50% of the market value of the land as contemplated in condition no. 4 of the regrant order reproduced in Mutation Entry No. 6273. Admittedly, the said condition was not complied with; hence, non-agriculture use was not permissible. Therefore, the deeming provision shall not apply. Thus, the decisions of this court in the cases of *Ganesh Ginning and Pressing Company Ltd. Jalna*, and *State of Maharashtra and Ors Vs. Shri Narayan Agro Udyog Pvt. Ltd.* relied upon the learned counsel for the petitioner are of no assistance in view of the facts of this case.

30. Thus, for the reasons recorded above, the Order of Resumption of Land passed on 30th May 1999, confirmed by the order dated 9th November 2001 by the Additional Collector and Order dated 27th March 2003 by the Additional Commissioner, are not sustainable on the ground of breach of Section 63 of the

Tenancy Act. However, the conditions of the regrant order are binding upon the petitioner. Hence, no fault can be found in the Order of Resumption of Land passed on 30th May 1999, confirmed by the order dated 9th November 2001 by the Additional Collector and Order dated 27th March 2003 by the Additional Commissioner on the ground of breach of condition of the regrant order. Though willingness was expressed by the petitioner in the letter dated 6th February 1997, in response to the show cause notice dated 30th January 1997, no action was taken to quantify the amount as contemplated in condition no. 4 of the regrant order reproduced in Mutation Entry No. 6273. Hence, I find it appropriate to direct the learned Tahsildar to quantify the amount to be paid in compliance with the said condition of the regrant order. On quantification of the amount payable, if the petitioner complies with the condition by making payment, the Order of resumption will not be sustained.

31. Hence, the petition is partly allowed by passing the following order:

- (i) The Tahsildar, Karveer, Kolhapur shall quantify the amount payable as contemplated in condition no. 4 of the regrant order reproduced in Mutation Entry No. 6273 and

intimate the same to the Petitioner within three months from today. The learned AGP to forthwith convey this order to the concerned Tahsildar.

(ii) The Petitioner is permitted to pay the quantified amount as directed above within two months from the date of intimation.

(iii) The Order of resumption dated 30th May 1999 by the SDO, confirmed by the order dated 9th November 2001 by the Additional Collector and Order dated 27th March 2003 by the Additional Commissioner, shall remain in abeyance for a period of six months from today to enable all the parties to comply with the directions issued in clauses (i) and (ii) above.

(iv) On payment of the quantified amount in compliance with condition no. 4 of the regrant order reproduced in Mutation Entry No. 6273, the Order of resumption dated 30th May 1999 by the SDO, confirmed by order dated 9th November 2001 by the Additional

Collector and Order dated 27th March 2003 by the Additional Commissioner shall stand cancelled.

(v) It is clarified that if the petitioner is aggrieved by the quantification of the amount, the petitioner shall be at liberty to challenge the quantification in accordance with the law on payment of the amount without prejudice to their rights and contentions.

(vi) It is also clarified that if the amount is paid as directed above, there shall not be any impediment in considering the application for non-agriculture use of the subject land.

(vii) Needless to clarify that on failure to make the payment by the petitioner as directed above, the Order of resumption dated 30th May 1999 by the SDO, confirmed by order dated 9th November 2001 by the Additional Collector and Order dated 27th March 2003 by the Additional Commissioner shall stand confirmed.

32. Writ Petition is disposed of in the above terms.

(GAURI GODSE, J.)